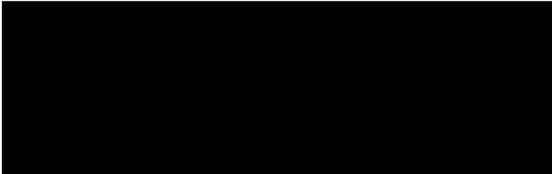


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JUN 29 2007

FILE: WAC 05 159 51446 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 of the Administrative Appeals Office 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.

James Blinzinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a limousine service, employs six personnel, and claims a gross annual income of approximately \$330,000. It seeks to employ the beneficiary as a contracts administrator. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant in a specialty occupation pursuant to 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). The director denied the petition determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation, received at the service center on May 16, 2005; (2) the director's August 2, 2005 request for further evidence (RFE); (3) the petitioner's undated response to the director's RFE; (4) the director's November 23, 2005 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of 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 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In a May 9, 2005 letter appended to the petition, the petitioner noted that it had been providing limousine service in Southern California since 1997. The petitioner stated its clients have included executives for Japanese and Japanese-American companies, Japanese tour groups, and that it also worked with travel agencies and airlines. The petitioner indicated its desire to hire a professional with training in contracts administration to prepare contracts. The petitioner listed the specific duties of its contracts administrator as:

- Examine service & schedules based on performance requirements, delivery of services, estimated operating costs such as liability, maintenance, & potential damage of equipment.
- Prepare pre-service agreements with airlines, travel agencies, hotels and clients wanting to travel within the Southern California region whenever appropriate and for procurement of the offered service under a particular schedule.
- Negotiate contract bids.
- In accordance with Civil, Obligation, & Commercial Law generate final contract for service agreement with clients, airlines, travel agencies, hotels, and maintenance & service.
- Evaluate and monitor contract performance to determine necessity for amendment or extension to contracts.
- Act as liaison between company and its subcontractors and clients, to implement fulfillment of contracts.
- Approve or reject requests for deviations from contract specifications allowed by civil and obligation rules and amend contracts where deemed prudent and necessary.

The petitioner added that "[d]ue to the specialized nature of this position, we require an individual with at minimum a Bachelor's Degree in Law, Business Law or Administration, or related field or foreign equivalent."

In an undated response to the director's RFE, the petitioner noted the Irvine Chamber of Commerce had commented that it assumed contract administrators would have bachelor's degrees given the complexity of drafting and negotiating contracts which refer to insurance, legal liability, various duties and responsibilities, and that a small company, such as the petitioner, would have reason to need a university-trained person drawing up its contracts and implementing and monitoring them. The petitioner requested that CIS consider that small firms that do not have a depth of staff experience to draw upon must hire specialists for contract administration for protection of their businesses. The petitioner also noted that employers who promote lower-level staff, even those lacking a bachelor's degree, usually do so because the employer considers that their experience is much more valuable and at least equivalent to the minimum baccalaureate degree requirement for entry into such positions. The petitioner contended that the Department of Labor's *Occupational Outlook Handbook (Handbook)* referenced a contract administrator as a specialist. The petitioner opined: "by its very title and nature, contract administration involved sufficient complexity that any employer would want someone with analytical ability and problem solving skills to be able to perform the job with confidence" and that a law degree provides such abilities and skills.

On November 23, 2005, the director denied the petition, determining that the duties of the proffered position were duties similar to the position of a contract administrator described in the Department of Labor's *Occupational Outlook Handbook (Handbook)* under the chapter "Administrative Services Manager." The director noted the *Handbook's* report that managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. The director determined that although a baccalaureate level of training may be preferred or generally required for some jobs, the position of administrative services manager is not an occupation that requires a baccalaureate level of education in a specific specialty as a normal minimum for entry into the occupation.

The director noted that the petitioner had not submitted letters or affidavits from firms in the limousine services industry or any other evidence showing that a degree requirement is common to the industry in parallel positions among similar organizations. The director determined that the petitioner's description of duties of the proffered position was generic in nature and did not detail any unique or complex aspect of the position. The director noted that the petitioner had been in business since 1997 but had not provided evidence that it had required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. The director determined that the petitioner had not established that the proffered position was any more complex or specialized than other administrative services manager's jobs. The director concluded that the petitioner had failed to show that the proffered position met any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); thus, the petitioner had failed to establish the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director took a broad view of the petitioner's duties rather than the narrow and proper view pertaining specifically to the complex duties involved in contract administration. Counsel takes issue with the director's focus on the generic duties of administrative managers, rather than the specific nature of a contract administrator. Counsel references the Department of Labor's *Online O*NET (O*NET)* and its classification of administrative services managers as JobZone 4, comprising work experience plus a bachelor's or higher degree. Counsel further contends that it is up to the

employer to decide what the position is and should be called. Counsel also cites a district court decision for the proposition that the employer, not CIS, must establish the criteria for an open position.

Counsel's contentions are not persuasive. The AAO observes that the critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. In this matter, the petitioner provides a broad description of the duties of the proffered position that correspond generally to the duties of a contract administrator. The *Handbook* reports that contract administrators: "oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment material, supplies, products, or services." The *Handbook* reports: "[m]anagers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance."

