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Citizenship and Immigration Services

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

NOV 07 2003

FILE: EAC 02 198 51811 OFFICE: VERMONT SERVICE CENTER DATE:

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)

ON BEHALF OF PETITIONER:

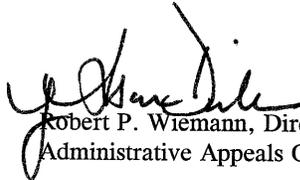
INSTRUCTIONS:

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

The petitioner is a children's residential summer camp that currently employs six persons (approximately 90 during camping season) and has a gross annual income of \$1,150,000. It seeks to employ the beneficiary as a program director for a period of three years. The director denied the petition because the proffered position is not 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.

On the Form I-129, the petitioner described the proffered position as "Program Director." Submissions with the Form I-129 included a letter of support from one of the petitioner's two owners/directors. According to the letter, the petitioner serves a total of more than 250 boys and girls each camping season. The letter stated that the program director would be responsible for:

researching, developing, implementing, and supervising safe, educational and recreational experiences for our campers; interviewing, hiring, training, and supervising staff; designing and producing camp yearbooks and bi-monthly newsletters; developing marketing tools and publications used to recruit new campers; traveling to camper fairs to market [the camp] to potential customers; proposing purchases for equipment and gear needed for programs and activities; coordinating camp reunions and picnics; and maintaining a budget for the camp.

On review of the Form I-129 and associated documents, the director issued a request for additional information which stated, in part, that the petitioner had not established that the proffered position required the services of a person in a specialty occupation. The request sought: (1) evidence that a bachelor's degree in a specific field of study was a standard minimum requirement in the petitioner's company or industry; (2) the number and educational degrees of those whom the petitioner employed in positions similar to the one at issue; and (3) additional evidence that showed how the beneficiary qualified for a specialty occupation.

In response to the request for additional evidence, counsel submitted a letter, with three enclosures, to support the assertion that the proffered position was a specialty occupation. These enclosures were:

1. A June 6, 2002 letter from the same owner/director who had submitted a letter of support with the Form I-129;

2. A June 7, 2002 letter from the director of professional development of the American Camping Association (ACA); and
3. Copies of pages from the ACA Internet site, which counsel provided as setting forth "the types of standards with which ACA accredited camps like [the petitioner] must comply, including the educational background of upper staff like [the petitioner]."

The owner/director's letter, in part, quotes the ACA Internet site for this insight on the abilities required for camp management: "Management roles in camps require know-how and background in very technical fields such as human resources, nutrition, health care, food service, facility and business management; it also necessitates the blending of the principles of youth development and social group work, recreation, physical education, psychology and education. . . ." This letter also cites the ACA website as the source of this information:

[M]any positions in [camp] organizations require a staff person to spend time in administrative functions other than programs. This can encompass areas such as: Recruitment/promotion; budgeting, sometimes fund raising; staffing; employing or recruiting volunteers, training and supervising; working with policy-setting body; coordinating functions; meeting legal requirements; writing and complying with ACA standards; administration of other program areas; strategic planning.

Here the owner/director also lists the educational backgrounds of those five camp employees in positions similar to the one at issue. The positions and their backgrounds as identified in the letter were: (1) owner/director (bachelor's degree in government, and law degree); (2) owner/director (bachelor's degree in American studies, and law degree); (3) assistant to director (bachelor's degree in sociology); (4) assistant to director (bachelor's degree in business and secondary education); assistant to director (bachelor's degree in psychology).

The owner/director also refers to the ACA standards for career camp positions, which shall be addressed below.

Finally, the letter asserts that, as with similar upper level staff positions, the demands of the proffered position require that its holder "possess at the very minimum, the equivalent of a baccalaureate degree in Education, Psychology, Counseling, Physical Education, Sports Management, Sports Management with Leisure and Recreation Management or a related field that allows our staff to

have the skill set necessary to positively interact with children and lower staff members."

