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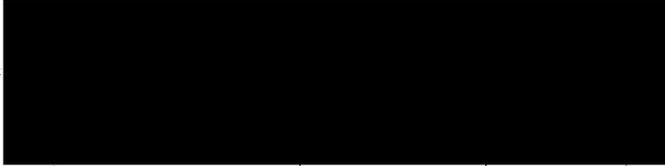
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U.S. Department of Justice

Immigration and Naturalization Service

DA

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



File: WAC-00-195-55090 Office: California Service Center

Date:

JAN 16 2003

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)

IN 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 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 an ocean shipping, air freight forwarding and other consolidation shipping services business with 12 U.S. employees and a gross annual income of \$197,511. It seeks to employ the beneficiary as a management program coordinator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's station manager 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, the petitioner states, in part, that the proffered position is that of a human resources, training, and labor relations specialist and manager. The petitioner further states that the duties of the offered position are more sophisticated than the duties of a clerical worker.

The petitioner'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:

To evaluate current company policies and systems to address defective methods of management of personnel, record keeping of time, performance evaluation/review, and to gather relevant information regarding management of personnel, payment expenditures involving employees and/or contractor vendors/staff in order to perform duties in setting up/establishing personnel record

keeping programs, benefit programs, and other management programs in relation to operation connecting our U.S. office and three (3) other locations in China concerning recruitment, training, promotion, evaluation and salary raise programs; help device [sic] the most effective methods and use computer programs to monitor policies & procedures thereto related.

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 appears to be similar to that of a human resources and training manager. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 62, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a human resources and training manager. Employers usually seek college graduates from a variety of educational backgrounds in filling entry-level jobs. Many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Other employers prefer college graduates with a technical or business background or a well-rounded liberal arts education. It is noted that in its "job opening announcement," the petitioner specifies that a bachelor's degree in liberal arts, or any business or related studies, was required. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty 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, 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 in a specific specialty.

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.