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

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

PUBLIC
[Redacted]

MAR 19 2003

File: WAC-02-058-54600 Office: California Service Center Date:

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:
[Redacted]

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

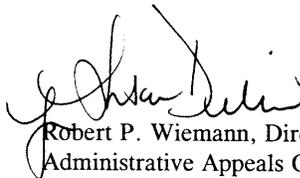
INSTRUCTIONS:

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 day care center with 12 employees and a gross annual income of \$525,000. It seeks to employ the beneficiary as an office 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an office manager, and states, in part, that the beneficiary would be supervising the petitioner's professional staff, as well as managing the accounting and administrative duties.

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:

We are in need of a qualified Office Manager...to handle administrative services such as taking care of all service needs of the facility are being met without hamper and obstacle such as the immediate presence of office and facility supplies, child care supplies including human resource concern such as assignment of daily activities of housekeepers and teacher's aides. She

will recommend, implement and purchase special care concerns for the needs of the children such as play equipment's, materials, furniture's that are child-sized and food that are appropriate to the needs of the children. She will be tasked in [sic] taking care of account[s] receivable, accounts payable and payroll.

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 require a bachelor's degree in English or a related field. The proffered position appears to combine the duties of an office and administrative support worker manager with those of a bookkeeper. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 418, finds no requirement of a baccalaureate or higher 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 review of the *Handbook* at pages 387-388, also finds that the usual requirement for a bookkeeping or accounting clerk is at least a high school diploma or its equivalent. Some college, however, is

becoming increasingly important, particularly for those occupations requiring knowledge of accounting. For positions such as bookkeepers and accounting and procurement clerks, an associate's degree in business is often required. 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 English, 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.