

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

01

APR 25 2007

FILE: WAC 04 045 53297 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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, Chief
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 residential facility for the developmentally disabled that seeks to employ the beneficiary as an activity 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an activity director. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the evidence the beneficiary would:

- Plan, develop, organize and evaluate assistance programs and activities for clients with mental, behavioral, emotional, psychological, physical, social or cultural deprivation problems;
- Devise, formulate and put together activities, outreach plans, and support materials to meet individual needs of residents, considering such factors as gender, emotional status, or degree of difficulties;
- Confer with relatives, other social specialists, activity workers, and allied service professionals to develop a personalized program for clients with individual and unique requirements;
- Organize, direct, and coordinate the programs required for residents' independent subsistence and self-sufficiency such as food, clothing, shelter, medical attention, schooling, and in community and religious activity involvement;
- Plan, develop and help administer programs to develop residents' feelings of self-worth and self-confidence as productive members of society;
- Lead, conduct or organize tuition-oriented classes, games and music, counseling sessions, self-help orientations, community-oriented seminars and vocational trainings to instill into residents' minds and hearts wholesome social values;
- Evaluate and assess activities and programs for possible revisions, improvements, expansion or integration of overlapping projects into a more comprehensive, economical, and feasible approach;

- Prepare and submit written reports to project directors and activity administrators on the outcome of programs or activities in order to address problem areas to ensure the most efficient and highest quality of services rendered;
- Supervise programs, policies and undertakings regarding participant involvement, operational requirements, would-be beneficiaries, and benefit coverage and spearhead and oversee budget preparation and prioritizing financial allocations and the sourcing of funds;
- Play the lead role in the research and implementation of methods of providing behavioral and activity services to residents;
- Direct, supervise, monitor and give specific job assignments to other healthcare and activity workers and allied support group leaders and participate in the hiring and preparation of performance appraisals of other personnel in the beneficiary's department, and represent the petitioner in community work-related forums and conferences.

The petitioner requires a minimum of a bachelor's degree in home economics for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position, though generally described, fall within those noted for social and human service assistants. Social and human service assistants is a generic term for people with a wide array of job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of workers from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. These workers provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. For example, they assess clients' needs, establish their eligibility for benefits and services such as food stamps, Medicaid, or welfare, and help them to obtain such benefits. They may also arrange for transportation and escorts, if necessary, and provide emotional support, and keep records of client progress while reporting to supervisors and case managers. Social service assistants also organize and lead group activities, assist clients in need of counseling or crisis intervention, and in group home settings, assist clients who need assistance in personal hygiene and daily living skills. The duties to be performed by the beneficiary fall within these duties. The *Handbook* notes that while a bachelor's degree is usually not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employer requirements. Some jobs may require a bachelor's or master's degree in human services or a related field such as counseling, rehabilitation, or social work. The minimum requirement for entry into the field is not a baccalaureate degree in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner states that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations and in support of that assertion refers to approval of petitions for similar positions in unrelated cases. This reference will not sustain the petitioner's burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire record of proceedings in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the petitioner has offered the beneficiary a position as an activity director. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The record does not establish that the duties to be performed by the beneficiary are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor does the record establish that the duties are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The petitioner has generally described the duties to be performed by the beneficiary. Without a more specific description of the tasks to be performed, however, it cannot be determined that the duties are so complex or unique that their performance requires a degree in a specific specialty. For example, the petitioner states that the beneficiary will:

- Plan, develop, organize and evaluate assistance programs and activities for clients with mental, behavioral, emotional, psychological, physical, social or cultural deprivation problems;

The record does not establish what type of assistance programs would be established or the purpose of any such programs. Thus, it is not possible to evaluate the complexity or uniqueness of the tasks to be performed in establishing those programs, and a determination cannot be made as to whether those tasks require knowledge obtained in a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position.

- Plan, develop and help administer programs to develop residents' feelings of self-worth and self-confidence as productive members of society;

The record does not describe the programs to be developed and administered in specific detail, or the tasks involved in developing and administering any such programs. Thus, it is not possible to evaluate the complexity or uniqueness of the tasks to be performed in developing and administering those programs, and a determination cannot be made as to whether those tasks require knowledge

obtained in a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position.

- Lead, conduct or organize tuition-oriented classes, games and music, counseling sessions, self-help orientations, community-oriented seminars and vocational trainings to instill into residents' minds and hearts wholesome social values;

The record is silent as to the nature of any tuition-oriented classes to be conducted, the nature and extent of any counseling to be performed, or what type of community-oriented seminars would be conducted. Thus, it is not possible to evaluate the complexity or uniqueness of the tasks to be performed in completing this duty, and a determination cannot be made as to whether those tasks require knowledge obtained in a specific course of study that conveys a body of highly specialized knowledge closely and directly related to the duties of the proffered position.

The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (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 failed to sustain that burden and the appeal shall accordingly be dismissed.

ORDER: *The appeal is dismissed. The petition is denied.*