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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: LIN 01 255 54885 Office: NEBRASKA SERVICE CENTER

Date: AUG 20 2003

IN RE: Petitioner:  
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]

**PUBLIC COPY**

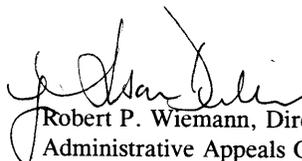
INSTRUCTIONS:

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 Michigan healthcare and management services company primarily providing staff relief to healthcare services. It has seventeen employees and a gross annual income of \$166,920. It seeks to temporarily employ the beneficiary as an auxiliary personnel manager 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 position of personnel manager is a specialty occupation and that the beneficiary's baccalaureate degree in business administration qualifies him for the position.

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 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 proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on September 4, 2001, the petitioner described the duties of the proffered position as follows:

- o Assess[es] needs of the department and personnel. Plans, provider (sic) and evaluates service to meet stated goals in the healthcare facility.
- o Works with the other disciplines to plan and evaluate team goals for the coast [sic] effective health care we service. When more than one service is providing care, there is evidence of interdisciplinary and discussion(sic).
- o Interview[s] and make[s] hiring decisions[.]
- o Conduct[s] orientation of new personnel[.]
- o Disciplines and suspends personnel if needed[.]
- o Responsible for assigning work and directing the work flow assigned to auxiliary personnel[.]
- o Establish[es] performance standards and periodically conducts appraisal interview with subordinates[.]
- o Participates in the educational programs of the agency in-service programs related to cost effective delivery of service. Advises and consults with the health care providers, medical personnel, Physicians and other agency personnel.
- o Monitors key activities and outcomes and obtain[s] solution to problems and improve[s] service and operations in a cost-effective manner.

The petitioner also stated:

Our requirement for the professional position of Personnel Manager in which we seek to employ the beneficiary are [sic], at a minimum, a Bachelor's degree

in any related field, or the equivalent thereof. It has been our established practice to require, at minimum, a Baccalaureate level degree for all our personnel Manager[s.]

On October 29, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation based on the criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A). In particular, the director requested a breakdown of the beneficiary's work responsibilities with regard to the percentage of time the beneficiary would spend performing each duty. The director also requested copies of any written contracts between the petitioner and the beneficiary.

In response, the petitioner submitted a job description that expanded on previously identified areas such as "assess needs of the department and personnel," and added new duties. Among the duties identified in the petitioner's response were:

- o Direct[s] employees and activities in cost effective manner. Initiates and direct[s] activities to enhance productivity,
- o Acts as a liaison [to] staff. Ensures safe delivery of hospitality services to customer and efficient function by communicating with other personnel, vendors, community, and other branches of the facility to gather pertinent data in order to make appropriate decisions or report decisions made,
- o Establish[es] standards for personnel administration and performance,
- o Allocates funds. Administers fiscal operations such as budget planning, accounting and establishing rates for services,
- o Enforces legal, regulatory department policies and procedures. Participates in periodic competency evaluation (mandatory in-service programs), and
- o Develops, evaluates, recommends and monitors adherence to policies, quality improvement objectives, procedures and standards including those promulgated by regulatory bodies and the facility [,] and
- o Generates informational reports if necessary; conducts analysis to determine areas needing improvement to increase quality, efficiency and productivity.

In addition, the petitioner submitted eighteen vacancy announcements for various administrative or management positions

taken off the Internet. The petitioner also submitted an employment agreement between the petitioner and the beneficiary. When the petitioner described the terms and conditions of the beneficiary's employment, it stated: "The employee will, under limited direction and according [to] established policies and procedures[,] interprets[sic] and implements [sic] quality assurance standards in the healthcare facility to ensure quality care to patients."

On February 4, 2002, the director denied the petition. The director determined that the proffered position was analogous to the Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) classification of human resources, training, and labor relations specialists and managers. The director stated that this classification does not require a bachelor's or higher degree in a specific specialty or their equivalent for entry into the position. The director stated that neither the vacancy announcements submitted by the petitioner nor the job duties described by the petitioner established that a bachelor's degree in a specific specialty was required for entry into the personnel manager position.

On appeal, counsel asserts that the beneficiary, who possesses a baccalaureate in business administration from a Filipino university, is qualified to perform the job duties of personnel manager. Counsel also asserts that the complexity of the job duties for the proffered position establish that the job is a specialty occupation. In addition, counsel submits twenty-four vacancy positions for jobs taken off of the Internet. Counsel presents no additional documentation on the complexity of the proffered position in the instant petition.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered 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 below.

**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)**

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.

