

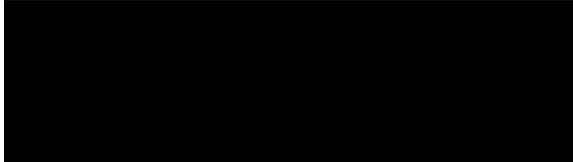
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



FILE: WAC-02-028-53977 OFFICE: CALIFORNIA SERVICE CENTER

DATE: DEC 18 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:



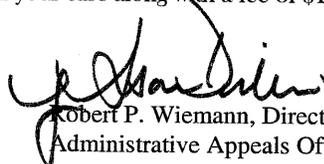
INSTRUCTIONS:

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

The petitioner is a daycare center for disabled children that employs two persons and has a gross annual income of \$31,174. It seeks to employ the beneficiary as a facility manager. The director denied the petition because the petitioner failed to establish that the offered position qualifies as a specialty occupation.

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 letter accompanying the I-129 petition described the beneficiary's duties as bookkeeping, advertising, complying with government filing requirements, and planning the petitioner's growth and expansion. The letter explained that candidates must possess a degree in business, economics, or management studies.

On November 19, 2001, the director sought additional information:

- (1) a detailed job description and an explanation of why the position required a person holding a college degree or its equivalent in the occupational field;
- (2) evidence that the position's duties could never be performed by a person with less than a bachelor's degree, and an explanation of how the beneficiary could acquire experience performing the position's duties without a degree;
- (3) evidence that the petitioner has established one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A); and
- (4) employment letters from the beneficiary's previous employers establishing that the beneficiary has training and experience in the specialty occupation.

In response, counsel submitted a letter, explaining that the beneficiary's duties will be bookkeeping, including receipts and expenses, profit and loss statements, and credit determinations. The letter further stated that the beneficiary would maintain and file all federal, state, and local tax documents and all other administrative or regulatory filing requirements, too. Moreover, the letter reported that the beneficiary would develop expansion plans, including marketing, financing, and overseeing additional construction or leasing of premises. The letter stated that as the business expands, the beneficiary would establish rules regarding employee conduct, develop employee handbooks, and hire and fire employees. Finally, the letter stated that the beneficiary would enter into contracts with independent

contractors, such as lawyers, accountants, or medical personnel. The letter stated that the beneficiary will spend 50 percent of her time on administrative and bookkeeping responsibilities; about 30 percent on business development and expansion plans; about 10 percent reviewing the performance of employees, and the level and quality of service provided to clients; about 5 percent on consulting with independent consults; and 5 percent on hiring or firing employees, meeting with the owner of the business, and writing reports.

The letter averred that candidates must possess a bachelor's degree for several reasons. First, the letter stated that, because the beneficiary will interact with other professionals, including doctors, educators, psychologists, lawyers, accountants, and marketing specialists, all of whom possess at least a bachelor's degree, the beneficiary should hold a degree, too. Second, the letter stated that the beneficiary's duties entail marketing, finance, and business development, duties usually performed by persons holding college degrees in the areas. Third, the letter alleged that the petitioner's clients would expect the person managing the facility to hold a college degree. Fourth, the letter claimed that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that employers require candidates for facility manager positions to possess a degree, and that employers of small facilities require a degree and some managerial experience. Moreover, the letter further claimed that the owner of the petitioning entity performs the duties of the offered position and that she holds a bachelor's degree in commerce. Counsel submitted copies of the owner's degree and transcripts as evidence.

Last, the letter stated that the petitioner submitted as evidence a letter from the beneficiary's former employer.

On April 2, 2002, the director denied the petition, finding that the petitioner failed to establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that, under the heading "Office and Administrative Support Supervisors and Managers," in the 2000-2001 edition of the *Handbook*, the *Handbook* reports that most employers fill administrative and office support supervisory and managerial positions by promoting clerical or administrative support workers within their organization, and that many employers require post-secondary training and, in some cases, an associate's or bachelor's degree.

On appeal, counsel submits a brief and additional evidence. Counsel maintains that the offered position qualifies as a specialty occupation, requiring a degree in business, economics or management studies.

Counsel maintains that the petitioner established the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A), specifically,

that a baccalaureate or higher degree or its equivalent is the minimum requirement for entry into the particular position. Counsel, citing the *Handbook*, states that the beneficiary's duties are parallel to those performed by facility manager positions. Moreover, counsel submits a letter from Bright World, a care facility that is similar to the petitioner's. Bright World's letter states that it requires candidates for facility manager positions to hold bachelor's degrees for the same reasons described by the petitioner.

Counsel's assertions are without merit; the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Citizenship and Immigration Services (CIS) looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation. In addition, CIS also considers the nature of the petitioning entity's business operations.

