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FILE: WAC 02 066 51118 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



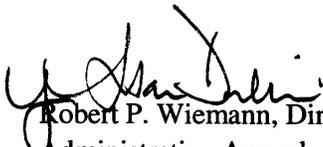
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a community service organization serving lower income people. It seeks to employ the beneficiary as a project director. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker 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 because the proffered position is not 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.

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 criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a project director. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 12, 2001 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: supervising, managing, and reviewing paid and volunteer outreach staff and managing training; communicating and organizing with state, private non-profit, and other organizations to facilitate the petitioner's programs; monitoring and evaluating the effectiveness of the programs; administering grant funds and ensuring compliance with grant requirements and the petitioner's finance department; writing grant proposals, developing informational and educational materials; and preparing periodic, special, and technical reports on individual projects. The petitioner indicated that a qualified candidate for the job would possess, in part, a bachelor's degree or higher in public administration, community resource management, or a related field.

The director found that the proffered position was not a specialty occupation because it is similar to a general manager position. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is similar to that of a social and community service manager, and is not a general manager position. According to counsel, the proffered position is a "Job Zone 4" occupation (referring to the DOL's *O*Net*), which requires a degree. Counsel states further that the proposed duties, which include grant writing, monitoring of educational funds, and producing educational materials, are so complex that a baccalaureate degree in a specific specialty is required. Counsel submits an expert opinion and Internet job advertisements in support of her claim.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Counsel's reference to and assertions about the relevance of information from *O*Net* are not persuasive. The Job Zone category does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook* at page 595 for social and community service managers indicates that the most significant source of training is a bachelor's degree; the *Handbook*, however, does not specify a specific specialty. Furthermore, the record does not persuasively establish that the proffered position is that of a social and community planner. Although part of the beneficiary's proposed duties entail supervising, managing, and reviewing paid and volunteer outreach staff and managing training, the petitioner has not demonstrated that it has any staff. On page three of the agreement signed by the petitioner's president on November 19, 2001, between the petitioner and the County of San Mateo, it states, in part, as follows:

Contractor currently does not have insurance as they don't have employees. Contractor shall obtain Comprehensive General Liability Insurance and Worker's Compensation Insurance immediately upon hiring their first employee.

Information on the petition that was signed by counsel on December 12, 2001, indicates that the petitioner has eight employees. The record, however, does not contain any evidence of such employees, and thus, it is not clear that the beneficiary would be performing the proposed duties of supervising, managing, and reviewing paid and volunteer outreach staff and managing training. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regarding parallel positions in the petitioner's industry, the petitioner submitted various Internet job postings. The petitioner, however, has not demonstrated that the proposed duties of the proffered position are as complex as those for the advertised positions. For example, one posting is for a Program Manager II/Director for Children & Families First Commission, whose duties include providing guidance and coaching to a staff of School Readiness Coordinators and Outreach workers. Although the proffered position may contain similar duties, the record does not demonstrate that the petitioner has hired any staff for the beneficiary to supervise or manage. Another posting is that of a director for the American Heart Association (AHA), whose duties include managing, planning, directing, and implementing all Latino media and educational programs in the Los Angeles area. Another posting is for a manager to research grants and budgets of a biomedical research institute. There is no evidence, however, to show that such employer is similar to the petitioner, or that the advertised position is parallel to the instant position. In view of the foregoing, the advertisements have little relevance.

The record contains a letter from [REDACTED] Housing Development Manager, of the Tenderloin Neighborhood Development Corporation in San Francisco, California, who states that a baccalaureate or higher degree in public administration, community resource management, or a related field, is required for positions such as the proffered position. [REDACTED] states that she holds a master's degree in business administration and a certificate in public management. She does not, however, demonstrate that her educational background was required for her position as a housing development manager. Furthermore, she does not provide evidence to demonstrate that such a requirement is industry wide. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It is also noted that the record also does not include any evidence from professional associations regarding an industry

standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As this issue is not addressed on appeal, it will not be discussed further in this proceeding.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.