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U.S. Department of Homeland Security

Citizenship and Immigration Services

PUBLIC COPY

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: SRC 02 059 51772 OFFICE: TEXAS SERVICE CENTER DATE: DEC 03 2003

IN RE: Petitioner: [redacted]
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:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Citizenship and Immigration Services (CIS) 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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a provider of resident assisted-living services that currently employs five people and has a gross annual income of approximately $200,000. It seeks to employ the beneficiary as an administrative services manager for a period of three years. The director denied the petition as failing to establish that the proffered position qualified as 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 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 one 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 Form I-129 identified the proffered position as "Manager, Administrative Services," and, for proposed duties, stated, "Analyze and implement office operations and procedures, including business correspondence, marketing efforts, contractual transactions, personnel, payroll." Summarized below are the major duties and responsibilities that the administrator of the petitioner corporation identified in a letter filed with the Form I-129:

- Charge of analyzing and organizing all office operations and procedures
- Charge of evaluating production in order to improve the efficiency of operations
- Handling all business correspondence, especially correspondence geared towards the advancement of marketing goals
- By review of all personnel and office records, evaluation of budget and expenditure needs for both daily operations and the medical, residential, and overall needs of all the petitioner's assisted-living residents
- Responsibility for management of all the petitioner's human resources and personnel needs, including employee benefits, payroll, and scheduling
- Charge of the petitioner's record keeping and compilation of reports on health care residents that the staff prepare
- Responsibility to guide the administrator on improving operations in order to maximize the petitioner's level of service to its clients

That letter also stated that the position requires a "professional" who can perform the duties above and is "experienced in formulating

procedures for systemic retention, protection, retrieval and disposal of records;" skillful in staff supervision; able to handle "frequent interactive and consultative associations" with both staff and residents; able to "take on complex problems, whether ethical, or administrative, and make sound judgment calls in all aspects of employee practice and supervision" in order to preserve the trust of the petitioner's health-care residents and their families.

A letter from counsel replying to the director's request for additional evidence listed the duties in this fashion, which substantially conforms to the above information:

a. analysis and organization of office operations and procedures[;]

b. formulation of procedures for the systematic retention, protection, retrieval, and disposal of records;

c. handling of all business correspondences (sic);

d. review of personnel and office records to evaluate budget and expenditure needs;

e. management of human resource and personnel needs;

f. supervision of staff;

g. compilation of records and reports on health care and conditions of the residents;

h. other duties to assist [the] Administrator in overall operational management of the facility.

This letter also states that a full-time administrative services manager is essential to the smooth operation of the petitioner's resident healthcare services and proper response to resident's other needs. The letter asserts that the position requires "managerial expertise and business knowledge." Also the letter restates information from the administrator to the effect that she had handled essentially all the duties now described for the proffered position and created this new position in order to free-up her time for another business interest. Also according to the letter, the administrative services manager will serve as liaison between the administrator and the facility's staff and "will on a day-to-day basis be required to make operational decisions autonomously and without direct guidance."

When the director issued its request for further evidence, it was because it perceived the duty descriptions in the I-129 and supporting documents as "similar to a secretary or administrative assistant" position, neither of which qualifies as a specialty

occupation. Accordingly, the director requested the submission of more evidence relevant to the proffered position's qualifying as a specialty occupation under 8 C.F.R. § 214.2 (h) (4) (iii) (A).

With her letter of reply mentioned above, counsel also submitted seven exhibits, five of which are relevant:

- Exhibits 1 and 4: printouts from the Internet version of the 2002-2003 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* on two occupations: administrative services managers, at *Handbook* pages 24-26; secretary and administrative assistants, at pages 422-425.

- Exhibit 2: an Internet printout of an excerpt from a DOL Bureau of Labor Statistics document entitled, "Teacher's Guide to Occupations Related to English," which lists "Administrative services manager" among occupations under a heading "Bachelor's or higher degree usually required."

- Exhibit 3: a group of Internet advertisements presented as "presently available parallel Administrative Services Manager positions in similar fields (or its functional equivalent, the Office Manager position)."

