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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, DC 20536



File: LIN 01 254 55285 Office: NEBRASKA SERVICE CENTER Date: JUN 12 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



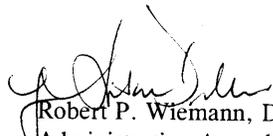
INSTRUCTIONS:

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, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a new software development company in Illinois with one employee and an anticipated \$300,000 gross annual income for the year 2001. It seeks to temporarily employ the beneficiary as a human resources manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of human resources manager is a specialty occupation and submits additional documentation.

Section 214(i)(1) of the Immigration and Naturalization Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which 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 in the United States.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on August 30, 2001, the petitioner described the duties of the proffered position as follows:

[The beneficiary] will be responsible for planning, directing, coordinating and carrying out the policies of the human resources management department. He will maximize use of our human resources through oversight of employee compensation, recruitment, personnel policies, separation review, and compliance. The Human Resources Manager will ensure that employees' backgrounds meet with the individual project needs. The position requires that the Human Resources Manager travel to the Philippines office on an as-needed basis to oversee the recruitment of appropriate staff in the Philippines.

The petitioner also provided the following breakdown of duties and the percentage of time to be spent in the respective duties:

- o Manage the delivery of Human Resources Operations, including recruitment, training, development, performance management, etc. 30%
- o Contribute to the ongoing development of policies as a whole, and provide assistance with the management of change processes and practices necessary for improving the capability and effectiveness of the organization 30%
- o Contribute to the development of strategic initiatives designed to ensure that the management of the ownership contributes to the overall strategic objectives 10%
- o Shuttling from Chicago, Illinois to Manila, Philippines for monitoring of personnel and human resources activities in Manila 3%
- o Develop and implement benefit package for company employees 5%
- o Prepare detailed job descriptions and classification systems, and develop fair and competitive pay structures 5%
- o Give employee orientation and conduct training and personnel development classes for staff members and management 7%
- o Handle employee insurance, pension and savings plan administration 5%

- o Handle reports as requested 5%

The petitioner stated that the candidate for the proffered position had to have at least a baccalaureate degree in human resources management, business, or the equivalent and one year experience as a human resources manager and a recruiter in the information technology field, or working directly in the information technology field. The petitioner also provided an educational equivalency evaluation document from Educated Choices, Inc. that stated the beneficiary's baccalaureate degree in human resource management was equivalent to a degree awarded by a regionally accredited U.S. college or university.

On October 29, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation pursuant to the four criteria outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (A). In particular, the director requested more documentation with regard to whether other companies within the petitioner's industry required a bachelor degree in a specific field of study for entry into human resources management positions or whether the particular position was so complex or unique that it could be performed only by an individual with a degree. The director also requested documentation that the petitioner had previously hired individuals with baccalaureate or higher degrees or their equivalent in a specialized area for the same position.

In response, the petitioner submitted seventeen job advertisements from the website Monster.com for human resources managers. In addition, the petitioner submitted an expert letter from Dr. [REDACTED] of Educated Choices that stated the position of human resources manager met the criteria of a specialty occupation with the requirement for a baccalaureate degree in human resources management, business administration, or a closely related field. The analysis done in reaching this conclusion was based on information contained in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* on human resource managers and on an expert opinion offered by Dr. Daniel Miller, Dean of the Business School at Central Connecticut State University.

On February 19, 2002, the director denied the petition stating that the organizations whose human resource manager positions were referenced in the Monster.com website were not similar to the petitioner in size or scope. The director further stated that the proffered position appeared to incorporate and combine the duties of an administrative services and facility manager and general manager of a small organization, as opposed to duties of a human resource manager. The director determined that neither job classification required a baccalaureate or higher or its equivalent in a specific specialty for entry into positions in these two employment areas.

