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

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ADMINISTRATIVE APPEALS OFFICE  
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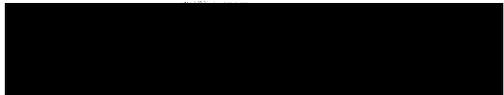


File: SRC-01-240-50288

Office: TEXAS SERVICE CENTER

Date: OCT 17 2003

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: SELF-REPRESENTED

**PUBLIC COPY**

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

The petitioner is a nonprofit healthcare education business with 15 employees and a gross annual income of \$900,000. It seeks to employ the beneficiary as a counselor for education/case manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, the petitioner's executive director submits additional information. She further states that the proffered position is now that of a "health educator."

The executive director's statement is noted. Citizenship and Immigration Services (CIS) regulations, however, affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). A petitioner cannot materially change a position's title or its associated job responsibilities after the filing of the petition. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, as have occurred here, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. As such, for the purposes of this proceeding, the proffered position is that of a counselor for education/case manager.

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, the petitioner's executive director states, in part, that she is submitting the correct job description for a "health educator," a position that requires a baccalaureate degree. She further states that the beneficiary initially applied for the position of education counselor, but was overqualified and, thus, was chosen for the health educator position. The petitioner's executive director submits job postings in support of her assertion that a health educator position requires a baccalaureate degree in a related field of study.

The petitioner's statement on appeal is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Assist the CCEP/WTCCC in any of its recruitment, eligibility and community health prevention activities; Encourage the mutual exchange of ideas and information regarding specific education information, referral and follow-up regarding chronic disease. Conduct outreach activities in all clinic settings as well as within the community.
2. Appropriate case management, referral and follow-up of patients[.]
3. Prepares [sic] and submits [sic] monthly reports of all activities, (phone calls, presentations, patient's home or office visits).
4. Assimilation and dissemination of any information pertinent to the program.
5. Appropriate distribution of educational materials.
6. Self motivation and ability to work with minimal supervision and as a team member.

7. Represent the Cancer Consortium of El Paso/West Texas Community Care Consortium with pride, dignity and integrity.
8. Must attend regular and emergency staff meetings.
9. Performs [sic] other duties as assigned.

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 AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in health science or a related field. The proffered position is primarily that of a social and human service assistant. In its *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 158, the Department of Labor (DOL) describes the position of a social and human service assistant, in part, as follows:

Social and human service assistant is a generic term for people with various job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of professionals from a variety of fields,

such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. . . .

Social and human service assistants play a variety of roles in a community. They may organize and lead group activities, assist clients in need of counseling or crisis intervention. . . .

A review of the DOL's *Handbook* at page 159 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a social and human service assistant. While a baccalaureate degree usually is not required, employers increasingly seek individuals with relevant work experience or education beyond high school. Most employers' requirements are met with certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences. 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 health science, 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. The job postings submitted by the petitioner are noted. The petitioner, however, has not demonstrated that the duties of the proffered position are as complex as those listed in the advertised positions. For example, one position is that of a community cancer control manager whose duties include recruiting, training, and retaining volunteers to expand and/or enhance all cancer control activities. Another position is that of a cancer control program manager whose duties include recruiting, training, and coordinating volunteers to implement cancer control programs. 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 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.