- Exhibit 5: "copies of the Administrator's credentials, showing possession of a bachelor's degree, or its equivalent."

The substance of counsel's assertions in response to the request for evidence is that the duties of the proffered position clearly are those of a specialty occupation and that this fact is supported by:

1. The *Handbook's* references to (a) bachelor's degrees as generally required for administrative service managers; (b) certain college courses that this type of employee should have, regardless of college major; and (c) the type of undergraduate or graduate degree that most facility manager's have.

2. The Bureau of Labor Statistics listing administrative service manager among positions requiring a bachelor's degree.

3. The facts that (a) the job descriptions in the Internet advertisements are similar to the duties of the proffered position, and (b) a bachelor's degree is a general requirement for the advertised positions. The fact that the administrator, who has performed most of

the duties of the proffered position, has at least the equivalent of a bachelor's degree.

4. The obvious nature of the proffered position's duties.

The director denied the petition for lack of sufficient evidence that the proffered position was a specialty occupation. The director's decision stated that, while the *Handbook* excerpts speak in terms of degrees "usually" and "generally" required, they do not state "that the minimum of a baccalaureate degree is the requirement for entry into the position." The director discounted the job advertisements as involving positions that were not parallel to the one proffered, not in the same industry as the petitioner, and not in organizations similar to the petitioner. The director also was not persuaded that the five employees on the petitioner's staff would generate sufficient "baccalaureate level duties for a full time position." Finally, the director noted that the administrator's letter submitted with the I-129 petition did not state that a bachelor's degree was required.

On appeal, counsel contends that the director had misconstrued the meaning of the word "normally" as it appears at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1). Insisting that "normally" is synonymous with "generally" and "usually," counsel asserts this section of the regulation does not state that a bachelor's degree must be a minimum requirement for a specialty occupation position, but only that such an educational requirement must be a "usual" or "general" requirement. Counsel states, "There never was the requirement nor was the burden ever on the Petitioner, as the Service suggests, to prove absolutely that 'the minimum of a baccalaureate degree is the requirement for entry into the position.'"

Counsel next maintains that the fact that the petitioner had not explicitly stated the requirement for a bachelor's degree is inconsequential. Counsel asserts that the petitioner's letter of support that was submitted with the Form I-129 detailed the duties of the proffered position in such a way as to demonstrate that they were so complex as to require a bachelor's degree in accordance with 8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

The appeal next addresses the advertisements submitted to support the petition. Counsel acknowledges that the advertisements "were not with companies in the same industry, nor were they with companies of similar size [as the petitioner]." Nevertheless, counsel contends that the director erred in discounting this evidence:

> [W]hile Petitioner concedes the accuracy of this observation, Petitioner argues that the job announcements were not submitted to show that the degree requirement is common to the industry. Rather, such announcements submitted comply, albeit indirectly, with

> the requirements of the 4th criteria [sic]. That is, the nature of the specific duties are [sic] so specialized and complex that knowledge required to perform the duties is usually associated with attainment of a baccalaureate or higher degree.

Finally, counsel asserts that the director erred in the determination that, in light of the small size of the staff, the proffered position did not appear to generate sufficient baccalaureate level duties for a full time position. Counsel here maintained that the holder of the proffered position, "while under the ultimate direction of the Administrator, would in effect handle the daily management of the Petitioner's operations." Counsel then explained why it is not "unusual" to require familiarity with management principles and practices" and to "require a minimum of a bachelor's degree of its Administrative Services Manager." In part, counsel refers to an exhibit of materials on operation of residential healthcare services and notes that these include "operational necessities" such as residency agreements, risk management, food service policies, accounting and bookkeeping, bills processing, personnel, staffing, sales and marketing, audits, health insurance compliance regulations, fee and occupancy options, and project budgeting.

As the following discussion of each criterion will show, the facts presented by petitioner do not establish that the proffered position is a specialty occupation under any one of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. -8 C.F.R. § 214.2 (h) (4) (iii) (A) (1).