On appeal, counsel submits further information on the staff

development plans for the petitioner and also elaborates further on the duties of the proffered position previously outlined in the initial petition filing. Although the petitioner refers to the submission of two job announcements from a Manila newspaper that demonstrate the differences in recruiting personnel in the Philippines as opposed to recruitment in the United States, no such evidence was found on the record. In addition, officers from Educated Choices, Inc. commented further on the similarity of the proffered position to other human resource management jobs, as well as the specific duties of the human resources manager position versus those of a general or office manager position.

The Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

With regard to the instant petition, the petitioner and the director identified three job classifications, namely, human resources manager, administrative services and facilities managers, and general manager. The generic general manager classification does not appear to be analogous to the proffered position. Accordingly this classification will not be examined in this proceeding.

With regard to human resource managers, the 2002-2003 edition of the *Handbook* on page 60 describes numerous specializations within the field of human resources managers. The *Handbook* states that the basic role of these workers is to perform the "administrative function of an organization, such as handling benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management." The *Handbook* also identifies international human resources managers as an emerging specialty within the human resource manager field. On page 62, the *Handbook* states that for entry-level jobs in human resources, employers usually seek college graduates, and "many prefer applicants who have majored in human resources, personnel administration or industrial and labor relations."

With regard to administrative services and facilities managers, the *Handbook* on page 25 states:

In a small organization, a single administrative services manager may oversee all support services. . .

.

Facility managers have duties similar to those of administrative services managers, but also plan, design and manage buildings and grounds in addition to people.

They are responsible for coordinating the aspects of the physical workplace with the people and work of an organization. This task requires integrating the principles of business administration, architecture, and behavioral and engineering science.

With regard to educational requirements for either administrative services or facility managers, the *Handbook* on page 25 states:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. . . . In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements.

. . . .

. . . Most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration or facility management.

Upon review of the job duties provided by the petitioner as well as the nature of the petitioner's business, as well as the information provided by the *Handbook* on the two job classifications, the proffered position appears to be most analogous to that of a human resources manager. Both the initial petition and the expanded description of the beneficiary's job duties provided by the petitioner indicate that some 60% of the beneficiary's work time will be spent in recruiting, training, and developing new personnel along with performance measurement and other policy development for the new company. The remaining duties are also involved in the support of such personnel activities. In addition the *Handbook* description of international human resources manager would also be analogous, based on the location of future employees in both the United States and the Philippines. The comments provided by Dr. Ellen Lent as well as the comments of Dr. Daniel Miller with regard to the duties and educational requirements for human resource managers for small or emerging companies also lent substantive weight to this determination.

With regard to the director's determination that the proffered position is that of an administrative or facility manager, the petitioner has made no mention of any other administrative function to be done by the beneficiary beyond personnel management, either in the United States or in the Philippines. The *Handbook* classification of administrative or facility managers also emphasizes the maintenance or control of property and physical environments which does not appear to be related to any duties outlined by the petitioner in its petition.

Upon review of the *Handbook* description of the educational requirements for human resources managers, the statement that employers usually seek college graduates for human resource management positions, while some employers prefer hiring specific specialties depending on the type of position does not necessarily establish that a baccalaureate in human resources is the minimum requirement for entry into a human resources manager position. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

Nevertheless, the nature of the duties of the position which involves knowledge of information technology processes for recruitment, selection and hiring purposes; the actual recruitment, selection, and hiring of employees; and the human resources management of employees in both the United States and in the Philippines for purposes of employee recruitment, retention and company growth, can be viewed as sufficiently specialized and complex so as to establish the fourth criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A) (4). Upon review of the duties of the proffered position, it does not appear excessive that the petitioner would seek to hire an individual with a baccalaureate degree in a specific specialty, namely, human resources, along with practical work experience in information technology, and prior indepth knowledge of the petitioner's primary international business environment.

The critical element in the adjudication of H-1B petitions is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. In the instant petition, the petitioner appears to have met both the statutory requirements as outlined in the Act and the regulatory criteria as outlined in 8 C.F.R. § 214.2 (h) (4) (iii) (A).

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.