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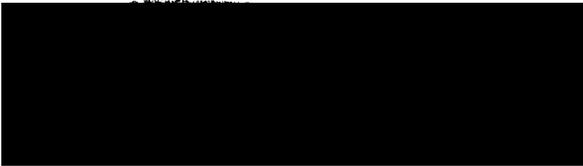


FILE: WAC 03 200 51632 Office: CALIFORNIA SERVICE CENTER Date: DEC 27 2004

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:



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 network of residential care facilities for the developmentally disabled. It seeks to employ the beneficiary as a teacher of the developmentally disabled. 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 teacher (developmentally disabled). 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 directing care staff to implement a program to support clients in their individual program/IPP objectives; planning an individualized curriculum with a goal of self-reliance; observing clients and gathering and analyzing data about each client to determine the level of services necessary for each person's social, mental, and intellectual needs; overseeing the direct care staff in implementation of these programs; developing training programs about the company's educational services for new staff; incorporating learning objectives for clients through field trips and community activities such as shopping; assisting clients in budgeting; and meeting with prospective clients, their family members, and health care providers to discuss educational goals. The petitioner stated that a candidate for the proffered position must possess a "professional education and diploma in an applicable discipline."

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner stated that the patients are adults and that the beneficiary will instruct them in very basic life skills. Thus, the director concluded that the position would not require a person with a bachelor's degree. The director stated that the petitioner never stated the courses the beneficiary will teach. The director found that the beneficiary will perform the duties of a medical assistant rather than the professional duties of a teacher. The director found the evidence did not indicate that a bachelor's degree is a normal, industry-wide minimum requirement for entry into the proffered position or that the petitioner normally requires applications to possess such a degree in the field. The director stated that the proposed duties and stated level of responsibility do not indicate complexity or authority beyond what is normally encountered in the occupational field, and that the record does not show that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that a candidate must possess a bachelor's degree or its equivalent because of the complexity of the proffered position's duties. Counsel refers to submitted letters to establish that the degree requirement is common to the industry. Turning to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), counsel states that the DOL reports that all states require teachers to hold at least a bachelor's degree, and that teachers in private institutions are not required to possess licensure.

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. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A review of the *Handbook* discloses that the director properly concluded that the duties of the proffered position are not performed by a teacher. Rather they are performed by social and human service assistants, a generic term for people with a wide array of job titles including human service worker, social work assistant, and mental health aide. Similar to the beneficiary who seeks to "develop an individualized curriculum with an aim toward self-reliance and basic skills fluency" for clients, social and human service assistants "provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning." The beneficiary will help clients with "budgeting their own monies"; social and human service assistants in halfway houses, group homes, and government-supported housing programs "assist adults who need supervision with personal hygiene and daily living skills." The beneficiary meets with the clients "family and/or existing care-provider, and health care providers to discuss educational plans, objectives and developments." Similarly, social and human service assistants review clients' records, and confer with medical personnel and other caregivers to gain better insight into clients' backgrounds and needs. The beneficiary will incorporate "learning objectives with clients' trips outside the facilities . . . such as shopping." This is similar to the social and human service assistants who help clients become involved in their own well-being, in community recreation programs, and in other activities.

The *Handbook* states that a bachelor's degree usually is not required for entry into this occupation, and that employers increasingly seek individuals with relevant work experience or education beyond high school. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to expert opinion letters from [REDACTED] program director with Evergreen Adult Development Center, and [REDACTED], a special education teacher. The letter from [REDACTED] stated that facilities require that their teachers have a four-year degree in a related field and have the desire and the ability to work directly with the developmentally disabled, and with those who take care of them. According to [REDACTED] teachers who specialized in teaching the developmentally disabled are similar to adult remedial education teachers; both teach basic skills to persons with a wide array of developmental and learning disabilities, with the goal of making the student more self-reliant and confident. The letter from [REDACTED] stated that although a bachelor's degree is a uniform

prerequisite to become a teacher of the developmentally disabled, there is no specific college major that is required, and that backgrounds in social science, education and psychology are best.

The letters are not persuasive. The degree requirement stated by [REDACTED] is contradicted by [REDACTED] letter. Although [REDACTED] claimed that a teacher of developmentally disabled adults must possess a four-year degree in a related field, [REDACTED] stated "there is no specific college major that is required." Ms. [REDACTED] further stated that some teachers have backgrounds in fields such as "social science, education and psychology." The degree requirements in the two letters are obviously inconsistent. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record explains the inconsistent degree requirements. Consequently, the probative value of the letters is diminished. 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. Again, the *Handbook* shows that the duties of the position are performed by social and human service assistants, occupations that do not require a bachelor's degree.

Nor is there 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 for the position. No evidence in the record of proceeding shows that the petitioner has a past practice of employing persons with a bachelor's degree in a specific specialty for the proffered position.

The evidentiary record fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by social and human service assistants, occupations that do not require a bachelor's degree.

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.