Although the *Handbook* indicates that managers of highly complex services, such as contract administration, generally need a bachelor's degree in business, human resources, or finance, the *Handbook* does not further expound upon what constitutes highly complex services. Although the *Handbook* reports employers generally require a bachelor's degree in business, human resources, or finance, the *Handbook* does not elaborate on the general requirement of such disparate degrees as those of business, human resources, or finance. It is not possible to conclude from the *Handbook's* brief discussion of contract administration or the education required for contract administrators to conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the position of contract administrator. Thus, the *Handbook* does not provide a method, in and of itself, to conclude that a contract administrator is a position wherein a baccalaureate or higher degree in a specific discipline is normally the minimum requirement for entry into the particular position. Moreover, the AAO notes that the petitioner itself has conceded that it would find acceptable a candidate with a range of degrees. As noted previously, the petitioner stated in its May 9, 2005 letter of support that it would find acceptable an individual with a bachelor's degree in law, business law, business administration, or a related field. Further, the AAO notes that, according to the educational evaluation contained in the record, the beneficiary does not possess the equivalent of a degree in a specific field of study.¹ When a job can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). As previously stated, CIS interprets the term "degree" to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The AAO acknowledges counsel's reference to the *O*NET* and its JobZone classification of 4 for an administrative services manager. However, the AAO does not consider the *O*NET* a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *O*NET* provides only general information regarding the tasks and work activities

¹ According to the evaluation from the International Education Research Foundation, Inc., date November 21, 2001, the beneficiary possesses the equivalent of a "bachelor's degree." The evaluator did not conclude, however, that the beneficiary education was equivalent to a bachelor's degree in any particular field.

associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. A JobZone classification is meant to indicate the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Moreover, as counsel noted, the petitioner in this matter has indicated its proffered position is focused more on the administration of contracts, rather than the duties of an *administrative services manager*.

Turning to the petitioner's description of the proffered position, the AAO finds that the petitioner provided a broad and general description of the duties of the position. For example, the AAO is unable to determine the daily tasks involved in "[e]xamin[ing] service & schedules based on performance requirements, delivery of services, estimate[ing] operating costs such as liability, maintenance, & potential damage of equipment." Without a more meaningful description of the tasks involved in performing these "duties," the AAO cannot conclude that the position, based on this language, requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty as a minimum for entry into the occupation in the United States.

The AAO notes the petitioner's indication that the beneficiary will prepare pre-service agreements, negotiate contract bids, generate final contracts, and evaluate and monitor contract performance, as well as act as a liaison between the petitioner and its subcontractors and clients. However, the petitioner does not further describe the daily duties involved in these tasks or document the type of contracts/agreements generated. The petitioner does not indicate whether these contracts include multiple terms or are one-page documents outlining a specific one-time service. The petitioner does not indicate whether the contracts are generated over the phone, via facsimile, or in person, are for each client, for multiple clients, or whether the contracts are long-term. The petitioner does not explain the necessity for this position now, after the petitioner has been in the business a number of years. The petitioner does not provide a description of the specific duties and responsibilities to be performed by the contract administrator in relation to the petitioner's particular business interests as a limousine service. The information provided regarding this position is too general to connect to the petitioner's limousine services. The AAO declines to speculate on the complexity, or lack thereof, of the proffered position without a more thorough understanding of the petitioner's ongoing business and the duties of the proffered position.

The AAO does not find that the opinion of an individual at the Irvine Chamber of Commerce is probative in this matter. The petitioner has not identified the person who provided the opinion, the information provided to that individual on the petitioner's behalf, the authority of the individual to speak on behalf of the Irvine Chamber of Commerce, or how the individual's assumptions translate into a factual foundation upon which such an opinion can be based. As observed above, the petitioner has not provided any documentary information outlining the parameters of its proposed contracts. The AAO declines to assume facts not in the record.

The AAO acknowledges that the petitioner is the entity that sets forth the duties of a particular position. However, the petitioner cannot label a position, refer generally to preparing and implementing contracts, and conclude that the position and duties it encompasses comprise a specialty occupation. The AAO declines to

accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide details of the daily tasks the petitioner requires when performing the position and explain how those tasks relate to its business. In the instant matter, the petitioner has offered no description of the duties of its proffered position beyond the generalized outline it provided at the time of filing. It has not detailed the actual work to be performed for this position rather than describing the occupation. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In that the record offers no meaningful description of the complexity of the services, the beneficiary would perform in relation to the petitioner's specific business interests, the petitioner is precluded from meeting the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Moreover as observed above, although the *Handbook* references the occupation of contract administrator, neither the *Handbook's* discussion nor the petitioner's description is sufficient to elevate the proffered position to a specialty occupation that normally requires a baccalaureate or higher degree as a minimum for entry into the occupation. Also, as previously discussed, the petitioner indicates that it would find a range of degrees acceptable for its proffered position, which precludes classification as a specialty occupation.

In addition, the AAO observes that the record does not include any information to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations. Nor has the petitioner offered evidence to distinguish the proffered position as more complex or unique than similar, but non-degreed employment, as required by the second prong of the second criterion.

As observed above, the petitioner does not claim and has not presented evidence that it previously employed individuals with baccalaureate degrees in a specific discipline in the proffered position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Although the petitioner claims the job duties of the proffered position are specialized, the petitioner does not adequately elaborate on the content of the job duties that make the position specialized. Without a meaningful position description, the petitioner cannot satisfy the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the credential's evaluation in the record does not adequately address the beneficiary's foreign education. The evaluator does not discuss the coursework pursued by the beneficiary and how the coursework would prepare the beneficiary to perform the duties of a specialty occupation. The AAO observes that a general bachelor's degree is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). The AAO observes further that although the beneficiary has taken law courses, the courses were taken at a Japanese University and there has been no demonstration that such

courses would aid the beneficiary in understanding American contract law. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. The petition is denied.