In its response to the director's request for further information, the petitioner expanded the initial job description, adding generic duties such as "allocates funds, develops policies, generates reports and conducts analysis." To the extent that these additional duties were not included in the original petition, they

will not be considered in this proceeding. A petitioner must establish eligibility at the time of filing. *Matter of Michelin Tire Corporation*, 17 I&N Dec. 248,249 (Reg.Comm.1978).

The director's classification of the proffered position as a human resources, training or labor relations manager and specialist is accurate. Some subcategories of this classification included in the 2002-2003 edition of the *Handbook* on page 60-64 are compensation, benefits and job analysis specialists, employment and placement managers and recruiters, employee assistance plan managers and training and development managers. In examining the educational level required for the jobs contained within this classification, the *Handbook* states:

Because of the diversity of duties and level of responsibility, the educational background of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, employers usually seek college graduates. 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-founded liberal arts education.

The *Handbook* description clearly establishes that a bachelor's degree in a specific specialty is not required for entry into the position of personnel manager. Individuals with liberal arts baccalaureate degrees as well as others with baccalaureate degrees in such areas as personnel administration, or human resources appear to be hired for personnel manager positions. 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup>

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 in any field is an incorrect interpretation. Accordingly, the petitioner has not established the first criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

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<sup>1</sup> 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 (5<sup>th</sup> Cir. 2000).

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. § 214.1(h)(4)(iii)(A)(2)

A. Degree Requirement is Common to the Industry

Factors often considered by the Bureau when determining the industry standard include: whether the Department of Labor's (DOL) *Occupation Outlook Handbook* (*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.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for a personnel manager position were discussed in the previous section, and shall not be repeated here. In the original petition, the petitioner submitted eighteen vacancy announcements for jobs throughout the United States. Documents labeled by the petitioner as exhibits seventeen through nineteen were job advertisements for either personnel managers, or human resource managers. None of these exhibits indicates that a degree in a specific specialty was required for entry into a personnel manager position. For example, the position of personnel manager for Ayers & Associates, in Greensboro, North Carolina, simply requires a degree and at least three years experience as a personnel generalist in a manufacturing environment for entry into the advertised position.

On appeal, the petitioner submits twenty-four vacancy announcements for jobs, some of which were identical to the first list of vacancy announcements. These job announcements range from a senior services manager for the city of Ypsilanti, Michigan, a laboratory manager in Marysville, Michigan, to an assistant nurse manager at the Brigham and Women's Hospital in Boston, Massachusetts. None of the vacancy announcements submitted on appeal appear to have any substantive relevance to the proffered position in terms of job titles, specific educational requirements or job responsibilities. In addition, the petitioner submitted no documentation that any professional personnel management association has made a bachelor's degree in a specific specialty a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, while the petitioner added more duties to the original job description, as previously stated, the additional duties are not considered in this proceeding. In addition, none of the duties listed in the original petition or on appeal appear to be either complex or unique. For example, the petitioner has supplied no additional information as to the complexity of the petitioner's present or projected staffing or staff training that would indicate that the personnel manager position is either a unique or complex job.

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

Although the petitioner stated in its original I-129 petition, that its established practice has been to require a baccalaureate degree for all its personnel managers, the record is devoid of any information on any previous personnel managers that the petitioner has employed and the academic credentials of these individuals. In addition, it is noted that the actual employer of the beneficiary, as opposed to the entity that hires the beneficiary, needs to establish that a degree or its equivalent is required for the proffered position.<sup>2</sup> To date this has not been established.

For example, the contract submitted by the petitioner states that the beneficiary would, under limited direction, and, according to established policies, "interpret and implement quality assurance standards in the healthcare facility to ensure quality care to patients." This description suggests that the beneficiary will be working in a specific healthcare facility as opposed to working within the administrative or management structure of the petitioner's business. Without more persuasive evidence, the petitioner has not established who the actual employer of the beneficiary is, and what educational credentials the actual employer requires. Accordingly the petitioner has not established the third criterion of 8 C.F.R. § 214.2 (h) (4) (iii) (A).

**IV. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually**

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<sup>2</sup> In *Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000), the court held that the Bureau reasonably interpreted the statute and the regulations when it required the petitioner to show that the entities ultimately employing foreign nurses require a bachelor's degree for employees in that position. The court found that the degree requirement should not originate with the employment agency that brought the nurses to the United States for employment with the agency's clients. While this decision was directed at nurses, it can be applied to other employment classifications.

**associated with the attainment of a baccalaureate or higher degree - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)**

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position. The job description in the original petition contains work duties that are similar to any personnel manager position. On appeal the petitioner describes the position as complex; however, no further documentation as to any specialized or complex duties within this description has been placed on the record. Without more persuasive evidence as to the specialized or complex nature of the personnel manager position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.