

D2

U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services

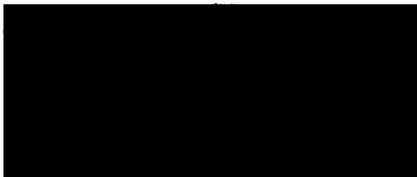


FILE: WAC 02 097 54215 Office: CALIFORNIA SERVICE CENTER Date: APR 20 2004

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:

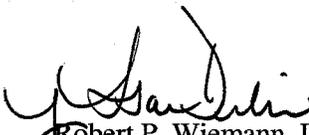


**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the service center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is an independent insurance broker/agent that seeks to employ the beneficiary as an administrative assistant. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative assistant. Evidence of the beneficiary's duties includes: the Form I-129; the January 14, 2002 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: administering and coordinating office procedures, functions, and schedules; supporting the president in planning the company's policies/objectives; administering office budgets; assisting in correspondence and communication activities; and handling and maintaining confidential information. The petitioner did not explicitly express that the proffered position requires a bachelor's degree; however, it did imply that a qualified candidate for the job would possess a bachelor's degree in commerce with a major in management accounting.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that the duties of the proffered position are an amalgam of those performed by a secretary, administrative assistant, and bookkeeper/financial clerk, and that a bachelor's degree in a specific specialty would not be required to perform secretary, administrative assistant, and bookkeeper/financial clerk positions. The director also found that the submitted advertisements did not establish the second criterion.

On appeal, counsel maintains that the proffered position is a specialty occupation. Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO considers the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations; or a 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 these criteria 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." See *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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the director oversimplified the beneficiary's duties to seem as though they correspond to those of a secretary. Counsel refers to the *Handbook* to state that even the *Handbook* acknowledges "executive secretaries or administrative assistants handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff." Counsel further states that some of the beneficiary's duties are performed by accountants, not by bookkeepers or financial clerks.

Counsel's claims are without merit. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the director correctly determined that the duties of the proffered position are an amalgam of those performed by a secretary, administrative assistant, and bookkeeper/financial clerk, and that the *Handbook*, indeed, reveals that a bachelor's degree in a specific specialty would not be required to perform a secretarial, administrative assistant, or bookkeeper/financial clerk position. Furthermore, counsel's quoted passage from the *Handbook* - executive secretaries or administrative assistants handle more complex responsibilities - is irrelevant in establishing that the proffered position is a specialty occupation. The *Handbook* plainly explains that employers accept high school graduates who have basic office skills for entry-level secretarial positions. Accordingly, the petitioner fails to establish the first criterion.

To establish the second criterion - that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations - counsel states that the submitted newspaper advertisements demonstrate that companies in various industries require a bachelor's degree to enter into administrative positions. Counsel states that job duties vary, but maintains that the advertised positions are nonetheless administrative and require a bachelor's degree.

Counsel's evidence, however, is insufficient to establish the second criterion because the advertisements are from organizations that are dissimilar to the petitioning entity, and some of the organizations either do not require a bachelor's degree in a specific specialty or their positions are not parallel to the proffered position. The following organizations are dissimilar from the petitioner: Aramark, Morongo Tribal Enterprises, Thorgroup; the pediatric group; Pepperdine; Presbyterian Homes; two advertisements from healthcare companies; CSULB Foundation, CSU Pomona; the redevelopment agency; and the healthcare organization NEVHC. Inland Empire Co. is not sufficiently described in the advertisement to determine whether it is a similar organization. Also, The Times, Thorgroup, Presbyterian Homes, Pepperdine, CSULB Foundation, CSU Pomona, and the healthcare organization NEVHC do not require a bachelor's degree in a specific specialty. Finally, some the advertised positions are not parallel to the proffered position. Thus, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent in a specific specialty for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific 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 in a specific specialty. According to counsel, the duties of the proffered position are complex, requiring a candidate holding a bachelor's degree with an accounting background.

Counsel's assertions, however, are not supported by independent corroborating evidence. The assertions, therefore, carry no weight in this proceeding. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). No evidence in the record establishes the fourth criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.