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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.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

MAY 19 2003

File: WAC 01 049 53323

Office: CALIFORNIA SERVICE CENTER

Date:

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:

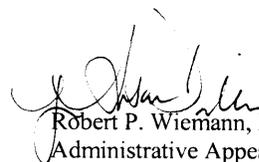
INSTRUCTIONS:

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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a travel agency with four employees and a stated gross annual income of \$400,000. It seeks to employ the beneficiary as a contract specialist 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 and additional documentation.

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. The term "specialty occupation" is defined at section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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.

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 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.

At issue in this proceeding is the question of whether the proffered position qualifies as a specialty occupation.

The director determined the proffered position most closely resembles that of a purchasing manager, purchasing buyer, or

purchasing agent, occupations that do not normally require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the duties of the position are clearly those of a contract specialist. Counsel contends that the size and scope of the petitioning entity's business operations are not considerations when determining whether a particular job qualifies as a specialty occupation.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The duties of this individual will be to negotiate with hotels, suppliers, etc., to draw up procurement contracts, to prepare proposals and bids, evaluate and monitor contract performance in order to determine necessity to obtain brochures for amendments or extensions, and for compliance to contractual obligations. Approve or reject request for amendments or extensions, and for compliance to contractual obligations. Approve or reject request for deviations from contract specifications. Arbitrate claims and compliance occurring in performance contracts. Analyze price proposals, financial reports and other data to determine reasonableness of processes, and to act as liaison between this company [sic] suppliers to ensure fulfillment of obligations by contractors.

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

Although counsel asserts that the position in question is a contract specialist job rather than a purchasing manager or purchasing agent job, the Department of Labor ("DOL") groups both contract specialist and purchasing manager or purchasing agent jobs into the general heading purchasing managers, buyers, and purchasing agents in its *Occupational Outlook Handbook (Handbook)*. The DOL describes the work of purchasing agents at page 80 of the *Handbook*, 2002-2003 edition, as follows:

Purchasing managers, buyers, and purchasing agents seek to obtain the highest quality merchandise at the lowest possible purchase cost for their employers. . . . Purchasers and buyers determine which commodities or services are best, choose the suppliers of the product or service, negotiate the lowest price, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time.

* * *

Purchasing managers, buyers, and purchasing agents evaluate suppliers based upon price, quality, service support, availability, reliability, and selection. . . . Once all the necessary information is gathered, orders are placed and contracts are awarded to those suppliers who meet the purchasers' needs. . . . Purchasing agents and managers obtain items ranging from raw materials, fabricated parts, machinery, and office supplies to construction services and airline tickets.

A review of the *Handbook* at page 82 finds no requirement of a baccalaureate degree in a specific specialty for employment as a contract specialist or purchasing agent. Educational requirements tend to vary with the size of the organization. Retail and wholesale firms prefer to hire applicants who have a college degree, and are familiar with the merchandise they sell and with wholesaling and retailing practices, but there is no indication in the *Handbook* that a baccalaureate degree in a specific specialty is normally required for these positions.

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 considered to be 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. The *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 Department of Labor has assigned it a specific SVP rating in the DOT.

The petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations. Furthermore, the petitioner has not submitted any evidence to show that it required a baccalaureate degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the specific duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Counsel's assertion that the size and scope of the petitioning entity's business activities cannot be a factor in determining

whether a particular job qualifies as a specialty occupation, while correct, is not relevant to the question of whether the position in question qualifies as a specialty occupation. In this case, the petition was not denied based on the petitioner's size or the scope of the petitioner's business activities. Rather, the petition was denied because the petitioner had not shown that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

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.