

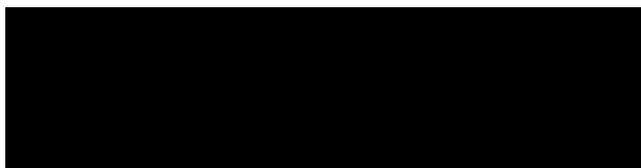
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U.S. Department of Homeland Security  
Citizenship and Immigration Services

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



**OCT 23 2003**

File: SRC 02 208 50169 Office: TEXAS 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:



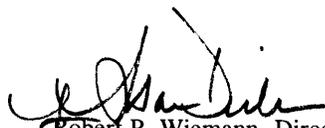
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 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, Texas Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner produces and presents motivational business seminars. It has 19 employees and an undetermined gross annual income, having been established in 2001. The petitioner seeks to employ the beneficiary as a program/staff development counselor for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation, and that the beneficiary did not qualify to perform the duties of a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the duties of the proffered position are akin to a manager of education and training, and that the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. Counsel further asserts that the beneficiary is qualified to perform the duties of a specialty occupation.

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.

The AAO does not simply rely on a position's title 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. The beneficiary's job responsibilities were detailed with the filing of the I-129 petition:

We wish to have [the beneficiary] join our staff as [a] Staff/Program Development Counselor. In this position he will provide strategic and operational direction in the development of new staff development programs. He will also assist in supervising our corporate representatives and promoting our 12-26 mentorship program. Finally, he will be engaged in research[,] as needed[,] on various projects he will be working on and developing. This position is a member of the management team and he will report directly to the Senior Vice President.

Those duties were further defined by counsel on appeal:

In the position of Staff/Program Development Counselor with [REDACTED] [the beneficiary] will provide strategic and operational direction in the formulation and implementation of new staff development programs. These programs will be designed to assist new and existing staff to develop and improve their interpersonal skills, communication skills, time management, leadership abilities, and decision-making skills. [The beneficiary] will be designing programs that will provide training through on-site and off-site seminars, on-the-job training, individualized training courses, and computer and/or distance learning. The company's goal through these programs will be will be [sic] to improve staff productivity and maintain a high level of job satisfaction.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked the petitioner to detail the minimum academic requirements for the proffered position, and to state how a Degree in Divinity and Ordination qualified the beneficiary for the proffered position.

In response to the director's request, counsel stated that the beneficiary would develop training programs and provide training to staff, the majority of whom were professionals. Counsel did not, however, offer any evidence of staff credentials. Counsel further indicated that the beneficiary qualified to perform the duties of the offered position through his Divinity and Ordination Degree, completion of various courses/leadership

seminars, and past work experience.

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 failed to meet the first criterion listed above. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 61, the Department Of Labor describes, in part, the duties of training and development managers/specialists:

*Training and development managers and specialists* conduct and supervise training and development programs for employees. . . .

*Training specialists* plan, organize, and direct a wide range of training activities. Trainers conduct orientation sessions and arrange on-the-job training for new employees. They help rank-and-file workers maintain and improve their job skills, and possibly prepare for jobs requiring greater skill. They help supervisors improve their interpersonal skills in order to deal effectively with employees. They may set up individualized training plans to strengthen an employee's skills or teach new ones. Training specialists in some companies set up leadership or executive development programs among employees in lower level positions. These programs are designed to develop potential and current executives to replace those retiring. . . .

Many of the duties associated with the proffered position fall within those listed above. The *Handbook* further notes, however, that the educational backgrounds of training and development

managers/specialists vary considerably due to the diversity of responsibilities in various organizations. Employers usually seek college graduates for these positions. Those graduates may, however, have educational backgrounds in human resources, personnel administration, industrial or labor relations, business, or a well rounded liberal arts education. Acceptable courses of study may be found in university departments of business administration, education, instructional technology, organizational development, human services, communication, public administration or within a separate human resources institution or department. *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. Education and training in a number of backgrounds will suffice.

The petitioner has also failed to establish any of the remaining criteria. The record does not indicate that a degree requirement is common to the industry in parallel positions among similar organizations, that the proffered position is so complex or unique that it can be performed only by an individual with a degree, that the employer normally requires a degree or its equivalent for the position, 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 has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petitioner has also failed to establish that the beneficiary qualifies to perform the duties associated with a specialty occupation. Pursuant to 8 C.F.R. § 214.2 (h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, the beneficiary must:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state

of intended employment; or

- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

With regard to degree equivalence, the regulation at 8 C.F.R. § 214.2 (h) (4) (iii) (D) (1) provides, in part, as follows:

- (D) *Equivalence to completion of a college degree.* For purposes of paragraph (h) (4) (iii) (C) (4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

. . . .

The beneficiary does not meet any of the qualification criteria. First, the beneficiary does not hold a United States baccalaureate or higher degree related to the proffered position. Second, there was no evidence presented to establish that the beneficiary's foreign degree is equivalent to a baccalaureate or higher degree from an accredited college or university in the United States. Third, the proffered position does not require an unrestricted state license, registration or certification. Finally, the petitioner did not present evidence from an official authorized to grant college-level credit for training and/or experience in the specialty at an accredited college or university having a program for granting such credit based on an individual's training and/or work experience to establish that the beneficiary's training and/or experience is equivalent to a bachelor's degree in a field of study required by the petition.

It should further be noted that the record does not contain sufficient information for CIS to make a determination as to the beneficiary's qualifications under 8 C.F.R. § 214.2

(h) (4) (iii) (D) (5).

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.