

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



D2

File: SRC-02-014-53914

Office: TEXAS SERVICE CENTER

Date:

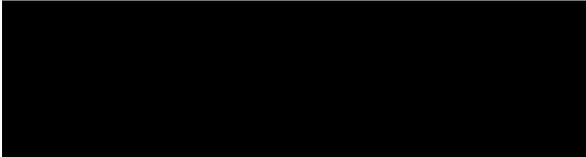
JUL 18 2003

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



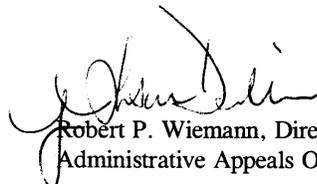
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an insurance business with six employees and an undisclosed gross annual income. It seeks to employ the beneficiary as an administrative assistant for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary is qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position, or that the beneficiary holds the equivalent of a baccalaureate degree. On appeal, counsel states, in part, that the proffered position is more similar to the position of an administrative services and facility manager than a secretary. Counsel further states that the Department of Labor (DOL) has determined that an administrative assistant position requires a baccalaureate degree. Counsel also states that the record contains a credentials evaluation as evidence that the beneficiary holds the equivalent of a baccalaureate degree in business administration from a U.S. university.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[A]ssistance to the President in identifying way forward for the company; setting of detailed plans to achieve strategic objectives; identification and procurement of necessary resources to achieve plans; contract negotiation and formulation with fellow Health Insurance companies, including feasibility studies and reporting; product development and marketing; maintenance of sales representatives' commissions; management of facilities, office supplies and communications.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
3. The employer normally requires a degree or its equivalent for the position; or
4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree

in business administration or a related field. The proffered position is that of an administrative assistant. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the AAO does not consider the *DOT* a persuasive source of information regarding whether a particular job requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation.

The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The DOL's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

The proffered position is primarily that of an administrative assistant. In its *Handbook*, 2002-2003 edition, at pages 422-423, the DOL describes the job of an administrative assistant, in part, as follows:

As technology continues to expand in offices across the Nation, the role of the office professional has greatly evolved. Office automation and organization restructuring have led secretaries and administrative assistants to assume a wider range of new responsibilities once reserved for managerial and professional staff. Many secretaries and administrative assistants now provide training and orientation for new staff, conduct research on the Internet, and operate and troubleshoot new office technologies. . . .

They serve as an information manager for an office, schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information via the telephone, postal mail, and e-mail. They may also prepare correspondence and handle travel arrangements

. . . .

In addition, secretaries and administrative assistants increasingly use personal computers to create spreadsheets, compose correspondence, manage databases, and create reports and documents via desktop publishing, and using digital graphics - all tasks previously handled by managers and other professionals. . . .

A review of the *Handbook* finds that although high school graduates with basic office skills may qualify for entry-level secretarial positions, employers increasingly require extensive knowledge of software applications, such as word processing, spreadsheets, and database management. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges.

Counsel's argument that the proffered position is closely related to an administrative services and facility manager is noted. It is also noted that in its *Handbook*, at page 25, under the occupation of Administrative Services Managers, the DOL finds that in small offices, experience may be the only requirement needed to enter a position as an office manager. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

As the petitioner has not sufficiently established that the proffered position is a specialty occupation, the beneficiary's qualifications need not be examined further in this proceeding.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.