U.S. Department of Justice

Immigration and Naturalization Service

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

[redacted]

File: SRC-01-266-56517 Office: Texas Service Center Date: JAN 16 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a real estate business with one employee and a gross annual income of $1,118,107.70. It seeks to employ the beneficiary as an office administrator 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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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 administrator. Counsel further states that the duties of the offered position are more sophisticated than the duties of a first-line administrative service manager or secretary. Counsel additionally states that the proposed duties, which include handling the petitioner's escrow accounts, require complex mathematical reasoning and the application of the concepts of business administration. Counsel also states that the requirement of a baccalaureate degree for the proffered position is common industry wide, and that the proffered position is similar to that of a business administrator or manager.

Counsel's statement on appeal is not persuasive. The Service 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 Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

> Among her main responsibilities [the beneficiary] will be responsible for handling all billing matters, accounts receivables, will organize workloads of real estate agents, will review and prepare administrative documents, serve as a liaison between agents and international South American clients and handle customer service.

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 Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in business administration or a related field. The proffered position combines the duties of an office and administrative support worker supervisor or manager with those of a bookkeeper and accounting clerk. At page 417 of the Occupational Outlook Handbook (Handbook), 2002-2003 edition, the Department of Labor (DOL) describes the position of an office and administrative support worker supervisor or manager, in part, as follows:

> Planning the work of their staff and supervising them are key functions of this job . . .
>
> After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meets established quality standards.

At page 390 of the Handbook, the DOL describes the positions of a bookkeeper and accounting clerk as follows:

> In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping . . . More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on accounts; and code documents according to company procedures.

A review of the Handbook at page 418 finds that most firms fill office and administrative support supervisory and managerial positions by promoting clerical or administrative support workers from within their organizations. A further review of the Handbook at page 387 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 specialized area such as business administration, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. 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.

Counsel has provided two letters from individuals involved in the real estate industry. Both state that the usual requirement for positions such as the proffered position is a baccalaureate degree in business administration. Two letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, neither of the writers has indicated the number or percentage of office administrators who hold such degrees.

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.