The letter from the ACA's director of professional development identifies the ACA as an organization of over 6,000 camp professionals and states that it operates partly as an accrediting body that focuses mainly on the quality, health, and safety of camp programs. With regard to an industry-wide educational standard, the director of professional development stated:

[I]t is the industry wide standard for our camps to hire, in positions like that offered to [the beneficiary] individuals who possess, at the very least, the equivalent of an undergraduate degree in Education, Psychology, Counseling, Physical Education, Sports Management or Sports Studies with Leisure and Recreation Management. This skill set ensures that our children are provided with the highest quality of supervision and the greatest opportunity for emotional growth and a safe, happy summer.

In pertinent part, page 2 of the "ACA Careers in the Camp Community" document, which appears among the ACA website pages submitted by counselor, contains this educational-background information which was referenced in the owner/director's June 6, 2002 letter:

**Qualifications for Career Positions**

Advanced degrees are helpful but not always essential. A B.A. or B.S. degree is usually required and is helpful in the areas of:

- Recreation, with emphasis in camping
- Youth development or Group work
- Liberal arts education
- Outdoor education and/or camping

This portion of the ACA materials also states that training usually includes "a broad liberal education" and "camp administration."

In his denial of the appeal, the director summarized and commented upon the petitioner's evidence and determined that it had not established that the proffered position "requires an individual who possesses a bachelor's degree in a specific field of study."

On appeal, counsel submits a 10-page brief with 13 exhibits. The exhibits relevant to the specialty occupation issue include copies of:

1. These documents already mentioned above: the owner/director's letter that was submitted with the Form I-129 (Exhibit B); that same owner/director's letter of June 6, 2002, which was submitted with the response to the request for additional information (Exhibit C); the June 7, 2002 letter from the ACA's Director of Professional Development, which was submitted with the response to the request for additional evidence (Exhibit I); and the excerpts from the ACA Internet site (Exhibit J).
2. These new submissions: excerpts from the petitioner's internal manuals and materials on camp procedures (Exhibit D); schedules for special activities for which the proffered position would be responsible (Exhibit E); an organizational flow chart, which includes the proffered position on the same line as two assistants to the director (Exhibit F); a listing of the staff members whom the beneficiary would supervise (Exhibit G); a letter for the appeal, dated August 21, 2002, from the same owner/director who had submitted previous letters (Exhibit H); another letter, dated July 22, 2002, from the ACA's director of professional development (Exhibit K); and four letters from other camps, written to support the appeal: three are from owner/directors and one from an assistant director (Exhibits L and M).

The brief also cites to the Department of Labor's *Occupational Outlook Handbook, 2002-2003 edition (Handbook)*, to rebut the director's assertion that the 1998-1999 edition "does not state that a bachelor's degree in a specific field of study is the minimum requirement for the position of social and recreation workers," and "does not substantively establish what the degree requirement for the proffered position would be in your company."

In its "Conclusion" section, counsel's brief states, "The position of Program Director (Assistant Director/Programs) at [the petitioner's camp] is truly a position which requires the equivalent of an undergraduate degree in Education, Psychology, Counseling, Physical Education, Sports Management, Sports Studies with Leisure and Recreation Management or a related field and clearly falls within the INS' definition of a 'specialty occupation.'"

Upon full review of the entire record, the AAO has determined that the petitioner has not established that the proffered position is a specialty occupation. As the following discussion will show, the evidence does not satisfy any of the qualifying criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

It is worth emphasizing that "degree" as used in each of the four criteria at 8 C.F.R. § 241.2(h)(4)(iii)(A) means one in a specific specialty, that is, in a discipline characterized by a body of highly specialized knowledge. See section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), above.

**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 AAO regularly consults the *Handbook* for information about the duties and educational requirements of certain occupations. Here the AAO focused on the *Handbook's* treatment of the recreation and fitness workers occupation, at pages 336 to 339, which includes sections which counsel quoted and commented upon.

Counsel relies upon the *Handbook* for the proposition that a recreation position on a level with the one proffered here requires at least a bachelor's degree or higher. However, the *Handbook* does not state any requirement for a degree in a specific specialty associated with a body of highly specialized knowledge.

According to the *Handbook*, full-time career recreation positions usually require a college degree with a major in parks and recreation or leisure studies, while a bachelor's degree in any liberal arts field may be sufficient for some jobs in the private sector. The *Handbook* also asserts that a bachelor's degree is preferred for most recreation supervisor jobs as well as for most higher level administrator jobs, and that increasing numbers of recreation workers who aspire to administrator positions obtain master's degrees in parks or recreations or related disciplines.

