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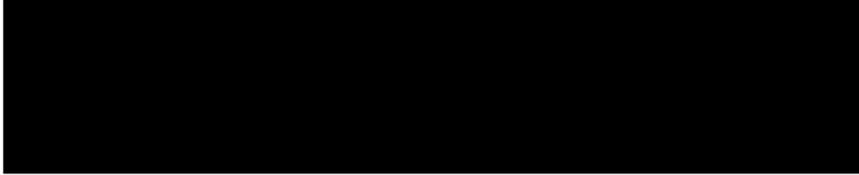
U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 247 50773 Office: NEBRASKA SERVICE CENTER Date: **JUL 31 2007**

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:



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, Nebraska Service Center, denied the nonimmigrant visa petition. 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 rehabilitation center and claims to employ 50 personnel and to have a gross annual income of \$1.2 million when the petition was filed. It seeks to employ the beneficiary as a medical consultant. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation filed September 3, 2004; (2) the director's February 8, 2005 request for additional evidence (RFE); (3) an undated response to the director's RFE; (4) the director's June 20, 2005 denial letter; and (5) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as a medical consultant. The petitioner indicated on the Form I-129 that the individual employed in the proffered position would "provide guidelines for rehabilitation of the Center, including supervision of nurses and medical staff." In response to the director's RFE, the petitioner listed the duties of the proffered position as:

[T]he beneficiary will compile and review the various medical procedures conducted at the rehabilitation center and prepare a summary of all procedures. Said duties will require 20% of the beneficiary's time.

The beneficiary will evaluate the various medical procedure[s] in order to compile a complete manual of the rehabilitation methods used by the various providers. Said duties will require 20% of the beneficiary's time.

The beneficiary will provide a uniform method of treatments and procedures in order to streamline all medical procedures in the facility. Said duties will require 30% of the beneficiary's time.

The beneficiary will provide the uniform manual to the medical staff for their review. The beneficiary will amend and modify the manual in accordance with the decision of the medical staff. Said duties will require 30% of the beneficiary's time.

The petitioner added that the position required a person with a medical degree in order to understand, evaluate, and compile a complete manual to be used in the facility.

On June 20, 2005, the director denied the petition determining that the description of duties provided was vague and they did not appear to be so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The director found that the description of duties corresponded most closely with that of a medical records and health information technician as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, an occupation that did not require a

baccalaureate or higher degree. The director determined that the record did not contain evidence establishing that the petitioner had satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner asserts that although the *Handbook* does not discuss an occupation titled medical consultant, the description of duties of the position is more closely aligned with the *Handbook's* discussion of a management analyst, and not a medical records and health information technician. Counsel also asserts that devising "a manual for use by healthcare practitioners requires an in-depth medical knowledge and procedure, since the other providers would utilize such a comprehensive manual," and that the uniform manual would be used to streamline medical procedures at the rehabilitation center. Counsel avers that the duties of the proffered position more accurately corresponds to the duties of a management analyst, as the duties of the proffered position include: (1) developing a comprehensive manual; (2) recommending the manual for approval; and (3) implementing the manual which entails gathering information on procedures, analyzing data, and providing solutions. Counsel asserts that the duties of the proffered position satisfy the first criterion as the position is that of a management analyst or consultant; satisfies the second criterion as the duties are indicative of a position that is so complex or unique that a degree is required; and satisfies the fourth criterion as the duties are indicative of a position with specific duties so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a degree.

Counsel cites *Unical Aviation Inc. v. United States Immigration and Naturalization Service*, 248 F. Supp. 2d 931, 935 (C.D. Calif. 2002) (*Unical Aviation Inc.*) for the proposition that similarity between the description of an occupation in the *Handbook* and a petitioner's description of duties, is evidence that the alien will be performing the duties of the occupation listed in the *Handbook*.

Counsel's assertions are not persuasive. The AAO finds that the petitioner's description of the proffered position is too general to enable the AAO to conclude that the position requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in a specific specialty.

The AAO observes, that to determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 nor 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. In this matter, the petitioner's description of the proffered position is not that of a management analyst.

