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

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

[REDACTED]

File: SRC 01 110 57342

Office: TEXAS SERVICE CENTER

Date: JUN 03 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]

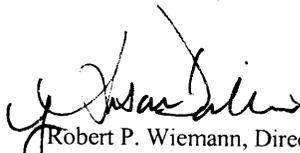
INSTRUCTIONS:

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 petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a medical center with 25 employees and an unspecified gross annual income. It seeks to employ the beneficiary as a business administrator for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional evidence.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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.

The director denied the petition because the petitioner had not shown that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the particular position.

On appeal, counsel asserts that the duties of the position are highly complex and require the services of an individual with a baccalaureate degree in a specific specialty.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary's] primary responsibility is to perform administrative services, coordinate and direct support services, administration, conference planning, materials scheduling, oversee all support services, office managers, contract administrators, acquire, distribute and store supplies and may sell or dispose of surplus property, resale of scraps, reject and surplus or [sic] unneeded sup[p]lies and machinery.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

In the initial I-129 petition, the petitioner identified the position as that of an administrative assistant. In response to a Bureau request for additional evidence ("RFE"), the petitioner changed the title of the position to "administrative services manager," but the duties of the position remain the same. The duties appear to be those of an entry-level administrative services manager or an office manager. The Department of Labor (DOL) describes the general duties of entry-level administrative services managers and office managers at pages 24-26 of the *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition as follows:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, and personal property procurement, supply, and disposal.

* * *

In small organizations, a single administrative services manager may oversee all support services. . . . As the size of the firm increases, administrative services managers are more likely to specialize in specific support activities. For example, some administrative services managers work primarily as office managers, contract administrators, or unclaimed property officers.

A review of the *Handbook* at pages 25-26 finds no requirement of a baccalaureate degree in a specific specialty for employment as an entry-level administrative services manager or an office manager. Educational requirements for administrative services managers vary widely, depending on the size and complexity of the organizations. 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. For first-

line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience.

On appeal, counsel cites the *Handbook* at page 26 as follows:

For managers of highly complex services such as contract administration, a bachelor's degree, preferably in business administration or finance, is usually required. . . . Similarly, facilities managers often need a bachelor's degree in engineering, architecture, or business administration. Some administrative services managers have advanced degrees. (Emphasis in the original.)

The duties of this position, however, are not those of a contract administrator or facilities manager. The beneficiary will not be involved in the oversight of contract negotiations or the planning, design, or management of the facility's building and grounds. Rather, the beneficiary will perform the administrative tasks normally performed by entry-level administrative services managers such as oversight of secretarial and reception, payroll, conference planning and travel, information and data processing, mail, and materials scheduling and distribution. Moreover, the statement that **some** administrative services managers may have advanced degrees does not demonstrate that a baccalaureate or higher degree in a specific specialty is the normal minimum requirement for entry into the occupation. (Emphasis added.)

Additionally, although the petitioner indicated in the initial I-129 petition that the beneficiary would oversee all support services office managers and contract administrators, the petitioner has not provided an organizational chart showing the beneficiary's place within the company, nor has the petitioner provided a list of the support services office managers or contract administrators the beneficiary would purportedly supervise, along with evidence showing the educational credentials of such managers. In the absence of corroborating evidence, counsel's assertion that the position qualifies as a specialty occupation based on the beneficiary's supervisory duties over other managers cannot be accepted. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it

was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

Finally, counsel's assertion that the proffered position is a specialty occupation because the beneficiary would be working in a medical facility overseeing support services for physicians, nurses and medical technicians is not persuasive. The beneficiary's duties as described by the petitioner do not have any connection to the medical functions of the facility. As previously stated, the beneficiary's duties are the responsibilities normally performed by entry-level administrative service managers or office managers. Thus, the petitioner has not shown that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

The petitioner has not provided any evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations. Furthermore, the petitioner has not shown that it required a bachelor's degree in a specific specialty as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty.

Counsel asserts that the Bureau should give deference to the employer's view and should not rely simply on the *Handbook's* classification system in determining whether a particular job qualifies as a specialty occupation. In support of his assertion, counsel cites the holding reached in *Unico American Corp. v. Watson*, CV No. [REDACTED] (C.D. Cal. Mar. 19, 1991). Counsel has not, however, demonstrated that the cited decision is relevant to the facts and issues of this proceeding.

The petitioner has failed to establish that any of the four factors 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 director also determined the petitioner had not shown that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel asserts that the beneficiary holds the equivalent of a baccalaureate degree in administrative services management. In support of his assertion, counsel submits a new credentials evaluation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary was awarded a diploma in tourism administration from the Universidad Simon Bolivar in Venezuela. The petitioner has not submitted an evaluation from a reliable credentials evaluation service based solely on the beneficiary's foreign education.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by an

evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

The record contains an employment letter from [REDACTED] General Manager of Business Travel International in Caracas, Venezuela. Mr. [REDACTED] stated that the beneficiary worked for that company from January 1998 to August 2000 as an administrative assistant. He did not, however, provide a description of the duties performed by the beneficiary during her employment for that company.

In response to a Bureau request for additional evidence, the petitioner submitted an additional letter signed by [REDACTED] Administrator, Inversiones Compu 2011, C.A. Mr. [REDACTED] stated that the beneficiary worked for his company as an administrative assistant from July 15, 1997 to August 15, 2000. Mr. [REDACTED] stated that the beneficiary was responsible for accounting, purchasing, data transcription, and sales.

There is a direct conflict between these two employment letters. The letters are signed by two different individuals who are officials at two different companies with different addresses in Venezuela. It is not possible for the beneficiary to have worked as a full-time administrative assistant for two different companies during the period from January 1998 to August 2000. The petitioner has not provided any explanation for this apparent discrepancy in the beneficiary's claimed employment. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988).

The record contains three evaluations of the beneficiary's foreign education and work experience. All three of these evaluations were performed by evaluators for the same credentials evaluation service, First L.E.E.G.A.L. Institute of Florida. The first evaluation was performed by [REDACTED]. The second and third evaluations were both performed by [REDACTED].

All three evaluators based their findings on the beneficiary's diploma in tourism administration in combination with her work experience. Mr. [REDACTED] found the beneficiary's foreign education and work experience equivalent to a bachelor's degree in office management. Mr. [REDACTED] arrived at the same finding in his first evaluation. In his second evaluation, Mr. [REDACTED] found the beneficiary's foreign education and work experience equivalent to "Administrative Service Manager."

The Bureau uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In this case, all three evaluations are based in part on the beneficiary's work experience. As stated above, the discrepancies in the beneficiary's claimed work experience raise serious questions as to the credibility of such claims. Furthermore, bachelor's degrees in office management or administrative services management are not generally offered in U.S. colleges and universities. Finally, the record does not contain an evaluation of the beneficiary's foreign education and work experience from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Bureau may determine that equivalence to completion of a baccalaureate degree in a specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition for expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that

the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record does not contain any evidence to demonstrate recognition of the beneficiary's expertise in a specialty occupation by recognized authorities in the same specialty occupation, nor does the record contain any evidence to show that the beneficiary holds membership in a recognized foreign or United States association or society in a specialty occupation. The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specific specialty. Furthermore, the petitioner has not submitted any evidence to show that the beneficiary holds licensure or registration to practice a specialty occupation in a foreign country. Additionally, the record does not contain any published material by or about the alien in professional publications, trade journals, or major newspapers. Finally, no evidence has been submitted to document any achievements which a recognized authority has determined to be significant contributions to the field of a specialty occupation. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to demonstrate that the beneficiary qualifies to perform the duties of the position in question.

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.