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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: LIN 01 256 53211

Office: NEBRASKA SERVICE CENTER

Date:

APR 14 2003

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:



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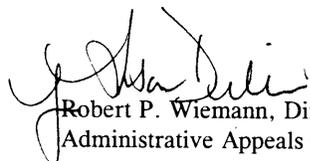
INSTRUCTIONS:

This is the decision 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.

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 that 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 Bureau of Citizenship and Immigration Services (Bureau) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a Illinois not-for-profit organization that provides health care services in a four-county area of Illinois that has 1,145 employees and a gross annual income of approximately \$65.7 million dollars. It seeks to temporarily employ the beneficiary as a mental health case manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation and reclassified the position as a human services worker.

On appeal, counsel asserts that the Bureau's reclassification of the position does not apply to the proffered position. Counsel submits further documentation.

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 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 field 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.

The issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the Nebraska Service Center on September 4, 2001, the petitioner described the position as mental health case manager and explained the duties of the proffered position as follows:

[The beneficiary's] specific duties will include providing resource linkage, counseling and role recovery adjunctive services to mentally ill clients and their families including:

counseling clients and families according to mental health issues and identified treatment plan needs;

providing linkage with community behavioral health care services including applying for financial, medical and other public entitlements;

locating housing;

obtaining medical and dental care, and obtaining other social, educational, vocational, and recreational services;

providing assistance with problem solving/resolution;

securing intake and social history information;

counseling clients with adjustment following discharge from psychiatric hospitalization;

educating clients' family members;

participating in after-hours youth crisis on call and providing case management services on a crisis basis as needed;

following supervisory direction and agency policies and procedures; participating in JCAHO and quality improvement activities as necessary;

and completing other duties as assigned.

The job description provided by the petitioner states the following with regard to education and/or experience requirements: "bachelor's degree (B.A.) from four[-] year college or university with academic and experience emphasis in the human services field. For any area where there is not sufficient training documented, an individualized training plan will be developed listing trainings to be obtained and dates to be completed."

The petitioner also submitted an educational equivalency document from Global Education Group, Inc. that indicated the beneficiary's bachelor of arts degree from the University of Sierra Leone was the equivalent of a bachelor of arts degree from an accredited university in the United States.

On November 3, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested evidence that would establish any of the four criteria outlined in 8 C.F.R. § 214.2 (h)(4)(iii)(A) namely, that a baccalaureate or higher degree is normally the minimum requirement for entry into the particular position, that the degree requirement is common to the industry in parallel positions among similar organizations, that the employer normally requires a degree or its equivalent for the position, or that the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The director asked for specific documentation with regard to these criteria.

In addition, the director requested a breakdown of the percentage of time the beneficiary would spend performing each duty. Finally the director requested evidence to show that the beneficiary holds an unrestricted State license, registration or certification which authorizes her to fully practice as a mental health manager in the state of Illinois, or evidence from the state that a license is not required.

In response, the petitioner stated the beneficiary was a Mental Health Professional (MHP), and that the State of Illinois recognized an MHP as an individual who provides services under the supervision of a Qualified Mental Health Professional (QMHP) and who possesses a bachelor's degree. (Emphasis in original.) The petitioner submitted relevant State of Illinois documentation from the Illinois Administrative Code with regard to this issue. The petitioner also provided resumes that listed educational credentials for the petitioner's three other mental health case managers. With regard to the percentage of time to be spent by

the beneficiary on various duties, the petitioner stated the following:

Case managers are expected to spend 55-65% of their time providing direct counseling services to clients. Representative direct services duties include:

- Individual client counseling
- Performing client intakes
- Co-facilitating group activities
- Coordination of community resources (including financial resources, housing, medical and dental care, social, education, vocational, and recreational services)
- [O]n call 24-hour crisis coverage, education of clients' family members
- Providing client advocacy and assistance, problem solving and resolution
- Interpreting mental health counseling to clients' families, to help to reduce fear and other obstructive attitudes so that mental health care and treatment may continue.