The *Handbook* is instructive because it provides a 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. According to the *Handbook*, the beneficiary's duties are an amalgam of those performed by bookkeeping, accounting, auditing and financial clerks, marketing managers, and human resource generalists. For example, the record shows that the beneficiary will spend about 50 percent of her time handling receipts and expenses and profit and loss statements; making credit determinations; and maintaining federal, state, and local tax filings.

According to the *Handbook*, on pages 390, such duties encompass those performed by bookkeeping, accounting, auditing, and financial clerks:

Bookkeeping, accounting, and auditing clerks are an organization's financial recordkeepers. They update and maintain one or more accounting records, including those that tabulate expenditures, receipts, accounts payable and receivable, and profit and loss . . . . post debits and credits, produce financial statements, and prepare reports and summaries for supervisors and managers . . . . handle the payroll, make purchases, prepare invoices, and keep track of overdue accounts.

More advanced accounting clerks may total, balance, and reconcile billing vouchers; ensure completeness and accuracy of data on account . . . . They may also

review invoices and statements to ensure that all information is accurate and complete . . . . Auditing clerks verify records of transactions posted by other workers.

Financial clerks . . . record all amounts coming into or leaving an organization . . . .

According to the *Handbook*, on page 27, marketing manager positions are described as follows:

[They] develop the firm's detailed marketing strategy. With the help of subordinates . . . they determine the demand for products and services offered by the firm and its competitors . . . . They identify potential markets - for example, business firms, wholesalers, retailers, government, or the general public. Marketing managers develop pricing strategy with an eye towards maximizing the firm's share of the market and its profits while ensuring that the firm's customers are satisfied. . . . they monitor trends that indicate the need for new products and services.

The beneficiary's duties reflect those of marketing manager positions. For example, the beneficiary will spend about 30 percent of her time developing expansion plans, such as marketing and finance.

On page 60, the *Handbook* states that, in small organizations, a human resource generalist may handle all aspects of human resources work, and in large corporations, generalists usually develop and coordinate personnel programs and policies. This description encompasses the beneficiary's duty to establish employee conduct rules, develop employee handbooks, and hire and fire employees.

With respect to qualifications, training, and advancement, for bookkeeping, accounting, auditing, and financial clerks, on page 387, the *Handbook* states that employers require most financial clerks to have at least a high school diploma, and for bookkeepers and accounting clerks, they often require an associate's degree in business or accounting. For marketing manager positions, on page 28, the *Handbook* states that employers find a wide range of educational backgrounds suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer candidates with experience in related occupations plus a broad liberal arts background. For example, employers accept a bachelor's degree in sociology, psychology, literature, journalism, or philosophy. With marketing, sales, and promotion management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. For human resource positions, the *Handbook*, on pages 62-63, reports that, because of

the diversity of duties and level of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, employers usually seek college graduates, and the *Handbook* reports that many employers prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations; whereas, other employers desire college graduates with technical or business backgrounds or a well-rounded liberal arts education.

Based on the *Handbook*, the petitioner fails to establish the first criterion, namely, that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum for entry into the particular position. For example, the *Handbook* relates that employers do not require candidates to possess a bachelor's degree to perform the duties of bookkeepers, and accounting and financial clerks; counsel's letter states that the beneficiary will spend about 50 percent of her time performing these duties. In addition, the general trend for marketing manager positions is for many employers to accept candidates with experience in related occupations plus a broad liberal arts background; whereas, only a smaller group of employers prefer candidates with a bachelor's or master's degree in business administration with an emphasis in marketing; thus, employers do not require a degree in a specific specialty. For generalist positions, the *Handbook* explains that many employers prefer candidates to possess human resources, personnel administration, or industrial labor relations degrees, and other employers desire college graduates with technical or business backgrounds. Consequently, employers do not require a degree in a specific specialty. Moreover, Bright World's letter, although relevant, fails, in itself, to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum for entry into the position.

The petitioner also failed to satisfied the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), showing that the degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that its particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining the industry standard include: whether the Department of Labor's (DOL) *Occupational 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)). As previously discussed, the Department of Labor relates that the offered position would not require a bachelor's degree. In

addition, the letter from [REDACTED] although pertinent, is insufficient in itself to establish an industry standard.

The petitioner fails to satisfy the third criterion: that it normally requires a degree or its equivalent for the position. The petitioner alleges that the owner of the company holds a bachelor's degree in commerce. However, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As previously discussed, the *Handbook* reveals that employers would not require candidates to possess a bachelor's degree to perform most of the beneficiary's duties, and the duties that would require a bachelor's degree would not require a bachelor's degree in a specific specialty.

Next, the petitioner fails to prove 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. Again, the *Handbook* reports that employers do not require candidates to hold a degree to perform the bookkeeping, accounting, auditing, and financial duties of the offered position, and employers would not require candidates to hold a degree in a specific specialty to perform the marketing and human resources duties. Thus, the petitioner fails to establish the fourth criterion at 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 id.* at 387.

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.