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U.S. Citizenship
and Immigration
Services

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FILE: WAC 03 214 51732 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 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:

[REDACTED]

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 a professional group of medical-nursing services provider that seeks to employ the beneficiary as a management analyst. 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 and additional evidence.

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 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 a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing the operation and procedure manuals to assist management in operating a more efficient and effective business; analyzing company problems in detail, discovering their causes, and submitting solutions; conducting organizational studies and evaluating policies, systems, and procedures; designing and recommending reforms and modifications for management methods and operational guidelines; and establishing general consultants that provide a full range of services for clients such as administration and human resources. The petitioner's July 10, 2003 letter stated that a candidate for the proffered position must possess a "general body of knowledge normally obtained in an academically recognized course of study leading to a [b]achelor's [d]egree."

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner's job description was vague, failing to indicate the beneficiary's day-to-day duties. The director concluded that the petitioner never indicated that it normally requires a bachelor's degree in the field; that similar firms require the services of persons in parallel positions; or that the proposed duties and level of responsibility indicated a complexity or authority beyond that normally encountered in the occupational field.

On appeal, counsel states that the director never provided the petitioner with an opportunity to clarify the position and explain its day-to-day duties. Counsel submits a letter from the petitioner elaborating on the beneficiary's duties. Counsel contends that a college degree or its equivalent in the occupational field is required for the proffered position because the position is specialized and includes complex duties such as analyzing sales and revenue statistics and advising management about improving operations, profitability, cash flow, and production. According to counsel, the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) describes a management analyst as requiring at least a bachelor's degree in business administration or a related field. Thus, counsel claims that the degree requirement is common in the industry.

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 first 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 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)).

In determining whether a position qualifies as a specialty occupation, 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.

In the appeal brief, counsel contends that the director never provided the petitioner with an opportunity to clarify the position and explain its day-to-day duties; thus, counsel submits a letter from the petitioner elaborating on the beneficiary's duties. These duties submitted on appeal do more than clarify and elaborate on the daily duties that the beneficiary will be performing; they materially alter the job description. The AAO will not consider this evidence on the ground that CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the proffered position is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

As previously mentioned, 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 petitioner's July 10, 2003 letter stated that a candidate for the proffered position must possess a "general body of knowledge normally obtained in an academically recognized course of study leading to a [b]achelor's [d]egree." Nowhere in the evidentiary record did the petitioner state that a candidate is required to possess a bachelor's degree in a specific specialty for entry into the proffered position. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO notes that in the appeal brief counsel contends that a college degree or its equivalent in the occupational field is required for the proffered position. But the petitioner never made this contention. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Because the petitioner does not require a bachelor's degree in a specific specialty, it fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Since the petitioner merely requires a bachelor's degree without indicating a specific specialty, it fails to establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, given that the petitioner does not require a baccalaureate degree in a specific specialty, it fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which requires that it show 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.

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.