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

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



File: EAC 02 125 52838 Office: VERMONT SERVICE CENTER Date: OCT 14 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:



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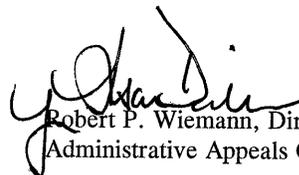
INSTRUCTIONS:

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

The petitioner is a corporation that provides home healthcare services. It has 170 employees and a gross annual income of \$3,806,161. The petitioner seeks to employ the beneficiary as a human resources benefits manager for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states that the proffered position qualifies as a specialty occupation, and in support of that assertion, submits a position evaluation.

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 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 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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129

petition:

Responsible for the computation and maintenance of benefits acquired for the employees of the company. Maintains the database of personal files of the agency. Prepares personnel related reports as required by the management and Human Resources Director. Keeps abreast of the changes in the agency's employee benefits program. Responsible for complying with federal and state benefits laws.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the petitioner was asked to provide: a detailed statement articulating the beneficiary's proposed duties along with the percentage of time the beneficiary would spend on each duty during the work day; documentary evidence showing that a bachelor's degree is required for the proffered position in the petitioner's company and the industry as a whole; and a list of other employees holding, or who have held, the offered position and their educational backgrounds.

In response to that request, the petitioner provided the following information:

**Explanation of why the Human Resources Benefits Manager's Duties and Responsibilities require a Baccalaureate degree:**

- **Responsible for the computation and maintenance of benefits acquired for all the employees of the company.** In order for this task to be performed accurately and efficiently, the Human Resource Benefits Manager is required to have the knowledge of the accounting spread sheet method through Excel and Lotus computer programs. He/she is also required to have a common knowledge [of] and excellent aptitude in computations and calculations of the accrual accounting method. These needed qualifications are in the core curriculum requirements of a baccalaureate degree in [a] business related major, such as basic computer programming and accounting courses. (approximately 25% of the daily manager's time is spent on this duty).
- **Maintains the database of personnel files of the agency.** This duty also requires the knowledge and use of the Excel and Lotus spread sheet programs which is also required in the core curriculum of a baccalaureate degree in [a] business related

major. (approximately 25% of the daily manager's time is spent on this duty).

- **Prepares personnel reports pertaining to the cost of benefits, accrual of benefits and current employment status of the company in a timely manner (daily, monthly, quarterly and year-to-date).** Excellent organizational and communication skills (both oral and written) are required of this position in order to present and convey the contents of the report effectively to the Board of Directors, executives, certified public accountants and attorneys of the company. (approximately 30% of the daily manager's time is spent on this duty).
- **Keeps abreast of the changes in the agency's employees' benefit program.** In order to keep up with the company's benefits program, the manager attends workshops, meetings[,] and conferences offered by providers to the company. He/she also studies and reads new materials on benefits introduced and offered by different providers to be able to determine the best and most economical way to provide benefits to the employees of the company. (approximately 10% of the daily manager's time is spent on this duty).
- **Responsible for complying with federal and state laws pertaining to employee benefits.** The benefits manager should be able to acquire the knowledge of the law that pertains to the benefits offered by the company such as workmen's compensation and personal leave, through research and legal consultation. He/she should be able to convey effectively to the employees of the company the policy, rules and regulations that the company applies and complies with. (approximately 10% of the daily manager's time is spent on this duty).

In view of the above duties, the position of Human Resources Benefits Manager requires at least a baccalaureate degree to perform his/her duties because excellent organizational and communication skills (both oral and written), as well as creativity, are required qualifications to be an effective manager. These qualifications are the basic foundation obtained from the completion of a baccalaureate degree where the core requirements in humanities, sciences, mathematics and elective courses stimulate the student's critical thinking, creativity and excellence in communication

skills.

A baccalaureate degree in [a] business related major is preferred in consideration of the business math, accounting and computer programming courses required in a business degree.

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 qualified the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary are similar to those assigned to human resources, training, and labor relations managers and specialists. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 60-61, the Department Of Labor describes in part, the duties of employee benefits managers and specialists as follows:

*Employee benefits managers and specialists* handle the company's employee benefits program, notably its health insurance and pension plans. Expertise in designing and administering benefits programs continues to gain importance as employer-provided benefits account for a growing proportion of overall compensation costs, and as benefit plans increase in number and complexity. For example, pension benefits might include savings and thrift, profit sharing, and stock ownership plans; health benefits may include long-term catastrophic illness insurance and dental insurance. Familiarity with health benefits is a top priority, as more firms struggle to cope with the rising cost of health care for employees and retirees. In addition to health insurance and pension coverage,

some firms offer employees life and accidental death and dismemberment insurance, disability insurance, and relatively new benefits designed to meet the needs of a changing work force, such as parental leave, child and elder care, long-term nursing home care insurance, employee assistance and wellness programs, and flexible benefits plans. Benefits managers must keep abreast of changing Federal and State regulations and legislation that may affect employee benefits.

The *Handbook* further notes, however, that the educational backgrounds of human resources, training, and labor relations managers vary considerably due to the diversity of responsibilities in various organizations. Employers usually seek college graduates for these positions. Specialized education in human resources, personnel administration, industrial relations, labor relations, or business generally fulfill these requirements. *Id.* at 62. The petitioner has not, therefore, established that a baccalaureate or higher degree in a specific specialty is a minimum requirement for entry into the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Education and training in a number of backgrounds will suffice.

The petitioner has also failed to establish any of the remaining criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that a degree requirement is common to the industry in parallel positions among similar organizations, that the particular position is so complex or unique that it can be performed only by an individual with a degree, or 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. The petitioner did submit a statement from its Director of Patient Services/Human Resources indicating that, since its formation in 1996, the petitioner's human resources/benefits functions have been managed by degreed individuals. The petitioner did not, however, offer evidence in support of that assertion and it is, accordingly, given little weight. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Even if the petitioner had established that all prior employees holding the position possessed baccalaureate degrees in a specific specialty, the position still would not qualify as a specialty occupation as it does not require the theoretical and practical application of a body of specialized knowledge. Cf. *Defensor v. Meissner*, 201 F.3d 384 (5<sup>th</sup> Cir. 2000).

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.