The proffered position appears to be a higher level administrator job that the *Handbook* indicates would require a bachelor's degree. However, because the degree majors mentioned in the *Handbook* are not in a specific specialty, the position is not a specialty occupation.

The AAO also looks to the particular duties of the proffered position particular to see if they characterize a specialty occupation position. Here, they do not, because they do not indicate the exercise of a body of highly specialized knowledge in any specific specialty.

For the reasons above, the evidence in the record fails to qualify the proffered position as a specialty occupation 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).

A. Degree requirement common to the industry.

The letters from the administrative staff of other camps and from the ACA director of professional development do not establish that the summer resident camp industry requires a bachelor's degree in a specific specialty. Rather, they indicate that, for the duties of the proffered position, the industry would allow a bachelor's degree from a number of fields that do not appear to share any highly specialized body of knowledge, namely, "Education, Psychology, Counseling, Physical Education, Sports/Leisure/Recreation Studies or Management, or a similar area."

Likewise, the ACA website's information on educational qualifications for career positions specified a broad swath of bachelor's degrees which are outside highly specialized disciplines, including recreation, with a camping emphasis; youth development or group work; liberal arts; and outdoor education and camping.

Finally, as discussed above, the *Handbook* does not indicate that the proffered position carries with it an industry-wide requirement for a degree in a specific specialty.

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

The record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them.

The duties themselves, as enumerated and described in the record, appear neither complex nor unique. Additional testament to the lack of complexity and uniqueness is the evidence, discussed above, of the wide range of bachelor's degrees which would qualify a person for initial entry.

For the reasons discussed above, the director was correct in not granting the petition under 8 C.F.R. § 214.2(h) (4) (iii) (A) (2).

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).

In her August 21, 2002 letter (Exhibit H), one owner/director acknowledged that this is the first time that anyone is being sought for a position entitled "program director," but asserted

that the title is deceptive. According to her, she and the other owner/director considered the proffered position to be "equal" with and "in many respects, the same" as the petitioner's already existing "assistant director" positions. The owner/director asserted, in bold-face type, "[W]e can and do unequivocally state that in prior years the duties of [the proffered position] were split among our other Assistant Directors, all of whom have always held undergraduate degrees in fields which we consider to be related to camping and child development." According to the letter, entitling the proffered position as "program director" instead of as an assistant director was just meant to highlight that this new position would be responsible for creation, development, and oversight of all the camp's programs.

Although Citizenship and Immigration Services (CIS) cannot comply with the letter's request to amend the title of the proffered position to "Assistant Director/Programs," the AAO accepts as true the owner/director's statements about the relationship between this position and the existing assistant director positions. Accordingly, the AAO considered the hiring requirements of those positions.

In this regard, the AAO notes that the owner/director's August 21, 2002 letter only indicated that the assistant directors have always held college degrees in fields that the owners considered related to camping and child development. The letter did not indicate degrees in a specific specialty. Furthermore, the owner/director's letter of July 6, 2002 indicated that the present assistant directors hold divergent baccalaureate degrees that are not associated with a common body of highly specialized knowledge (that is: sociology; business and secondary education; and psychology.)

Therefore, because the petitioner's hiring history only shows that the petitioner required a bachelor's degree, rather than a bachelor's degree in a specific specialty, the evidence does not qualify the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

**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 totality of the petitioner's evidence does not establish that the specific duties are so specialized and complex that only a person with a baccalaureate degree in a specific specialty could perform them.

The duties are diverse, but are do not appear notable for difficulty in either understanding or performing them. Telling evidence of the lack of any remarkable specialization or complexity is the fact that, as seen above, the duties of the

proffered position used to be divided among assistant directors whose diverse degrees did not reflect a common body of knowledge.

Accordingly, the petitioner has not established that the proffered occupation should be treated as a specialty occupation under the auspices of 8 C.F.R. § 214.2 (h) (4) (iii) (A) (4).

As discussed above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h) (4) (iii) (A). Accordingly, it is concluded that the petitioner has not established that the proffered 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. The petition is denied.