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

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

File: LIN-02-192-52912 Office: NEBRASKA SERVICE CENTER Date: **JAN 16 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:

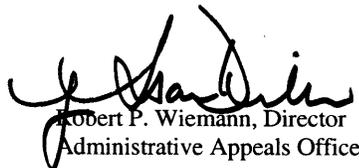
INSTRUCTIONS:

This is the decision 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 nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a residential, co-educational high school offering a range of classes enabling 17-year old students to earn two years of traditional academics in one calendar year. It has 80 employees and a gross annual income of \$5.4 million. It seeks to employ the beneficiary as an expedition counselor for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

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, in part, for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the proposed duties, which include working as a member of a treatment team, are so complex that a baccalaureate degree in a related specialty is required. Counsel further states that the record contains two expert opinions in support of his claim.

Counsel's statement on appeal is not persuasive. The AAO does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the

offered position combined with the nature of the petitioning entity's business operations are factors that the AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will develop, implement, monitor and evaluate outdoor behavioral health activities for students. [The beneficiary] will set goals and develop curriculum and lesson plans to meet the therapeutic needs of each participant. He will also work with other professional members of the Northwest Academy team to direct and facilitate the planning, preparation and facilitation of therapeutic activities. He will directly supervise participants during campus and off-campus activities, and provide crisis intervention as needed. [The beneficiary] will be responsible for directing and facilitating safe and effective activities for students.

[The beneficiary] will counsel students and provide group educational guidance services. [H]e will prepare course objectives, outline courses of study and develop curriculum for the outdoor behavioral health activities he directs. He will also collect, organize and analyze data about his students to appraise their progress and plan future activities. He will participate in faculty and professional meetings, educational conferences, and in-service training workshops, and meet with parents to discuss student progress and problems.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in physical education or a related field. The proffered position is that of an expedition counselor. In its *Occupational Outlook Handbook (Handbook)*, the Department of Labor (DOL) does not specifically address an expedition counselor position. Rather, the positions discussed by the DOL include school counselors, vocational counselors, rehabilitation counselors, mental health counselors, substance abuse and behavioral disorder counselors, and marriage and family therapists. According to the DOL, all of these positions require baccalaureate or higher degrees in college student affairs, elementary or secondary school counseling, education, gerontological counseling, marriage and family counseling, substance abuse counseling, rehabilitation counseling, agency or community counseling, clinical mental health counseling, counseling psychology, career counseling and related fields. Although some of the proposed duties of the proffered position are similar to the duties described for the counselor positions described by the DOL in its Handbook, the petitioner requires a baccalaureate degree in physical education, a field of study that does not fall within the degree fields designated by the DOL. It is also noted that the petitioner has not established that a physical education degree is related to the degree fields designated by the DOL. In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent in a specific specialty that is related to the proffered position is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position. Counsel's assertion that the petitioner's three employees without a baccalaureate degree, or with an unrelated degree, hold the equivalent of a baccalaureate degree in a related specialty is noted. The record, however, contains no evidence in support of this assertion. 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).

Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The record contains an opinion from Dr. Keith C. Russell, University of Idaho's Assistant Research Professor in the Department of Resource Recreation and Tourism, and Leader, Outdoor Behavioral Healthcare Research Cooperative, who states, in part, that the position of Expedition Counselor requires a baccalaureate degree in education (not physical education), counseling, or a related field. Dr. Russell further states as follows:

In 1996, a coalition of OBH [Outdoor Behavioral Healthcare] providers came together to create the Outdoor Behavioral Healthcare Industry Council (OBHIC) to work for higher standards in wilderness and outdoor treatment programs. In 1999 they formed the Outdoor Behavioral Research Cooperative at the University of Idaho to held fund research important to the community. It was at this point that OBH, and the EC [Expedition Counselor] position, was fully recognized as a profession.

The record contains a report coauthored by Dr. Russell entitled, *Outdoor Behavioral Healthcare, Technical Report 26, December 2000*, in which the OBH treatment team is described as comprising the following staff: clinical supervisor; medical supervisor; field therapist; and wilderness leaders or guides. The clinical supervisor "may hold a Ph.D. in psychology, counseling, family therapy or a related field, or are Masters degree level therapists, counselors or social workers." The medical supervisor "may be medical doctors (MDs) or licensed registered nurses (RNs)." The field therapist "may be licensed therapists, family therapists or counselors, Masters degree level social workers" The wilderness leaders or guides "are required to be trained in first aid . . . have a specified amount of wilderness guiding experience, and be a college graduate."

In his opinion, Dr. Russell states, in part, that the duties and responsibilities of the proffered position correspond with those of a "wilderness leader." In his report, however, Dr. Russell describes the duties of the "wilderness leader or guide" as follows:

[R]esponsible for the day-to-day living, safety and travel of client groups while on wilderness expedition. Duties include leading the expedition of up to 12 people in a variety of wilderness environments, such as alpine or desert, communicating with the base camp and managing day-to-day living.

The duties of a "wilderness leader" described by Dr. Russell in his report, *Outdoor Behavioral Healthcare, Technical Report 26, December 2000*, are not as complex or specialized as those described for the proffered position. For example, the duties listed for the proffered position include developing curriculum and lesson plans, and preparing course objectives. The duties described in Dr. Russell's report, however, are primarily travel related. The record contains no explanation for the inconsistency between the job duties of the two positions, even though Dr. Russell maintains that they are corresponding positions. Furthermore, although Dr. Russell states in his opinion that the proffered position requires a baccalaureate degree in education, counseling, or a related field, in his report, he states only that a "wilderness leader" needs to be a "college graduate." Again, the record contains no explanation for this discrepancy.

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 on 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).

The record also contains an opinion from Dr. Robert Cooley, President and founder of Catherine Freer Wilderness Therapy Expeditions, who states, in part, that positions such as the proffered position require a minimum of a bachelor's degree or equivalent in mental health, education (not physical education), or a related field. The record, however, contains no evidence in support of this assertion. 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, Supra*. In view of the foregoing, the opinions of Dr. Russell and Dr. Cooley are accorded little weight.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors 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 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.