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U.S. Citizenship
and Immigration
Services



D2

FILE: WAC 03 023 51365 Office: CALIFORNIA SERVICE CENTER Date: DEC 14 2004

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 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 non-medical companionship and home care services company that seeks to employ the beneficiary as a training specialist. 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 position is not a specialty occupation and the beneficiary is not qualified to perform the duties of the position. On appeal, counsel states that it is a specialty occupation and the beneficiary is qualified to perform the duties of the position. Counsel submits no 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 May 1, 2003; (4) a letter

submitted by previous counsel that responds to the director's request, dated July 18, 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 training specialist. The petitioner described itself as a franchise of a nation-wide company that provides in home services to the elderly. 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 petitioner, the beneficiary would develop a training program for non-medical caregivers and companions, develop an individual monitoring program for caregivers and companions; develop a patient/client feedback system, develop and implement a continuing education and training program for caregivers, maintain records of training results, develop training manuals, provide feedback to management on individual caregivers, and monitor developments in the non-medical care-giving field. The petitioner stated that a candidate for the position should possess a baccalaureate degree in education or a related field.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of human resources, training, and labor relations managers and specialists. The director stated that the *Handbook* indicated that the educational background for such positions varied considerably, and that employers usually sought college graduates to fill entry-level jobs. Among the fields listed by the *Handbook* as suitable for employment in the classification were human resources, personnel administration, industrial and labor relations, a technical or business background or a well-founded liberal arts education. 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). With regard to the beneficiary's qualifications, the director noted that, although the beneficiary had taken some courses that were similar to those taken by graduates with degrees such as human resources, the petitioner failed to establish that the beneficiary holds a degree required by the specialty.

On appeal, counsel refers to the *Handbook* classification of training and development managers and specialists and states that the *Handbook* clearly indicates that employers usually seek college graduates for positions similar to the proffered position. Counsel points out the *Handbook* also lists "a well-rounded liberal arts education" as a suitable background for human resources and training positions. Counsel further states that the fact that the beneficiary has a baccalaureate degree in elementary education is a distinct advantage because most of the employees whom the beneficiary would train have not finished their higher education. Counsel submits no further documentation.

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. 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. As correctly stated by the director, the *Handbook* establishes that a number of baccalaureate degrees in areas ranging from liberal arts to business would be suitable for entry into the proffered position. Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

With regard to parallel positions in similar businesses, counsel provided no further documentation. 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. The petitioner stated in its petition that the position is a new one. 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. The majority of duties of the position appear routine to the operations of any training program. In addition, the petitioner provided no further information that established the complex or specialized nature of any proposed training, which includes orientation to the petitioner's procedures and policies and continuing education for non-medical caregivers. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the beneficiary's qualifications to perform the duties of the position, if the proffered position had been determined to be a specialty occupation, the petitioner provided an educational equivalency document from Education Evaluators International, Inc., Los Alamitos, California. This document stated that the beneficiary has the equivalent of a baccalaureate degree in elementary education from an accredited U.S. university or college. Neither the petitioner nor counsel provided any evidentiary documentation that the beneficiary's studies were adequate academic preparation for instructing adults in non-medical care-giving responsibilities. Without more persuasive evidence, the petitioner has not established that the beneficiary is qualified to perform the duties of the position.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the proffered position. 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.