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U.S. Citizenship
and Immigration
Services



FILE: EAC 02 190 52459 Office: VERMONT SERVICE CENTER Date: APR 20 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

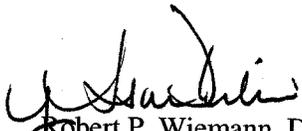
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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

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DISCUSSION: The service center director 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, a non-profit organization affiliated with Yeshiva Shavei Hevron located in Hevron, engages in fund raising activities and brings community awareness of the organization's activities, functions, and programs. It seeks to employ the beneficiary as its director. The petitioner 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 its director. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 6, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: developing, coordinating, and implementing financial fund-raising solicitations and the disbursement of funds; establishing financial and fund-raising goals; formulating policies for collecting and safeguarding financial contributions; developing and implementing public relations programs to promote and enhance community awareness, understanding, and support of the petitioner; developing and implementing a schedule for the disbursement of solicited funds; and preparing and issuing instructions to volunteers and paid workers regarding functions such as solicitations and public relations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in administrative services, fund raising, or an equivalent thereof.

The director found that the proffered position, which is similar to that of a manager or top executive, is not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proposed duties of the proffered position are so complex that a baccalaureate degree in a specific specialty is required. Counsel further states that, based on a complex world economy, the position of organization director has evolved into a professional position. Counsel additionally states that the record contains numerous job postings from similar, non-profit organizations that demonstrate the requirement of a baccalaureate degree in a specific specialty for their organization director positions.

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.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Top Executives job description in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of a manager or top executive. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty is required for a managerial or top executive job.

Regarding parallel positions in the petitioner's industry, the petitioner submitted various Internet job postings for director positions. There is no evidence, however, to show that the proposed duties of the proffered

position are as complex as those listed for the advertised positions. For example, one of the positions is that of a breast health and nutrition director for the American Cancer Society, whose duties include managing involvement in local breast cancer projects and participating in local breast cancer groups and coalitions. Another position is that of a director of tobacco, prostate, and nutrition for the American Cancer Society, whose duties include working with local coalitions to advocate for strong policies, programs, and resources to reduce tobacco use, and collaborating with local organizations regarding activities such as cancer control interventions. It is also noted that this position requires a master's degree in a health-related field. The petitioner has not shown that the employers issuing the postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. Counsel asserts that the position of organization director has evolved into a professional position. The record, however, contains no evidence in support of this assertion. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, and the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California, id.*

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.