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U.S. Department of Homeland Security

Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 MASS, SW  
425 I Street, N.W.  
Washington, DC 20536

[Redacted]

NOV 10 2003

File: LIN 01 018 53363 Office: NEBRASKA SERVICE CENTER Date:

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]

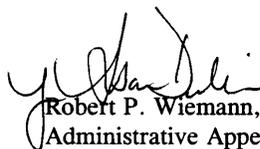
INSTRUCTIONS:

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 Director, Nebraska Service Center, denied the petition, and the matter was before the Administrative Appeals Office (AAO) on appeal. The AAO subsequently dismissed the appeal. The petitioner then filed a motion to reconsider over which the director erroneously took jurisdiction. The director affirmed the decision to deny the petition, and the petitioner appealed that decision to the AAO. The director's June 26, 2002 decision on the motion will be withdrawn. The petitioner's appeal will be treated as a motion to reconsider. The motion will be granted. The previous decision of the AAO to deny the petition will be affirmed.

The petitioner is a post secondary school providing instruction in hypnotherapy and other complementary medical therapies and also neural-subliminal communication. The petitioner also is involved in the research and development of light and sound technology used in complementary medical therapies. It has two employees, and a gross annual income of \$201,486. The AAO on appeal determined that the petitioner had not established that the proffered position was a specialty occupation.

On motion, counsel states the primary duties for the beneficiary as administrative manager will be to coordinate and assist in the production and development of light and sound technology. Counsel cites to *Tapis International* 94 F. Supp 2d 172 (Mass. Dist. Ct., 2000) and asserts that Citizenship and Immigration Services (CIS) reads the relevant statutory language with regard to baccalaureate degree in a specific specialty in an overly restrictive manner.

Section 214(i)(1) of the Immigration and Nationality Act (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 field 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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In its original petition, the petitioner did not describe the duties of the proffered position. When the director requested further evidence, counsel provided the following job description:

The beneficiary will oversee the maintenance and management of the school facility, it's [sic] database and files[.] ([S]aid task will require ten [per cent] of the beneficiary's time). The beneficiary will also coordinate and assist in the copyright and publishing and publishing function of the school (20 per cent of his time), as well as evaluate the classes, instructors, and student documentation in order to provide the management with an up to date information regarding the school's status ([S]aid task will require [an] additional 20 [per cent] of his time). Most importantly, the beneficiary will coordinate and assist in the production and development of the light and sound technology and evaluate their users [sic] while preparing and coordinating the documentation required to distribute the video courses in Bulgaria. Said documentation will include copyright agreements as well as distribution agreements with various institutions in Bulgaria and will require ongoing legal review of all documentation arriving from Bulgaria with reference to copyrights and distribution process. (Said task will require 50 [per cent] of the beneficiary's time). In essence, the beneficiary's legal education will be necessary to evaluat[e] for the petition all documentation arriving from Bulgaria in order to secure

proper distribution of the video courses without infringing on the copy rights [sic] of the petitioner.

Although the petitioner stated that it had enclosed evidence that a baccalaureate degree in law was a common requirement in parallel positions in which administration managers were required to review foreign legal documentation, no additional evidence was found in the record.

On April 12, 2001, the director denied the petition. The director noted that the petitioner had not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the petitioner had submitted evidence that a degree requirement is common to the industry in parallel positions among similar organizations; however, he did not identify any particular evidence that the petitioner submitted for the record on this issue. Counsel further asserted that the proffered position was a specialty occupation based on the complex and specialized duties outlined in the job description. Counsel asserted that with such a job description, the duties of the position would be dispositive and not the job title. Counsel also affirmed that other administrative positions mentioned in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* can be cited as specialty occupations. Counsel identified these positions are administrative analyst, administrative services manager, and administrative secretary. Counsel also cited to several unpublished AAO decisions to support his assertion that administrative positions have been found to be H-1B caliber positions.

On April 2, 2002, the AAO dismissed the appeal. The AAO disagreed with counsel's statement that the duties of the proffered position parallel those of an administrative analyst, administrative services manager, or administrative secretary. In addition, the AAO stated that the unpublished AAO decisions cited by counsel had no precedential effect in the appeal proceeding. The AAO also dismissed counsel's statements with regard to the *DOT* job categories, and stated that the Department of Labor's (DOL) *Occupational Outlook Handbook, (Handbook)* is given much more weight than the *DOT* in H-1B eligibility proceedings. The AAO then referred to each of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A), and stated that the petitioner had not met any of the four criteria. First, the AAO determined that the proffered position was that of a general manager and, based on the *Handbook* description of general manager, the position did not require a baccalaureate degree for entry into the position. Second, the AAO stated that the petitioner had not provided evidence, such as job advertisements for the proffered position, to document that the petitioner normally required such a degree. Finally the AAO stated that the petitioner had not shown that the degree requirement is common to the industry for parallel positions in similar organizations, and the petitioner had not provided any independent

evidence to show the complex or specialized nature of the duties of the position.

