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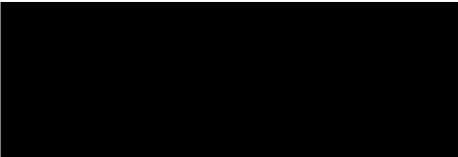


FILE: EAC 05 147 53714 Office: VERMONT SERVICE CENTER Date: OCT 02 2007

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.

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 organizes cultural exchange programs throughout the world and seeks to employ the beneficiary as an intercultural program coordinator. 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, counsel submits a brief indicating 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply 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 (5<sup>th</sup> 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.

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 counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an intercultural program coordinator. 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 this evidence the beneficiary would:

- Establish clear goals and evaluation techniques to ensure that program participants are utilizing all services offered;
- Create workshops and training programs for community counselors, host families, and staff which highlight elements of intercultural communication, adjustment issues and culture shock;
- Develop and implement yearly au pair surveys which can help participants to better understand the program and effectively manage the distribution, tabulation and reporting of the instrument;
- Develop marketing and web materials to assist program participants in understanding the services offered by the Au Pair in America program;
- Create educational materials for the program's community counselors field network regarding intercultural adjustment and country specific information, which counselors can utilize to assist families understanding;

- Act as an ombudsman to assist program participants in navigating through the necessary information and contacts in the program; and
- Prepare weekly reports for senior management regarding program services and issues.

The petitioner requires a minimum of a bachelor's degree in one of the business disciplines including business administration, accounting, management or economics for entry into the proffered position.

To determine whether the duties described are those of a specialty occupation, the AAO first considers 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; and 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 Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As the petitioner states that the duties of the proffered position falls within those noted for "Social and Community Service Managers," the AAO first turns to the *Handbook's* description of these workers. The *Handbook*, 2006 – 07 edition, at page 662, describes the occupation of social and community managers as follows:

Plan, organize, or coordinate the activities of a social service program or community outreach organization. Oversee the program or organization's budget and policies regarding participant involvement, program requirement, and benefits. Work may involve directing social workers, counselors, or probation officers.

The duties of the proffered position do not appear to fall within those normally performed by social and community service managers. The petitioner is not a social service organization, nor does it coordinate the activities of social service or community outreach programs. The petitioner states that it organizes cultural exchange programs for students throughout the world and is a for profit organization. The duties of the proffered position, as detailed by the petitioner, are presented in such vague and general terms that it is impossible to determine what tasks the beneficiary would perform on a daily basis. For example, the petitioner states that the beneficiary would:

- Establish clear goals and evaluation techniques to ensure that program (Au Pair in America program) participants are utilizing all services offered - The petitioner has not provided evidence detailing what the Au Pair in America program is, its purpose, goals or objectives, or what services are offered under the program. Thus, it is not possible to determine specifically what tasks the beneficiary

would perform, and whether the performance of those tasks require the theoretical and practical application of a body of highly specialized knowledge.

- Create workshops and training programs for community counselors, host families and staff, which highlight elements of intercultural communication, adjustment issues and culture shock - The petitioner has not provided detailed information about what type of information would be developed or provided in these workshops and training programs, or the ultimate purpose of those workshops/training programs. Thus, it is not possible to determine specifically what tasks the beneficiary would perform, and whether the performance of those tasks require the theoretical and practical application of a body of highly specialized knowledge.
- Develop marketing and web materials to assist program participants understand the services offered by the Au Pair in America Program - The petitioner has not described the Au Pair in America Program nor provided any information describing the marketing or web materials to be developed. Thus, it is not possible to determine specifically what tasks the beneficiary would perform, and whether the performance of those tasks require the theoretical and practical application of a body of highly specialized knowledge.
- Create educational materials for the program's community counselors field network regarding intercultural adjustment and country specific information, which counselors can utilize to assist families understanding - The record does not provide information as to who these community counselors are, what services they provide, what type of educational materials would be developed, or the purpose of the educational materials. Thus, it is not possible to determine specifically what tasks the beneficiary would perform, and whether the performance of those tasks require the theoretical and practical application of a body of highly specialized knowledge.

Without a detailed description of the duties to be performed by the beneficiary, the AAO is unable to determine whether the responsibilities of the proffered position would require the beneficiary to hold the minimum of a baccalaureate or higher degree or its equivalent to perform them. Accordingly, the record does not establish that the offered position qualifies as a specialty occupation under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – establish that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel contends that the record of evidence establishes the petitioner's degree requirement as the norm within its industry. He asserts that the *Handbook's* discussion of the occupation satisfies the requirements of the first prong as it establishes that the minimum requirement for entry into the profession is a bachelor's degree. The AAO does not agree.

The petitioner has failed to establish that the duties of the proffered position are those of social and community service managers as described by the *Handbook*, and there is no other evidence of record that would serve as proof that the petitioner's degree requirement for the offered position is common to its

industry in parallel positions among similar organizations. Further, the AAO also concludes that the record before it does not establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. As previously noted, the duties detailed by the petitioner are presented in such general terms that it cannot be determined specifically what tasks the beneficiary would perform on a daily basis. It finds no evidence in the record that would support such a finding. Accordingly, the petitioner cannot establish its position as a specialty occupation under either prong of the second criterion.

The AAO now considers the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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.

To determine the petitioner's ability to meet the third 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. This position is a new position with the petitioner; thus, there would be no record of the petitioner's past hiring practices for the position. The petitioner did provide a list of employees in its Au Pair division stating that with the exception of several clerical employees, over 80 per cent of its employees hold bachelor's degrees. The petitioner did not, however, provide copies of these individuals' diplomas, or any other information from the institutions where the degrees were obtained verifying the employee's degree status. Simply going on the 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 190 (Reg. Comm. 1972)). It should further be noted that the degrees reported are diverse with reported degrees in the following fields: psychology/English; French; elementary education; general studies; music education; fine arts; sociology; international affairs; business administration; economics; education; international education; and accounting. One individual holds an associate's degree in business. When a degree of generalized title will suffice to perform the duties, the position is not a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Further, 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 (5<sup>th</sup> 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 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 menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties of the 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. In support of this assertion counsel points to the discussion of the occupation in the *Handbook* as proof that the duties of the proffered position meet the specialized and complex threshold of the referenced criterion. He also contends that the complexity of the duties themselves establish that the position is a specialty occupation. The AAO does not agree.

As previously discussed, the duties of the proffered position are not akin to those of social and community service managers as stated by the petitioner, and the *Handbook's* discussion cannot, therefore, be used by counsel as proof of a degree requirement. Further, counsel's characterization of the specialized and complex nature of the duties of the position is not supported by the record. The duties of the proffered position as described are too generic to determine what specific tasks would be performed by the beneficiary. The generic description of the duties of the proffered position discussed under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the Form I-129 petition shall not be disturbed.

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.