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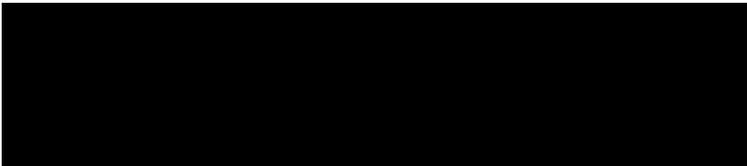
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
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U.S. Citizenship
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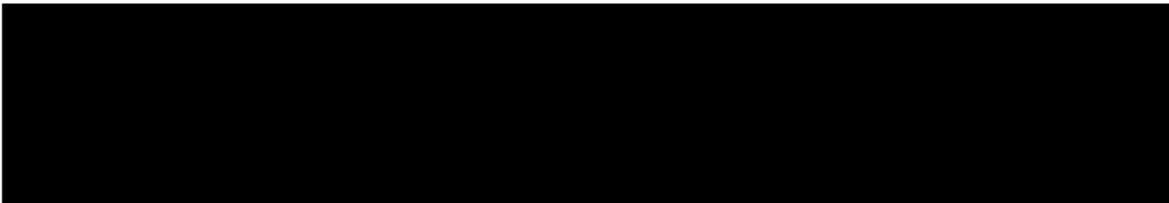


FILE: LIN 04 266 50535 Office: NEBRASKA SERVICE CENTER Date: **JUL 30 2007**

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 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 an adult support services company that seeks to employ the beneficiary as a residential coordinator. The petitioner, therefore, endeavors to extend the beneficiary's nonimmigrant classification as a 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 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 first denial letter; (5) the petitioner's first Form I-290B; (6) the director's second denial letter; and (7) the petitioner's second Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director first denied the petition on September 21, 2005. In his denial, the director found that the petitioner had failed to demonstrate that the proposed position qualifies for classification as a specialty occupation. In his second denial, dated January 3, 2006, the director elected to treat an untimely appeal as a motion and rendered a second decision on the merits of the case. The matter is now before the AAO on appeal.

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.

The petitioner, an adult support services company, was established in 2000. It proposes to hire the beneficiary as a residential coordinator. According to counsel’s May 5, 2005 response to the director’s request for additional evidence, the duties of the proposed position fall into three primary areas: (1) residential program bookkeeping; (2) on-call residential program management; and (3) residential client services. Specifically, the duties of the position would include preparing bimonthly payroll and payroll tax records; preparing and filing income tax reports and records; creating and maintaining unemployment tax records; preparing and maintaining Social Security tax records; maintaining insurance policy documents; documenting all insurance claims; creating, maintaining, and recording the petitioner’s accounting records, including sales receipts, canceled checks, receiving reports, and customer invoices; responding to calls for assistance from agency clients, client care-givers, and associated health care and service providers; responding to client calls when there are personnel problems; filling in for personnel at clients’ residences when caregiving staff members are late or absent; responding to calls from clients’ relatives or significant others; reporting to program administrators and residence coordinators at the end of his shifts; contributing to program quality-improvement analysis; assisting clients in getting ready for their workdays; administering medications to clients; preparing breakfasts and packing lunches for clients; assisting clients with exercise; making dinner for clients; helping clients prepare for bed; and performing light housekeeping for clients and helping with laundry.

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.

In reaching its conclusion regarding the degree requirements of the proposed position, the AAO has compared the position’s duties against those described for a range of professions. This review has found that virtually all of the proposed position’s duties are listed among the occupations of (1) bookkeeping, accounting, and auditing clerks; (2) payroll and timekeeping clerks; (3) tax preparers; and (4) personal and home care aides.

At page 434, the *Handbook* states the following regarding the duties of bookkeeping, accounting, and auditing clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss. They represent a wide range of skills and knowledge from full-charge bookkeepers who can maintain an entire company's books to accounting clerks who handle specific accounts. All of these clerks make numerous computations each day and increasingly must be comfortable using computers to calculate and record data.

In small establishments, *bookkeeping clerks* handle all financial transactions and recordkeeping. They record all transactions, post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers. Bookkeepers also prepare bank deposits by compiling data from cashiers, verifying and balancing receipts, and sending cash, checks, or other forms of payment to the bank. They also may handle payroll, make purchases, prepare invoices, and keep track of overdue accounts.

In large offices and accounting departments, *accounting clerks* have more specialized tasks. Their titles, such as accounts payable clerk or accounts receivable clerk, often reflect the type of accounting they do. . . .

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure the completeness and accuracy of data on accounts; and code documents according to company procedures. These workers post transactions in journals and on computer files and update the files when needed. Senior clerks also review computer printouts against manually maintained journals and make necessary corrections. They may review invoices and statements to ensure that all the information appearing on them is accurate and complete, and they may reconcile computer reports with operating reports.

Auditing clerks verify records of transactions posted by other workers. They check figures, postings, and documents to ensure that they are correct, mathematically accurate, and properly coded. They also correct or note errors for accountants or other workers to adjust.