On motion to reconsider, the petitioner states that the proffered position in the instant petition is that of administration manager. Counsel also states that the position requires theoretical and practical application of a highly specific field of expertise, namely, Bulgarian law. Counsel asserts that such knowledge can only be gained by way of a professional degree. Counsel further asserts that, since the *Handbook* does not contain a listing for administration managers, it is appropriate to look at *Handbook* occupations with similar duties to evaluate whether the position is a specialty occupation. Counsel asserts that the AAO's reference to the *Handbook* description of general managers and the educational requirements listed in this description was an overly restrictive reading of relevant statutory language.

Upon review of the record, counsel asserts that the proffered position is that of an administration manager. The AAO previously has identified the position as general manager. In fact, the proffered position appears to be an amalgam position that incorporates duties in the coordination of video production, with some oversight of documents relating to the distribution and copyrighting of new or existing videos in Bulgaria. A third category of job duties is the administrative duties assigned to the beneficiary with regard to support of the classes in hypnotherapy and other related subjects offered through the Leidecker Institute in the Chicago area.

Within these three areas, a lack of clarity exists as to the exact nature of the job duties. For example, while the job description submitted in response to the director's request for further evidence mentions the coordination and assistance in the production and development of light and sound technology and the evaluation of users, the petitioner provides no further explanation as to whether the beneficiary is producing videos in this area or assisting in the development of the actual sound and light technology and products used in hypnotherapy practices. The production of videos appears to be an entirely distinct job responsibility from that of the development of light and sound technology used in the field of hypnotherapy. In addition, the petitioner does not provide any further explanation with regard to duties involved in the beneficiary's evaluation of users.

Finally, there is no explanation on the record as to the volume of legal documents involved in setting up a distribution facility in a foreign country, or documents to be generated with regard to copyright protections in foreign countries. Without such information, the record is not clear as to why the beneficiary would be spending fifty per cent of his time reviewing legal documents.

CIS often uses the *Handbook* in examining whether the minimum requirement for entry into a proffered position is a baccalaureate

degree. For purposes of this adjudication, the most analogous *Handbook* classification appears to be that of administrative services managers. As described in the 2002-2003 edition of the *Handbook* on page 25, this category can include a single administrative services manager in a small organization as well as managers of audiovisual, graphics and other technical activities. On page 25, the *Handbook* states the following:

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.

Specific duties for these managers vary by degree of responsibility and authority.

With regard to the job duties of the proffered position in the area of oversight of copyright and distribution agreements in Bulgaria, the same job category states the following on page 25: "Administrative services managers who work as contract administrators, for instance, oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services." To the extent that contracts and copyright agreements have some overlap, this particular subset of administrative services manager is analogous to the proffered position.

On page 25, the *Handbook* states the following with regard to academic requirements for administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager.

. . . .

For managers of audiovisual, graphics and other technical activities, postsecondary technical school training is preferred.

Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance.

The *Handbook* classification outlined above does not indicate that a baccalaureate degree in a specific specialty or its equivalent is the minimum requirement for entry into an amalgam position such as the proffered position. More specifically, it also does not establish the need for a baccalaureate degree in law as the minimum requirement for entry into the position. Without more persuasive

testimony, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the second criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), an employer may show that 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. Factors often considered by CIS when determining the industry standard include: whether the *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)).

The *Handbook's* conclusions about a degree requirement for an administrative services manager position were discussed in the previous section, and shall not be repeated here. In the instant petition, to establish the industry standard, as previously noted, the petitioner did not submit any further documentary evidence, such as job vacancy announcements or any job advertisement used by the petitioner to solicit employees for the proffered position.

In addition, the petitioner submitted no documentation that any professional management association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the position of an administration manager would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them. As noted previously, the petitioner has placed limited information on the record with regard to the three major job duties for the proffered position. The three areas taken separately or as a whole do not appear to be either unique or complex.

With regard to the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), there is no evidence on the record that the petitioner has hired individuals in the proffered position previously. Without more persuasive evidence, the petitioner has not established this criterion.

The petitioner has also failed to establish 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The job description provided by the petitioner contains work duties in three distinct areas. The petitioner has provided no further documentation to establish the specialized or complex nature of any of these areas. For example, the record reflects no additional information on the complexity of the work undertaken to produce videos for the Leidecker Institute. With regard to the oversight of legal documents to establish copyright or distribution rights in Bulgaria, the record is devoid of any information on the volume or complexity of any such documents. Furthermore the record contains no information whatsoever on the number of courses offered by the Leidecker Institute and any specialized duties that the beneficiary would undertake in performing this particular part of the proffered position. Without more persuasive evidence as to the specialized or complex nature of the proffered position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated 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. Accordingly, the motion will be dismissed.

**ORDER:** The motion is dismissed. The previous decision of the AAO to deny the petition will be affirmed.