The remainder of the case manager's working time (approximately 35%) is spent on related activities which involve and sharpen counseling skills but do not necessarily involve direct patient contact, including:

- Developing client group activities for use with clients.
- Assuring that clients are treated at the lowest level of care possible through deflection from residential care.
- Evaluating mental health problems to assist in the focus of outpatient counseling.
- Participating in agency JCAHO and quality improvement activities to generally improve the quality of service provided by the petitioner's facility.
- Properly completing all agency paperwork requirements.

On February 20, 2002, the director denied the petition. The director noted that the three other mental health case managers working for the petitioner did not have degrees in a specific specialty. In addition the director stated that since the beneficiary appears to work under the direction of a qualified mental health professional with no license required, the proffered position was best classified as a human services worker as defined in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The director then cited to the *Handbook* with regard to educational and training requirements for human service workers and stated that it did not appear that a bachelor's degree was the minimum requirement for entry into the proffered position.

On appeal, counsel states that the petitioner always requires at least a bachelor's degree with academic and work experience emphasis in the human services field for all persons accepting the case manager position. With regard to the case manager who was hired with a bachelor of arts degree in communications, counsel states that this employee possessed sufficient relevant counseling experience to satisfy the petitioner's qualifications requirements. Counsel also disagrees with the director's statement that the case manager position is the same as the human services worker position contained in the *Handbook*.

Upon review of the record, a basic distinction can be made between the reasoning underlying the director's decision and counsel's remarks with regard to the petitioner always requiring a bachelor degree for mental health case manager hires. The critical element is not the title of the proffered 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. § 214.2(h) (4)(iii)(A) as solely requiring a bachelor's degree is an incorrect interpretation.

In addition, counsel asserts that SVP codes that are listed in the DOL *Dictionary of Occupational Titles (DOT)* are determinative of whether a position is a specialty occupation. However, the Administrative Appeals Office does not consider the *DOT* a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5th Cir. 2000).

comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*.

With regard to the first criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Although the duties of the proffered position appear to overlap with those of counselors and social workers, based on the petitioner's lack of specificity with regard to bachelor degrees, and the very specific educational credentials outlined in the counselor and social worker classifications, the *Handbook* classification of social and human service assistants appears to be the most analogous job description for the proffered position. The *Handbook* describes this classification as follows:

Social and human service assistant is a generic term for people with various job titles, including human service worker, case management aide. . . Social and human service assistants provide direct and indirect client services. They assess clients' needs, establish their eligibility for benefits and services, and help clients obtain them.

Social and human service assistants play a variety of roles in a community. They may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer a food bank or emergency fuel program.

. . . .

In psychiatric hospitals, rehabilitation programs and outpatient clinics, social and human service assistants work with professional care providers, such as psychiatrists, psychologists, and social workers, to help clients master everyday living skills, to teach them how to communicate more effectively, and to get along better with others. They support the client's participation in a treatment plan, such as individual or group counseling or occupational therapy.

With regard to training, and other qualifications for the social and human service assistant position, the *Handbook* states on page 159:

While a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers' requirements.

Based on the fact that the petitioner does not require a bachelor's degree in a specific specialty, and based on the fact that the beneficiary performs work under the supervision of a qualified mental health professional, the petitioner has not established that a baccalaureate degree or higher or its equivalent in a specific specialty is normally required for entry into the mental health case manager position.

With regard to the second criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely, that the degree requirement is common to mental health case managers in parallel positions among similar social service organizations, the petitioner only provided evidence with regard to its own mental health case managers. To date, the record is devoid of any information with regard to requirements for a bachelor's degree in a specific specialty in any other social service agency. Without more persuasive evidence, the petitioner has not established this criterion.

With regard to the third criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely, that the employer normally requires a degree or its equivalent for the position, the petitioner clearly established that it requires a bachelor's degree. However, it has not established that it requires a bachelor's degree in a specific specialty, pursuant to the statutory or regulatory requirements. (Emphasis added.) Thus, the petitioner has not established this criterion.

With regard to the final criterion of 8 C.F.R. § 214.2 (h)(4)(iii)(A), namely 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 provided a description of the beneficiary's job duties. According to the petitioner, the proffered position involves numerous duties, with some 55% to 65% percentage of the beneficiary's time at work involved in direct patient contact. This description does not establish that the duties of the proffered position are any more specialized or complex than the duties of any other mental health case manager working within a not-for-profit social services agency. Without more persuasive evidence, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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