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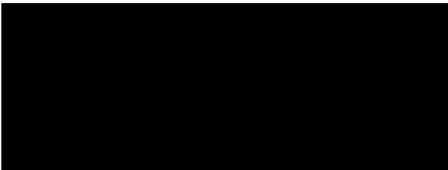
DEC 01 2004

FILE: WAC 03 084 50218 Office: CALIFORNIA SERVICE CENTER Date:

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

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 a nursing home that seeks to employ the beneficiary as a human resource generalist. 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 it is not a specialty occupation. On appeal, counsel states that it is a specialty occupation and submits further documentation.

Section 214(i)(1) of 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 petitioner's letter of support; (3) the director's request for additional evidence, dated June 23, 2003; (4) a

letter submitted by the previous counsel that responds to the director's request, dated July 17, 2003; (5) the director's denial letter; and (6) 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 a human resources generalist. The petitioner described itself as a limited liability company operating a 59 bed skilled nursing facility. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and the petitioner's letter in response to the director's request for further evidence. According to the letter of support submitted by the petitioner, the beneficiary would principally manage the petitioner's recruitment, hiring, job classification, training, wage, salary and employee benefits administration. The petitioner stated that it required a candidate to possess a baccalaureate degree in any of the social sciences with major studies in human resources management, personnel administration, industrial/labor relations, psychology, and other related disciplines. In lieu of a baccalaureate degree, the petitioner required that the candidate for the position have more than ten years of directly related work experience in the field of human resources and/or personnel work in a senior level capacity.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of human resource specialists. The director stated that while the *Handbook* indicated that a baccalaureate degree was a minimum requirement for entry into the position, it did not establish that a degree was an industry-wide standard. The director also determined 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 position is a specialty occupation and the *Handbook* classification establishes that employers usually seek college graduates for entry-level human resource positions. Counsel also submits seven job vacancy announcements to establish the industry wide standard for the proffered position. Finally counsel asserts that the duties of the proffered position are so specialized and complex that the DOL *Dictionary of Occupational Titles (DOT)* gave the position a Specific Vocational Preparation (SVP) level of 8.

Upon review of the record, the petitioner has established none of the 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. The *Handbook* clearly establishes that a baccalaureate degree is the minimum requirement for entry into the position. Nevertheless, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into the position. As previously stated, 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. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, on appeal, counsel provided seven vacancy announcements. These seven job vacancy announcements are for a range of jobs within the human resource industry; one position is within a health system with more than 800 employees while another appears to be within a smaller facility. The majority of the job vacancy announcements state that a bachelor’s degree in human resources or business administration is required for entry into the field, while other job vacancies only indicate the need for a baccalaureate degree with experience in the human resources field. As such, these job vacancy announcements do not establish that parallel positions in similar businesses require a baccalaureate degree in a specific specialty. The petitioner did not provide documentation from professional associations or individuals in the industry as to whether a baccalaureate degree in a specific specialty is required for entry into the profession. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. 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. Although the director requested information with regard to the petitioner’s present employees, the record does not contain any documentation of employees’ names, titles or salaries. In addition, the petitioner appeared to indicate that the position was a new one. Without more persuasive evidence, the petitioner has not established that it previously or currently employed human resource generalists who possess baccalaureate degrees in a specific specialty. Therefore, the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. As described by the petitioner, the duties of the proffered position appear routine and equivalent to the duties of any other human resource generalist position. On appeal, the petitioner referred to the *DOT*’s specific vocational preparation (SVP) level for the position, as evidence that the duties of the position are specialized and complex. The AAO does not consider the *DOT* a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. The petitioner provided no further information as to the specialized or complex nature of the duties of the position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. According to the educational equivalency document submitted by the petitioner, the beneficiary's university studies in the Philippines are equivalent to a four-year bachelor of arts degree from a regionally accredited U.S. university, and one year of graduate study in business administration and related subjects at an accredited U.S. university. The beneficiary's undergraduate degree in liberal arts would not be considered a baccalaureate degree in a specific specialty. For this additional reason, the petition may not be approved.

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.