The 2006-2007 edition of the *Handbook* discusses the employment of management analysts as follows:

Management analysts, often referred to as *management consultants* in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company that needs help improving the system of control over

inventories and expenses may decide to employ a consultant who is an expert in just-in-time inventory management

* * *

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem. During this phase, they analyze relevant data, which may include annual revenues, employment, or expenditures and interview managers and employees while observing their operations. The analyst or consultant then develops solutions to the problem.

The petitioner's description of the proffered position's duties does not include the detail necessary to establish the position as a management analyst. As the *Handbook* reports, a management analyst "analyze[s] and propose[s] ways to improve an organization's structure, efficiency, or profits," "define[s] the nature and extent of the problem," "analyze[s] relevant data," "interview[s] managers and employees while observing their operations," and "develops solutions to the problem." The petitioner has not provided sufficient evidence to establish that the duties of the proffered position incorporate the in-depth analysis, identification of specific problems, the collection and analysis of relevant data, or the development of solutions to problems generally referred in the *Handbook's* discussion of management analysts. Rather, the petitioner has provided a broad overview of a position that includes the identification of procedures and the compilation of those procedures into a manual. The description in the record lacks the analytical elements associated with the position of a management analyst. General references to compiling, reviewing, and evaluating medical procedures for the purpose of a manual of procedures do not describe the duties of a management analyst. The generic nature of the petitioner's description does not establish that the day-to-day duties of the proffered position include the routine duties of a management analyst. Counsel's reference to *Unical Aviation Inc.*, notwithstanding, the AAO does not find that the petitioner's description of duties is similar to the occupation of a management analyst as described in the *Handbook*.

The AAO also observes that the record does not include documentary evidence regarding the petitioner's business. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. The petitioner has not submitted sufficient information connecting the generally-stated duties of the proffered position to the petitioner's business so that the AAO, even if it were inclined to do so, could extrapolate the description of duties to an occupation that requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's or higher degree in a specific specialty. 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)).

The AAO notes counsel's assertion that devising "a manual for use by healthcare practitioners requires an in-depth medical knowledge and procedure, since the other providers would utilize such a comprehensive manual," and that the uniform manual would be used to streamline medical procedures at the rehabilitation center; however, 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).

The AAO does not find the petitioner's description of the position's duties sufficient to establish the position as a specialty occupation. Without a more detailed description relevant to the petitioner's business, the AAO is unable to determine the tasks to be performed by a beneficiary on a day-to-day basis and, therefore, whether a proffered position's duties are of sufficient complexity to require the minimum of a baccalaureate degree or its equivalent in a directly related academic specialty. As the record in the instant matter offers no meaningful description of the proffered position's responsibilities, the petitioner has not established that the duties of the position actually incorporate the duties of any occupation wherein a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position. Accordingly, the petitioner has failed to establish the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

To establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), a petitioner must prove that a specific degree requirement is common to its industry in parallel positions among similar organizations or, alternately, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant matter, the petitioner did not submit any evidence from similar firms in the industry attesting that other firms in the industry "routinely employ and recruit only degreed individuals," for parallel positions. *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). Thus, the record does not include evidence to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner has also failed to provide a meaningful description of duties to enable CIS to conclude that the position described is so complex or unique that it can be performed only by an individual with a degree. Thus, the petitioner has not satisfied either prong of the criterion and, therefore, is unable to establish the proffered position as a specialty occupation on the basis of an industry-wide degree requirement or to distinguish it from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has not submitted evidence sufficient to satisfy either alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): whether the employer normally requires a degree or its equivalent for the position; or whether the nature of the specific 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. The petitioner has not provided evidence that it normally requires a degree or its equivalent for the position. Thus the record does not demonstrate, and the petitioner does not contend, that it has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Regarding the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the general description of the beneficiary's duties provided by the record does not substantiate that they are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. The record lacks a meaningful list of duties, concretely described in relation to the petitioner's specific operations, that establish that such duties are sufficiently specialized and complex to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has not established that the proffered position is a specialty occupation. Accordingly, the AAO will not disturb the director's denial of the petition.

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The petition will be denied and the appeal dismissed for the above stated reason. As always, 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 met that burden.

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