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U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 157 50204 Office: TEXAS SERVICE CENTER Date: JAN 03 2007

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the service center 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 nonprofit health clinic that seeks to employ the beneficiary as an administrative business operations manager. The petitioner, therefore, 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 on two grounds, namely that (1) the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation; and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. On appeal, counsel contends that the director erred in denying the petition.

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 and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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.

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 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 proposed position.

According to counsel’s appellate brief, the beneficiary would be responsible for all aspects of the daily office operations so as to ensure the organization and completion of all necessary work. She would oversee and delegate workload to office staff and volunteers, and ensure that work is completed. Specifically, she would plan, direct, or coordinate supportive services for the organization, such as recordkeeping, mail distribution, event and meeting scheduling, contract negotiations, budgeting, and other office support services; handle research and negotiations of contracts with vendors providing maintenance and repair services to the petitioner’s main office as well as the [REDACTED] post, and maintain a monthly calendar of events; handle and coordinate service calls for the maintenance of the facility and its office equipment; design and prepare all forms necessary for office operations, directors, and committee chairpersons; assist the executive director with office clerical work; coordinate the budget and accounts receivable for the president, executive director, and accounting; handle research and negotiations of contracts with vendors providing maintenance and repair services, in conjunction with the president, executive director, director of finance, and clinic administrator; research and obtain quotes for necessary services as requested by the president and executive director; maintain list and order necessary office and facility supplies for the petitioner’s main office and the [REDACTED] handle vendors providing services to the petitioner’s main office and the [REDACTED] meet with supervisor regularly to ensure efficiency with office operations; work in support of, and in cooperation with, staff, board of directors, and volunteers; translate for the petitioner as well as for medical and dental clinics; purchase snacks and supplies for the petitioner’s Homework Assistance Program; and perform any other duties deemed necessary by the President and Executive Director.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO finds that the duties of the proposed position combine those of administrative services managers and office and administrative support worker supervisors and managers, as such positions are described in the *Handbook*. The 2006-2007 edition of the *Handbook*, at page 25, provides the following information regarding the duties of administrative services managers:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently. . . .

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers. . . .

In small organizations, a single administrative services manager may oversee all support services. . . .

The nature of managerial jobs varies as significantly as the range of administrative services required by organizations. . . .

The 2006-2007 edition of the *Handbook*, at page 479, provides the following information regarding the duties of office and administrative support worker supervisors and managers:

All organizations need timely and effective office and administrative support to operate efficiently. Office and administrative support worker supervisors and managers coordinate this support. These workers are employed in virtually every sector of the economy. . . .

Although specific functions of office and administrative support worker supervisors and managers vary significantly, they share many common duties. For example, supervisors perform administrative tasks to ensure that their staffs can work efficiently. Equipment and machinery used in their departments must be in good working order . . . They also request new equipment or supplies for their department when necessary.

Planning the work and supervising the staff are key functions of this job. . . .

. . . .

Office and administrative support worker supervisors and managers also evaluate each worker's performance. . . .

. . . .

Office and administrative support worker supervisors and managers often act as liaisons between the administrative support staff and the professional, technical, and managerial staff.

Having concluded that the duties of the proposed position combine those of administrative services managers and office and administrative support worker supervisors and managers, the AAO next turns to the *Handbook* to determine whether these occupations normally require applicants for employment to have the minimum of a baccalaureate or higher degree, or its equivalent. The *Handbook* states the following regarding the educational requirements for administrative services managers:

Educational requirements vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to

enter a position as office manager . . . In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements.

Specific requirements vary by job responsibility. For first-line administrative services managers or secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience. For managers of audiovisual, graphics, and other technical activities, postsecondary technical school training is preferred. Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree. . . .

The *Handbook* states the following regarding the educational requirements for office and administrative support worker supervisors and managers:

Most firms fill office and administrative support supervisory and managerial positions by promoting office or administrative support workers from within their organizations.

These findings do not support a conclusion that a bachelor's degree in a specific field, or its equivalent, is the normal minimum requirement for entry into these positions. For administrative services managers, the *Handbook* states that experience may be the only requirement necessary for employment in a small organization. While the *Handbook* states that managers of highly complex services (such as contract administrators) generally need a bachelor's degree, the petitioner has not demonstrated that its proposed duties are "highly complex." For office and administrative support worker supervisors and managers, the *Handbook* states that most firms fill such positions by promoting office or administrative support workers from within their organizations.

Moreover, the AAO notes that the petitioner would find acceptable a bachelor's degree in business administration. However, as conveyed earlier in this decision, 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 proposed position. When a range of degrees, or a degree of generalized title without further specialization, e.g., business administration or liberal arts, can perform the duties, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific course of study.

Finally, the AAO will accord no weight to the information counsel submits from the Department of Labor's *Dictionary of Occupational Titles (DOT)*, and from *O*Net*, as the *DOT* and *O*Net* are not persuasive sources of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Their assessments (the SVP rating and the JobZone categories) are meant only to indicate the total number of years of vocational preparation required for a particular position. They do not describe how those years are to be divided among training, formal education, and experience, and do not specify the particular type of degree, if any, that a position would require.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

In response to the director's request for additional evidence, the petitioner submitted an organizational chart and job descriptions for the positions of office manager/children's program coordinator and administrative assistant at

However, this information does not establish that this organization normally requires such employees to possess a bachelor's degree in a specific field of study. As noted previously, 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 proposed position.

Nor has the petitioner established that ██████████ actually employs anyone in these positions, as no corroborating information, such as payroll records or copies of degrees has been submitted. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, even if this information did establish that Handy, Inc. normally requires a degree in a specific specialty for such positions, the AAO notes that information from a single organization is not enough to establish an industry-wide standard. Accordingly, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. However, the AAO finds that such a demonstration has not been made. As noted by the *Handbook*, similar positions do not normally require, at minimum, a bachelor's degree or its equivalent in a specific field of study. The AAO finds no evidence that the duties of the proposed position are any more complex or unique than those of the positions set forth in the *Handbook*.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been submitted, and counsel has conceded that this is a newly-created position.

Accordingly, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. However, such a demonstration has not been made. Again, the AAO refers to the *Handbook* excerpts quoted previously in this decision, which state that a bachelor's degree in a specific specialty is not the normal minimum entry requirement for positions such as the one proposed here. The duties of the proposed position do not appear any more specialized and complex than those set forth in the *Handbook*. The AAO finds nothing in the record to indicate that the beneficiary, in her role as an administrative services manager at the petitioner's place of business, would face duties or challenges any more specialized and complex than those outlined by the *Handbook*.

As a result, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial.

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.