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

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

[Redacted]

File: EAC-01-204-53537 Office: VERMONT SERVICE CENTER Date: MAY 12 2003

IN RE: Petitioner: [Redacted]
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]

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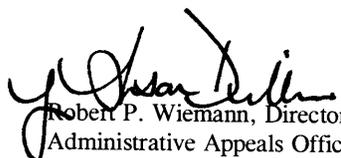
INSTRUCTIONS:

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

The petitioner is a county-funded community services provider catering to individuals with special needs. It has four employees and a projected gross annual income of \$174,543. It seeks to employ the beneficiary as an administrative professional for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement.

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 in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the record contains an expert opinion in support of her claim that the proffered position requires a baccalaureate degree.

Counsel's statement on appeal is not persuasive. The Bureau does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Bureau

considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

As an Administrative Professional, [the beneficiary] will be responsible for providing highly skilled confidential administrative assistance to the CEO/COO, managing the day-to-day activities of Wakefield Cottage and coordinating projects and proceedings with the County and state.

[The beneficiary] will be required to manage Wakefield Cottage in the absence of the CEO/COO, making independent judgments regarding matters that require immediate attention and taking necessary steps to assure the resolution of problems. She will serve as the common link to all operating units within the County, interacting with other employees in carrying out the CEO/COO instructions and transmitting information tactfully and accurately. [The beneficiary] will also prepare and recommend reports on behalf of the CEO/COO and assist the CEO/COO in the development and implementation of goals and objectives. Additionally, [the beneficiary] will be required to serve on district wide committees and complete district wide special projects.

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.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a Bachelor of Business Administration in Management degree. The proffered position is similar to that of an administrative assistant. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 422-423, the DOL describes the job of an administrative assistant, in part, as follows:

As technology continues to expand in offices across the Nation, the role of the office professional has greatly evolved. Office automation and organization restructuring have led secretaries and administrative assistants to assume a wider range of new responsibilities once reserved for managerial and professional staff. Many secretaries and administrative assistants now provide training and orientation for new staff, conduct research on the Internet, and operate and troubleshoot new office technologies. . . .

They serve as an information manager for an office, schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information via the telephone, postal mail, and e-mail. They may also prepare correspondence and handle travel arrangements

In addition, secretaries and administrative assistants increasingly use personal computers to create spreadsheets, compose correspondence, manage databases, and create reports and documents via desktop publishing, and using digital graphics--all tasks previously handled by managers and other professionals.

A review of the *Handbook* finds that although high school graduates with basic office skills may qualify for entry-level secretarial positions, employers increasingly require extensive knowledge of software applications, such as word processing, spreadsheets, and database management. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1 and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Thus, the petitioner has not shown that a bachelor's degree or its

equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as business administration in management, for the offered position. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The record contains an opinion from an industry expert who states, in part, that positions similar to the proffered position always require a bachelor's degree in the area of business administration, management, or a related field from an accredited institution of higher learning. The writer has not, however, provided evidence in support of his assertions. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings.

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 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.