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Immigration and Naturalization Service

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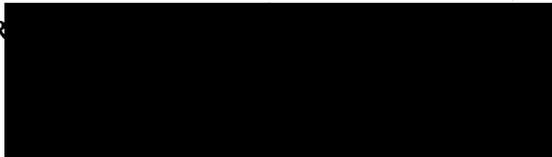
DATE: DEC 18 2002

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 USC 110(a)(15)(H)(i)(b)

IN BEHALF OF PETITIONER



**PUBLIC COPY**

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a non-profit foundation promoting Tibetan culture, aiding members of the Tibetan-American community adjust to life in the United States, and generally furthering the interests of the Tibetan-American community. The petitioner currently has one part-time employee and no full time employees and seeks to employ the beneficiary as its Executive Director for a period of three years.

The director denied the petition because he found that the petitioner failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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), 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 knowledge 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.

8 C.F.R. 214.2(h) (4) (ii) further defines the term "specialty occupation" 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.

In the initial petition, counsel for the petitioner stated that the duties of the position are "community related project management,

manag(ing the) office, maintain(ing) close contact with the community, report(ing) to board of directors, (and) grant writing."

The director requested the petitioner to submit additional evidence pertinent to the proffered position. Specifically, the director requested a description of the day-to-day duties of the proffered position, and evidence to demonstrate that the proffered position meets one of the four alternative criteria described in 8 C.F.R. 214.2(h)(4)(iii)(A), below.

The director also requested a copy of the applicant's college transcripts and a description of any of the beneficiary's work experience.

In response, the petitioner submitted another description of the duties of the proffered position. Those duties include acting as an intermediary between the Tibetan-American community and the non-Tibetan community, directing and managing projects, making presentations, fund raising, writing grant proposals, acting as a spokesperson for the Tibetan American community, meeting with dignitaries, and responding to correspondence and telephone calls.

The petitioner asserted that the position requires a well-rounded education at the college level and, as such, requires a minimum of a bachelor's degree. In support of that assertion, the petitioner submitted job postings for three ostensibly similar positions.

The director denied the petition on the basis that the petitioner did not establish that the proffered position is a specialty occupation.

On appeal, counsel submits a brief, in which he contends that the evidence demonstrates that the position is a specialty occupation and that the beneficiary is qualified for that position. Counsel notes that at least one of the job postings previously submitted specifically requires a college degree. Counsel submits additional job postings with the appeal.

In addition, counsel notes that the duties of the proffered position were described in the petition and in the response to the request for additional evidence. Counsel implies that the job description demonstrates that the proffered position is a specialty occupation and requires a minimum of a four year degree or the equivalent.

Further still, counsel contends that the beneficiary's proficiency in both English and Tibetan is at least equivalent to a four year degree.

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.

Counsel does not present a persuasive argument for classifying the proffered position as a specialty occupation. In evaluating whether the offered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. 214.2(h)(4)(iii)(A) will be considered separately.

**I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 8 C.F.R. 214.2(h)(4)(iii)(A)(1).**

In the decision of denial, the director stated that the proffered position entails duties akin to those of a public relations manager, and cited the U.S. Department of Labor's (DOL) Occupational Outlook Handbook (Handbook) for the proposition that the position of public relations manager does not require a degree in a specific specialty. On appeal, counsel noted that the proffered position is manifestly different from that of a public relations manager, whose duties include supervision of the work of public relations specialists.

Counsel is correct that the duties of the proffered position are not perfectly parallel to those of a public relations manager. In fact, none of the jobs described in the Handbook are parallel to the proffered position. The Handbook is not dispositive of, nor even helpful in, this matter. The burden remains on the petitioner, however, to demonstrate that the proffered position requires theoretical and practical application of a body of highly specialized knowledge such that a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into such a position.

In attempting to sustain that burden, counsel notes that the beneficiary is fluent in both English and Tibetan, and is

comfortable in both the American and Tibetan cultures. While bilingual fluency and the ability to move comfortably between American and Tibetan cultures are important to the proffered position, these skills do not constitute a body of highly specialized knowledge. An individual who does not have a bachelor's degree in a specialized area may possess the required fluency in English and Tibetan and familiarity with both the American and Tibetan cultures. Neither skill requires a bachelor's degree or its equivalent in a specific specialty. The petitioner has failed to demonstrate that a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the proffered position.

**II. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)(2).**

Factors often considered by the Service when determining the industry standard include: whether the DOL's Handbook reports that the industry requires a degree, whether the industry's 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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D. Minn. 1999) (quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp.2d 872, 1102 (S.D.N.Y. 1991)).

As observed above, the Handbook offers no guidance in this instance. Further, the petitioner has offered no evidence that any professional association or foundation of executive directors requires that its members have bachelor's degrees.

As stated above, the petitioner submitted three printouts of job postings in response to the request for additional evidence. These printouts were submitted in support of the contention that parallel positions require a minimum of a bachelor's degree. The positions they sought to fill were for a Grants and Program Administrator for a charitable foundation, a Grant Writer/Development Officer for a hospital, and a Special Projects Manager for a foundation representing the interests of child care providers.

The posting for Grants and Program Administrator appeared to require a bachelor's degree. The posting for Grant Writer/Development Officer stated that a "candidate should possess a college degree." The Special Projects Manager posting made no mention of any education requirement. None of those postings requires a degree in a specific specialty related to the duties of the job. Although the postings may be for parallel positions, they do not show that a degree in a specific specialty is required for

an executive director with a non-profit organization. The postings show that non-profit organizations seek individuals with bachelor's degrees in a wide variety of specialties. A specialty occupation is one that requires the attainment of a bachelor's degree or its equivalent in a specific specialty.

On appeal, counsel submits three more printouts of job postings, which are for an Executive Director for a maternity home, an Executive Coordinator for a neighborhood development group, and a Project Coordinator for a program to discourage teenage pregnancy. The maternity home and the anti-teenage pregnancy program both sought candidates with degrees in social work or related fields. The neighborhood development program sought candidates with a bachelor's in "non-profit management, urban planning, community organizing, business administration and/or related experience."

Counsel states on appeal that the duties of the proffered position are closely akin to those of a Social Worker or Instructional Coordinator, and notes that both of these positions require four year degrees. Counsel is correct. Positions as a Social Worker require a degree in social work, and positions as an Instructional Coordinator require a degree in education. Two of the job postings submitted on appeal, for instance, are for positions in social work. Both of those positions require degrees in social work or a related field. The proffered position, however, does not appear to be a position in social work. While the beneficiary may counsel individuals, the proffered position is administrative and involves more duties than simply counseling.

Finally, nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specific specialty.

**III. The employer normally requires a degree or its equivalent for the position. 8 C.F.R. 214.2(h)(4)(iii)(A)(3).**

The petitioner is a relatively new organization which has never hired anyone for this position before.

**IV. 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. 8 C.F.R. 214.2(h)(4)(iii)(A)4).**

As stated above, nothing in the description of the proffered position indicates that the petitioner's business is especially complex or unique, such that it would require a baccalaureate degree in a specific specialty.

Based upon the evidence in the record, the petitioner has not established that the proffered position is a specialty occupation. The critical element is not the title of the position, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as a minimum for entry in the occupation as required by the Act. The Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F3d 384 (5th Cir. 2000). In this case, the petitioner has not shown that the practice of the proffered executive director position requires the attainment of a bachelor's degree in a specific specialty.

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.