

PUBLIC COPY

U.S. Department of Homeland Security
Citizenship and Immigration Services

D2

Identifying data deleted to
prevent clearly un
invasion of personal privacy

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



FILE: WAC 02 227 51830 OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 06 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)

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California 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 physician's office with five employees and a gross annual income of \$658,391. It seeks to employ the beneficiary as an administrative assistant/analyst. The director denied the petition, finding that the proffered position was not a specialty occupation and that the beneficiary was not qualified to work in a specialty occupation. On appeal, counsel submits a brief and other documentation and states, in part, that the proffered position is so complex that it requires the services of an individual with a bachelor's degree or higher.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The first issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation. 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or

higher in a 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.

In the original petition filing, the petitioner described the proffered job duties as involving office management, report-writing, records management, hiring and other personnel matters, correspondence, and streamlining office procedures.

The director requested further information regarding the nature of the proffered position. In response, the petitioner provided a number of job announcements for administrative positions with different companies, as well as a statement providing expanded details on the job duties previously listed.

The director denied the petition on August 15, 2002, finding the evidence insufficient to classify the proffered position as a specialty occupation.

On appeal, counsel asserts that, given the job's complex responsibilities, it is reasonable to require a bachelor's degree for performance of the proposed duties. Counsel also states that the Department of Labor's *Dictionary of Occupational Titles's* (DOT) SVP rating for the instant position should be considered. The DOT, however, is not 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 evidence on record is analyzed below, pursuant to the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A):

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The proposed duties resemble those of an administrative assistant, as described in the *Handbook* 2002-2003 edition at pages 422-423. For example, administrative assistants manage administrative and clerical tasks, prepare correspondence and reports, train other employees, and manage projects. Information in the *Handbook* does not indicate that administrative assistants handle mere "keyboarding" functions; some may even assume certain responsibilities once reserved for managers. Nevertheless, the *Handbook* maintains that a high school diploma and office skills are the minimum qualifications required to enter into this field. There are also other training programs available, such as one and two-year courses offered at vocational schools and community colleges, but many skills necessary to perform the duties of this position are acquired on the job. There is no minimum requirement that an individual hold a bachelor's degree in any specific specialty in order to secure employment as an administrative assistant.

The instant position may also include elements of another position described in the *Handbook* on page 417, that of an administrative support manager. Administrative support managers ensure that personnel, equipment, finances, and record keeping, among other tasks, are all in order. These personnel coordinate work assignments, resolve staff and equipment problems, and handle a variety of responsibilities to assist in the effective operation of the business. The *Handbook* does not indicate that a bachelor's degree in any specific specialty is a requirement

for entry into the field of administrative support. There is no other documentation on the record, either, that would indicate that a bachelor's degree is a minimum entry requirement for the proffered position. The criterion at 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position has not been established.

(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.

Factors often considered by Citizenship and Immigration Services (CIS) when determining the industry standard 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." *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 Handbook's conclusions regarding educational and training requirements for administrative assistants and administrative support managers have already been discussed above and will not be repeated here. The record does not contain any information about industry professional associations, nor any letters from individuals in the industry.

The record includes several job postings which were submitted to establish that the degree requirement is common to the industry in parallel positions among similar organizations. It is noted that while these postings reflect a requirement or preference for a bachelor's degree, none mentions that the degree must be in any specific specialty. In addition, there is no documentation regarding whether the companies that posted the announcements are similar to that of the petitioner. The record does not establish that a bachelor's degree in a specific specialty is an industry standard requirement for the proffered position. The petitioner has not shown, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Thus, the evidence does not meet the requirements of 8 C.F.R. § 214.1(h) (4) (iii) (A) (2).

(2) The employer normally requires a degree or its equivalent for the position.

There is no information that the petitioner has hired individuals in the proffered position previously. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position.

(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.

Beyond counsel's statements, there is no specific evidence that the nature of the proposed 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. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) has, thus, not been established.

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The director also determined that the beneficiary is not qualified to work in a specialty occupation. However, as the appeal is being dismissed because the position is not a specialty occupation, the AAO will not address this issue further.

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.