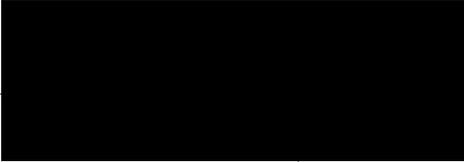


**IDENTIFICATION**  
Identifiers are limited to  
prevent unauthorized  
invasion of personal privacy

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

D2

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



FILE: LIN-01-142-55018 OFFICE: NEBRASKA SERVICE CENTER

DATE:

DEC 05 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)

IN BEHALF OF PETITIONER:



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

The petitioner is a private university that employs 250 persons and has a gross annual income of \$33 million. It seeks to employ the beneficiary as an international student advisor. The director denied the petition because the petitioner failed to establish that the offered position qualified as a specialty occupation under the regulations.

On appeal, counsel submits a brief and additional evidence. Counsel states, in part, that the offered position qualifies as a specialty occupation.

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.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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 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 beneficiary's duties are shown in the I-129 petition as follows:

Respond to new student inquiries, and conduct follow-up activities. Meet with prospective students and provide admissions advising using the outlined organized interview procedure. Assist new students with application and registration procedures. Process international student applications, issue acceptance letters and I-20 forms. Follow University and INS policies and procedures for all student paperwork processing. Properly maintain [files] on all international students and ensure necessary documentation for INS. Assist international students in simplified registration process. Monitor student compliance with immigration regulations and communicate with students in this regard. Follow up with students who have not re-registered or have "stopped out." Advise and counsel students on academic, immigration, cultural and social issues. Assist students in completing immigration forms for a variety of situations. Assist [in] conducting international student orientations. Act as an INS Designated School Official to ensure all operations related to international students are in compliance with INS regulations. Stay knowledgeable on all University academic programs, policies, procedures, particularly those related to the advising process. Keep current on INS student-related regulations[, ] procedures[, ] and policy changes. Act as a liaison for students to other University departments to resolve student problems and complaints. Regularly report student concerns to management. Participate in

Admissions and Student Services team activities. [P]articipate in joint City University activities. Participate in in-service and external training programs as required. Maintain passing scores for skills assessment training. Attend professional development meetings and conference[s] as deemed necessary. Work closely with all international team members and staff. Other duties as required.

The petitioner claimed that candidates must possess a bachelor's degree to perform the duties of the position.

On May 3, 2001, the director requested additional evidence that would show that the beneficiary qualified to perform the duties of the position and that the position satisfied one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In response, the petitioner submitted a letter that claimed that: (1) it normally requires a bachelor's degree or higher for the position; (2) the Immigration and Naturalization Service (INS), now Citizenship and Immigration Services (CIS) had previously approved petitions for this position; (3) the degree requirement is common to the industry in parallel positions among similar organizations; and (4) the nature of the specific duties is so complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

In addition, the petitioner submitted the following evidence: a letter from one of its employees in Human Resources; a chart listing employee identification numbers and indicating whether the employee held a bachelor's or higher degree; a job description of the offered position which indicated the preparation date of November 1994, and prior revision date of May 1990; a letter from Professor Richard Larkin, evaluating the beneficiary's employment and educational background; Professor Larkin's resume; job advertisements from the University of San Francisco, Dickinson College, Lesley University, Pine Manor College, University of Texas Arlington, Kaplan, and AiA; pages 145-147 of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*); pages 481 and 72 of the *Dictionary of Occupational Titles (DOT)*; and the beneficiary's employment verification letters.

On November 17, 2001, the director denied the petition, finding that the petitioner failed to establish that the position qualified as a specialty occupation. The director found that the petitioner's statements and the evidence showed that the position would not qualify as a specialty occupation. First, the petitioner had clearly stated, "City University does not require that the bachelor's degree be directly related to advising." Second, the petitioner had submitted a copy of the position's job description; this also indicated that a bachelor's degree was required, but the job description was silent regarding a specific academic specialty.

Thus, the director concluded that a bachelor's degree or higher in a specific specialty was not required for the offered position. Consequently, the petitioner failed to establish that the offered position qualified as a specialty occupation.

On appeal, counsel asserts that the request for evidence should have stated that the petitioner must show that it requires candidates to hold a degree in a specific academic specialty. Counsel alleges that, because of the examiner's error in not presenting the issue, the petitioner was not given an opportunity to respond to it.

Counsel's assertion is without merit: the Act's language clearly defines the term "specialty occupation" as an occupation that requires the "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." Thus, the petitioner had notice that the Act requires a bachelor's degree or higher in a specific specialty.

Counsel also misreads the request for evidence because it unequivocally states that the baccalaureate or higher degree be in a specialized area. For example, the request for evidence, on page one, states, "parallel positions must be documented . . . to show it is the normal practice for similar firms to employ individuals with baccalaureate degrees in a specialized area."

Likewise, page two states, "the employer must submit documentation to show that individuals with a baccalaureate or higher degrees in a specialized area . . . ."

Counsel states that the petitioner has satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), namely, that the petitioner show that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the particular position. The documentary evidence in the record reveals that the petitioner does not require a bachelor's degree in a specific academic specialty. For example, the I-129 petition states that a bachelor's degree is required; however, it doesn't state that the petitioner requires a degree in a specific specialty. The abstract of the beneficiary's job offer and the letter accompanying the petition both state that a bachelor's degree is required; however, they don't mention the requirement of a specific specialty area. Most important, the letter, dated May 29, 2001, states:

City University does require a bachelor's degree for the position of [i]nternational [s]tudent [a]dvisor. City University does not require that the bachelor's degree be directly related to advising. The purpose of requiring a bachelor's degree is that the [I]nternational [s]tudent [a]dvisor is responsible for advising student's [sic] on their degree programs.

Therefore, having a degree is necessary.

The record shows, unquestionably, that candidates for the position of international student advisor are not required to possess a bachelor's degree in a specific specialty. Based on the documentary evidence in the record, the petitioner fails to establish the first criterion.

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the petitioner does not require a bachelor's degree in a specific specialty, as required by the Act. Accordingly, the petitioner will not be able to establish that it has a degree requirement that's common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

The third criterion requires that the employer establish that it normally requires a degree or its equivalent for the position. The Act states that the degree must be in a specific specialty. As discussed, because the record discloses that the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth and final criterion requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record evinces that the petitioner has not established this criterion because the knowledge required to perform the duties of the position is not associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the petitioner does not require that candidates possess a bachelor's degree in a specific specialty to perform the duties of the offered position.

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.