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Citizenship and Immigration Services

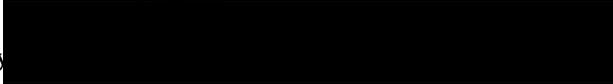
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS, 3/F
425 I Street, N.W.
Washington, DC 20536



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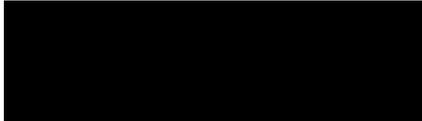
File: EAC 02 075 53313 Office: VERMONT SERVICE CENTER Date:

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:



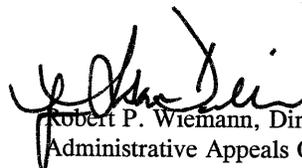
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Nutley, New Jersey consulting and manpower firm with 25 employees and a gross annual income of \$2,000,000. It seeks to employ the beneficiary as a contract specialist for a period of two years. The director determined that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality 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 director determined that the petitioner had not shown that the proffered position of contract specialist requires a bachelor's degree in a specific specialty. On appeal, counsel asserts that it is common knowledge in the industry that contract specialists must have a bachelor's degrees in a business-related field, even though the job announcements on record do not specify such.

In the initial petition, the job duties of the proffered position were described thusly:

Negotiates with suppliers to draw up procurement contracts; Negotiates, administers, extends, terminates and renegotiates contracts. Formulates and coordinates procurement proposals. Directs and coordinates activities of workers engaged in formulating bid proposals. Evaluates or monitors contract performance to determine necessity for amendments or extensions of contracts, and compliance to contractual obligations. Approves or rejects requests for deviations of contract specifications and delivery schedules. . . .

These duties are comparable to those of a purchasing agent as described in the U.S. Department of Labor's *Occupational Outlook Handbook* 2002-2003 edition at page 80:

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 prices, and award contracts that ensure that the correct amount of the product or service is received at the appropriate time. . . .

The *Handbook* states that educational requirements tend to vary with the size and focus of the organization. According to the *Handbook*, a variety of educational backgrounds may be suitable to enter into this field. The job announcements on record do not specify that the bachelor's degree sought must be in a specific field. Also, the advertisers in the submitted announcements are not shown to be similar in size or in nature to the petitioner. In sum, the petitioner has failed to establish that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into the contract specialist position or that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not placed on the record any evidence to the effect that its particular position is so complex or unique that

it can be performed only by an individual with a degree.

The record does not contain documentation regarding the petitioner's educational requirements for other contract specialists in its organization. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any contract specialist position.

The petitioner has failed to establish that any of the four criteria 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 appeal will be dismissed.

ORDER: The appeal is dismissed.