The issue here is whether the duties of the proffered position require, as a minimum for entry, a bachelor's degree or equivalent in a specific specialty. The actual duties, not the employer's self-imposed requirements, are critical. [1]

As it often does on specialty occupation issues, the AAO has considered the *Handbook* for its information on the education requirements of relevant occupations. Here, both the denial of the petition and the appeal address the *Handbook's* discussion about the administrative service manager occupation, at pages 24 to 26.

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[1] Furthermore, this regulatory provision requires that the baccalaureate or higher, or equivalent, be in a specific specialty, just as the Act, above, which it implements.

Regardless of counsel's interpretation of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1), the use of "normally" there conveys that the degree required by this provision must be one that is commonly recognized as a standard requirement for the proffered position. The evidence fails to establish that the proffered position has this requirement.

The *Handbook* does not provide evidence supporting the petition, because it falls short of indicating that the administrative services manager occupation requires a bachelor's degree in a specific specialty.

Page 25 of the *Handbook* states,

> Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside, and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

The *Handbook* next states, at the beginning of a long explanatory paragraph, "Specific requirements vary by responsibility."

Counsel's inclusion of the "Teacher's Guide" reference to the administrative services manager occupation as being among those which usually requires a bachelor's or higher degree has little evidentiary value. It just states a conclusion without any discussion that can be used to evaluate the specific duties in this proceeding. Furthermore, this "Teacher's Guide" excerpt does not address a critical requirement of the Act 8 C.F.R. § 214.2 (h)(4)(iii)(A), that is, that the proffered position's degree be in a specific specialty.

The actual duties are the critical element in any analysis of the qualifications of a proffered position under 8 C.F.R. § 214.2 (h)(4)(iii)(A) requirements. Here they do not support counsel's equating them to that of a "managers of highly complex services" or "facility managers." They are not highly complex, and they are different from most of the duties of a facility manager.

Furthermore, the evidence does not establish a spectrum of duties that require a bachelor's degree, or equivalent, in any specific specialty.

For the reason's discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position 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).

The AAO finds that the director was correct in not granting the petition under this regulatory provision.

A. Degree requirement common to the industry.

The record contains no evidence relevant to this provision. On appeal, counsel rightly concedes that the advertisements submitted by the petitioner did not relate to positions in the industry. These advertisements are not relevant to the issue of an industry-wide degree requirement, because they do not meet the evidentiary standard of being positions from the same industry as the proffered position, parallel to that position, and from organizations similar to the petitioner. Additionally, as discussed above, the *Handbook* excerpts do not indicate a specific degree requirement common to all administrative services management positions.

B. Degree necessitated by the complexity or uniqueness of the position.

The evidence in the record does not establish that the proffered position is either so complex or unique as to require at least a bachelor's degree in a specific specialty. In fact, the record indicates that all the proffered position's duties have been performed by an administrator who holds a foreign bachelor's degree in broadcast-communication psychology, a degree which is not indicative of any highly specialized knowledge related to the administration of a healthcare services business such as the petitioner's.

III. Degree or its equivalent as the employer's normal requirement for the position.
-8 C.F.R. § 214.2 (h) (4) (iii) (A)(3).

The record establishes that this is the first time that the position in question has been proffered. Therefore, the petitioner cannot provide any evidence of a prior hiring history. However, that the administrator has performed all the duties of the proffered position, with a foreign degree not directly related to that position, establishes that the degree requirement has not existed for essentially the same position as that offered now.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 14.2 (h) (4) (iii) (A) (4).

The evidence does establish that the proffered position involves a number of duties in different practical areas that would require applications of different skills. However, the evidence does not establish that the proffered position would involve duties, alone or combined, that are so particularly specialized and complex as to require knowledge usually associated with a bachelor's or higher degree in a specific specialty. The duties themselves as described and supported by the petitioner and counsel do not evidence such specialization and complexity. In addition, the material on the administrator's educational background is positive evidence that a bachelor's degree in a specific specialty is not required for the proffered position: she performed essentially all of the position's duties without a directly related bachelor's degree.

For the reason's discussed above, the AAO will not disturb the director's denial of the petition, which was justified by the evidence of record. Review of the record did not reveal sufficient evidence to qualify the offered job under any other provision of 8 C.F.R. § 214.2 (h)(4)(iii)(A).

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. The petition is denied.