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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: EAC-01-241-52254 Office: Vermont Service Center

Date:

MAR 19 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: SELF-REPRESENTED

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 owns and operates check cashing stores, gas stations and convenience stores. It has 165 employees and a stated gross annual income in excess of \$5 million. It seeks to employ the beneficiary as a night shift supervisor for a period of two years and eleven months. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner submits a statement.

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

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 concluded that the petitioner had failed to submit sufficient evidence to demonstrate that a bachelor's degree in a

specific specialty is a requirement for employment in the proffered position. On appeal, the petitioner argues that the duties of the offered job are so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of a baccalaureate or higher degree.

The Bureau does not rely solely on the title of a position in determining whether that position 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 an employment contract that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Employee will be responsible besides others for cash handling (about \$200,000.00) at the beginning of the shift and will verify this amount physically at the start and at the end of the shift will again verify this amount with the disbursement and cashiers receipts. At the closing he will prepare a report to this effect and mention any shortage or any other discrepancy to the senior management.

Employee will prepare[,] daily, weekly and monthly reports and forward those for the review of Senior Management and will perform other duties as may be specified from time to time or as and when needed.

In response to a subsequent Service (now the Bureau) request for additional information regarding the initial petition, the petitioner provided the following description of the duties of the proffered position:

- a) Take charge by physically counting \$200,000.00 at the beginning of the shift.
- b) Distribute money to the cashiers.
- c) Take charge from the cashiers at the end of the shift and compare it with the checks cashed, money transferred and other receipts.
- d) Help the cashier in the event a doubtful check is presented.
- e) Arrange all documents/paperwork sent to the main office for review, deposit and auditing.
- f) Maintain discipline during working hours.

- g) Initiate disciplinary action against an employee for misappropriation or negligence or for other reasons as described in the Employee handbook.
- h) Train and supervise new employees.
- i) Request replacement in the event an employee calls out.
- j) Prepare daily, weekly and monthly reports and about the financial activity at the center for the review of Senior Management and [a]uditing purposes.
- k) Make recommendations for the increase of business activity at the center.
- l) Every three months prepare a detailed comparison of the center[']s business performance and inform senior management of any unusual changes.
- m) Attend company meetings and coordinate with the management for center requirements.
- n) Serve as a team leader.
- o) Any other duties as may be assigned from time to time.

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.

The proffered position appears to combine the duties of an office and administrative support worker manager with those of a head bank teller. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 418, does not list a requirement of a baccalaureate degree in a specific specialty for employment as an office and administrative support worker manager. Most businesses fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organizations. In addition, certain personal qualities such as strong teamwork and problem solving skills and a good working knowledge of the organization's computer system are often considered as important as a specific formal academic background.

A further review of the *Handbook* at page 387, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in financial clerk positions such as a head bank teller. Most financial clerk positions require only that an individual possess a high school diploma. The *Handbook* notes that some financial clerk positions require either an associate's degree or bachelor's degree in such diverse areas as business, accounting, and the liberal arts. Experience and on-the-job training are also beneficial to individuals seeking employment and advancement in financial clerk positions. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has failed to submit any evidence demonstrating that businesses similar to it in their type of operations, number of employees, and amount of gross annual income require the services of individuals with bachelor's degrees in a specific specialty in parallel positions.

The petitioner contends that it has provided a list of all of its current employees who possess bachelor's degrees. However, the petitioner has failed to submit any evidence, such as diplomas or transcripts, that would tend to corroborate the claim that the individuals hold the listed degrees. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972). Therefore, the petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

The petitioner's assertion that the duties of the offered job are so specialized and complex that the performance of such duties in the business setting normally requires an individual with a minimum of a baccalaureate degree is not persuasive. As noted above, the *Handbook* does not provide any indication that a baccalaureate degree in a specific specialty is required for employment as an office and administrative support worker manager or a head bank teller. The record does not contain any independent evidence that would tend to support the petitioner's contention. Again, simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California, id.* Consequently, the petitioner has failed to establish 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 in a specific specialty.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.