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Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, NW
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536



APR 05 2003

FILE: WAC 02 036 52730 Office: CALIFORNIA SERVICE CENTER Date:

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:
[Redacted]

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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner locates and recruits home health care workers. It employs 30 people and has a gross annual income of \$1,200,000. It seeks to temporarily employ the beneficiary as a human resources specialist for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the Bureau erred in determining that a baccalaureate degree is not required for the position and that the position is not a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The position description submitted by the petitioner states that the beneficiary would:

[R]ecruit and interview potential employees to determine the most qualified applicants for the position offered. He will also study employees' performances and make recommendations to management. He will devise a plan to most effectively utilize the skills of the firm's employees and act as a liaison between management and labor force. He will meet with employees and management and gather data through interviews and studies of present company policies and procedures regarding working conditions.

The *Occupational Outlook Handbook (Handbook)* states that employers hiring human resources, training and labor relations managers and specialists "usually seek college graduates for entry-level jobs" and that "many prefer applicants who have majored in human resources, personnel administration or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded liberal arts education."

The Act defines the term "specialty occupation" as an occupation that requires "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." Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1) (emphasis added).

Counsel asserts that the statement in the *Handbook*, which begins "Employers usually seek college graduates . . .", clearly demonstrates that a bachelor's degree is the minimum requirement and the position is therefore a specialty occupation. The AAO disagrees with this interpretation. According to the *Handbook*, there is no absolute requirement for a degree; clearly, no requirement for a degree in a specific specialty exists. While some employers might require a particularly focused degree, others prefer a general liberal arts degree, and some may not require any degree.

Counsel further asserts that a requirement for a degree is common in the industry. The petitioner submitted three job listings for human resources specialists from careerbuilders.com. None of the listings was for similar businesses as the petitioner's. One listing required a bachelor's degree "in related field." The second simply asked for a bachelor's degree and the third required a "4 year degree in hr or related field." Rather than bolster the petitioner's declaration, these position announcements support the premise that there is no requirement for a degree *in a specific specialty*.

The petitioner has never hired a human resources specialist before, as the volume of business has only recently required the creation of this position; therefore, it is not able to establish that this is a specialty occupation based on others in its company in the same position.

The petitioner claims that the position is so complex and specialized that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree. However, the petitioner has provided no information as to why the position is particularly complex, particularly in light of the need for a baccalaureate degree in any subject rather than one specifically related to the position. The basic job description provides some information about the proposed duties, but no detail as to how the beneficiary would spend his time or how much time would be spent on each activity. Beyond the fundamentals of recruiting, interviewing and hiring new personnel, the description of other proposed duties lacks specificity.

On appeal, counsel states that the beneficiary would conduct and supervise training programs. The Bureau notes that these responsibilities were not included in the initial job description or in response to the directors' request for evidence. Bureau regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition

is filed. See 8 C.F.R. § 103.2(b)(12). A petitioner cannot materially change the associated job responsibilities of a proffered position in order to satisfy statutory or regulatory requirements. See *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Accordingly, the additional duties of conducting and supervising training programs cannot be considered part of the beneficiary's activities.

There may be a variety of skills required for a human resources specialist, but they are not necessarily particularly specialized or complex in the manner contemplated under 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner failed to establish that any of the four criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) 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.