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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington D.C. 20536



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prevent clearly unwarranted
invasion of personal privacy

JAN 22 2002

File: EAC-00-083-53898

Office: Vermont Service Center

Date:

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)

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 nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner, Examinations, on appeal. The appeal will be dismissed.

The petitioner is an assisted living facility for elderly and handicapped persons with a three-to-five-person per diem staff and a gross annual income of \$154,360. It seeks to employ the beneficiary as a supervisor of operations for a three-year period. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) 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.

The director concluded that the petitioner had failed to establish that the proffered position requires a baccalaureate degree in a specific field of study or that a baccalaureate degree in a specific area is common to the industry in parallel positions. On appeal, counsel argues that the director erred in his decision. Counsel states that a baccalaureate degree is common to the industry in parallel positions.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the proffered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will have responsibility for administration of operations, assuring that necessary functions, consisting of the following, are properly performed: nursing services; respite services; meals; housekeeping; scheduling of necessary outside rehabilitative-therapeutics services; family visitations; and, physical plant maintenance and repair.

Specific duties will include assisting in budget planning and control; human resources, including hiring, training, evaluation and termination; implementation of company policies and procedures, particularly relating to personnel issues; coordination and requisition of necessary services and supplies, including subacute care, rehabilitative therapy and respite care services, and medical supplies and services; family and community liaison and outreach; and government and regulatory compliance.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that a baccalaureate degree in a specific field of study is a standard minimum requirement for the proffered position. The proffered position combines the duties of an administrative services manager and those of a general manager. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2000-2001 Edition, at page 24 finds no requirement of a baccalaureate degree in a specialized area for employment as an administrative services manager. A wide range of educational backgrounds are considered suitable for entry into administrator positions. Some employers prefer associate of arts degrees in business or management, although a high school diploma may suffice.

Additionally, a review of the Handbook at pages 50-51 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or executive. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

The petitioner submitted a copy of the portion of the Massachusetts regulations pertaining to assisted living facilities. According to the regulations, the supervisor of operations of an assisted living facility is required to have a bachelor's degree or equivalent experience and knowledge of aging issues. However, the regulations do not specify that the bachelor's degree must be in the specialized areas of human services management, housing management, and/or nursing home management.

The petitioner also submitted an advisory opinion letter from Carolyn Williamson, Prevailing Wage Consultant of The Survey Group. Ms. Williamson states that she compared the duties of the proffered position with those listed for similar positions in the Economic Research Institute Salary Survey Assessor Report and the Department of Labor's Dictionary of Occupational Titles (DOT), and found that a baccalaureate degree is a standard minimum job requirement for such positions. However, Ms. Williamson did not indicate that the baccalaureate degree must be in a specific field of study. Furthermore, Ms. Williamson has not provided her curriculum vitae or any other documentation showing her professional qualifications to make such a finding. Furthermore, neither Ms. Williamson nor the petitioner has provided a copy of the portion of the Economic Institute Salary Survey Assessor Report upon which Ms. Williamson based her finding.

Moreover, a reference in the DOL's DOT, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the DOL in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees for the offered position. In addition, the petitioner has not shown that similar facilities require the services of such individuals in parallel positions.

Finally, the petitioner has not shown that 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.