As organizations continue to computerize their financial records, many bookkeeping, accounting, and auditing clerks are using specialized accounting software on personal computers. With manual posting to general ledgers becoming obsolete, these clerks increasingly are posting charges to accounts on computer spreadsheets and databases The widespread use of computers also has enabled bookkeeping, accounting, and auditing clerks to take on additional responsibilities, such as payroll, procurement, and billing. Many of these functions require these clerks to write letters, make phone calls to customers or clients, and interact with colleagues.

In pertinent part, the *Handbook* states the following, at page 437, regarding the duties of payroll and timekeeping clerks:

Payroll and timekeeping clerks perform a vital function: ensuring that employees are paid on time and that their paychecks are accurate. If inaccuracies occur, such as monetary errors or incorrect amounts of vacation time, these workers research and correct the records. In addition, they may perform various other clerical tasks.

At page 662, the *Handbook* states the following with regard to the duties and responsibilities of tax preparers:

Prepare tax returns for individuals or small businesses but do not have the background or responsibilities of an accredited or certified public accountant.

Finally, the AAO looks to the *Handbook's* discussion of the duties and responsibilities of personal and home care aides. At page 399, the *Handbook* states the following:

Personal and home care aides help elderly, disabled, ill, and mentally disabled persons live in their own homes or in residential care facilities instead of in health facilities. Most personal and home care aides work with elderly or physically or mentally disabled clients who need more extensive personal and home care than family or friends can provide. . . .

Personal and home care aides—also called *homemakers*, *caregivers*, *companions*, and *personal attendants*—provide housekeeping and routine personal care services. They clean clients' houses, do laundry, and change bed linens. Aides may plan meals (including special diets), shop for food, and cook. Aides may also help clients get out of bed, bathe, dress, and groom. Some accompany clients to doctor's appointments or on other errands.

Personal and home care aides provide instruction and psychological support to their patients. They may advise families and patients on nutrition, cleanliness, and household tasks. . . .

Based upon its reading of the *Handbook*, the AAO concludes that the duties of the proposed position as described by counsel and the petitioner combine the duties of bookkeeping, accounting, and auditing clerks, payroll and timekeeping clerks, tax preparers, and personal and home care aides. Having arrived at such a conclusion, 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.

According to the *Handbook*, most bookkeeping, accounting, and auditing clerks are required to have the minimum of a high school degree. A two-year associate's degree in business or accounting may be required for some bookkeeping and accounting clerk positions.

The *Handbook* states the following regarding the educational requirements for payroll and timekeeping clerks:

Most employees prefer applicants with a high school diploma or GED. Computer skills are very desirable. Payroll and timekeeping clerks learn their skills through a combination of on-the-job experience and informal training. . . .

The *Handbook* states the “[m]ost significant source of postsecondary education or training” for tax preparers is “[m]oderate-term on-the-job training.”

The *Handbook* states the following regarding the educational requirements for personal and home care aides:

In some States, the only requirement for employment is on-the-job training, which generally is provided by most employers. Other States may require formal training, which is available from community colleges, vocational schools, elder care programs, and home health care agencies.

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. Although a two-year associate's degree in business or accounting may be required for some bookkeeping and accounting clerk positions, a four-year bachelor's degree is not required for entry-level employment. Nor does the *Handbook* report that a four-year degree, in a specific field of study, is required for entry into payroll and timekeeping clerk, tax preparer, or personal and home care aide positions.

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)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not 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. However, no evidence to establish the first prong was submitted. Accordingly, the petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of the second criterion 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, there has been no demonstration that the proposed position is more complex or unique than the general range of bookkeeping, accounting, and auditing clerk, payroll and timekeeping clerk, tax preparer, and personal and home care aide positions in other, similar organizations. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

Therefore, the petitioner 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 AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

On appeal, counsel states that seventy percent of its employees who hold the beneficiary's position possess bachelor's degrees in science or the arts. However, this statement is insufficient to establish eligibility under the third criterion for several reasons. First, the AAO notes that counsel has submitted no evidence, such as copies of those employees' diplomas and payroll records, to document her assertion. Simply 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)).

Even if evidence to document counsel's assertion had been submitted, the AAO notes that she still did not assert that a degree *in a specific field of study* is required. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, 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 specialized field of study. CIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, --- F.3d ---, 2007 WL 1228792 (C.A. 1 (Puerto Rico) 2007). As stated previously, CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position.

Finally, counsel's assertion indicates that nearly one-third of the individuals that it employs in the position proposed for the beneficiary do not hold a bachelor's degree, or its equivalent. This is not consistent with a finding that the proposed position qualifies for classification as a specialty occupation.

While the petitioner states that a degree is required, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations in any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

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, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation. The evidence of record, as discussed above, does not establish that the nature of the duties is specialized and complex. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally

expected of bookkeeping, accounting, and auditing clerk, payroll and timekeeping clerk, tax preparer, and personal and home care aide positions in other, similar organizations. The petitioner has not established that its proposed position is more complex than those outlined in the *Handbook*, which do not demand a usual association with at least a bachelor's degree in a specific specialty.

Accordingly, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation, and the petition was properly denied.

Finally, the AAO notes that the beneficiary is currently in H-1B status. However, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.2(b)(16)(ii). If the previous petition was approved based upon the same evidence contained in this record, its approval would constitute error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director did approve a nonimmigrant petition similar to the one at issue here, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The proposed position does not qualify 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). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.