

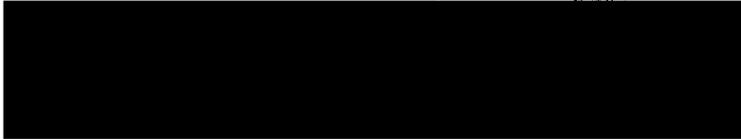


DA

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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC-01-130-51391

Office: California Service Center

Date: MAR 13 2003

IN RE: Petitioner:

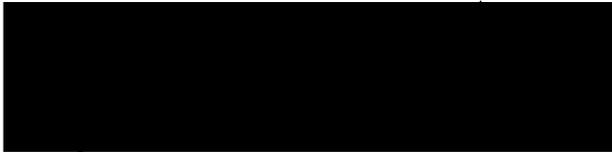
Beneficiary:



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)

PUBLIC COPY

ON BEHALF OF PETITIONER:



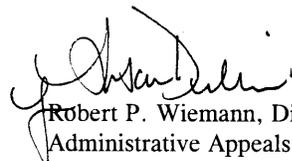
INSTRUCTIONS:

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 a full service international marine equipment facility with 19 employees and a gross annual income of \$2,300,000. It seeks to employ the beneficiary as an administrative services manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), the term "specialty occupation" is defined as:

an occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields 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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the Department of Labor (DOL) has assigned the occupation of administrative services manager an SVP rating of 7, which demonstrates that the proffered position is a specialty occupation. Counsel also states that the proposed duties, which include supervising professional workers, are so specialized and complex that a baccalaureate degree is required.

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. Although counsel states that the proposed duties include supervising professionals with baccalaureate degrees, such duties were not included in the description of duties provided at the time of filing. As such, the expanded description of duties provides little support for the instant petition. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

He will coordinate clerical activities in the company and other two affiliates (PTI Tours & Travel and Tito Rey Restaurant): Analyses [sic] and organize office operations and procedures, such as bookkeeping, preparation of payrolls, flow of correspondence, filing, and other clerical services. Evaluate office production, revise procedures or devise new forms to improve efficiency and workflow. Establish uniform correspondence procedures and new office procedures. Plan office layouts and initiate cost reduction programs. Review clerical and personnel records. Prepare activity reports for management visibility, using computer. Prepare organizational budget and financial reports.

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 argument that the proffered position would normally require a bachelor's degree in management or a related field. 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 *DOT* is not 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 appears to be primarily that of an office and administrative support supervisor or manager. In its *Handbook*, 2002-2003 edition, at pages 417-418, the DOL describes the job of office and administrative support worker supervisors and managers, in part, as follows:

These workers are employed in virtually every sector of the economy, working in positions as varied as *customer services manager, teller supervisor, and shipping-and-receiving supervisor*.

Planning the work of their staff and supervising them are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the required level of quality and time allotted to each job.

After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards.

Office and administrative support supervisors and managers usually interview and evaluate prospective clerical employees.

Office and administrative support supervisors and managers often act as liaisons between the clerical staff and the professional, technical, and managerial staff. This may involve implementing new company policies or restructuring the workflow in their departments. They must also keep their superiors informed of their progress and abreast of any potential problems. Often this communication takes the form of research projects and progress reports. Because they have access to information such as their department's performance records, they may compile and present these data for use in planning or designing new policies.

The types of duties the petitioner ascribes to the beneficiary fall primarily within the scope of an office and administrative support worker supervisor or manager. For example, the petitioner states that the beneficiary will "coordinate clerical activities in the company and other two affiliates..." and "[analyze] and organize office operations and procedures, such as bookkeeping, preparation of payrolls, flow of correspondence, filing, and other clerical services..." Such duties are normally associated with an office and administrative support worker supervisor or manager position. A review of the *Handbook* at page 418 finds that most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. 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 shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as management, 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.

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.