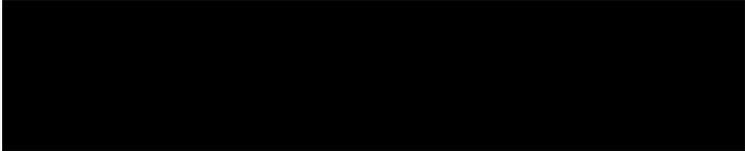


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U.S. Department of Homeland Security
Citizenship and Immigration Services

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



PUBLIC COPY

File: LIN 02 232 51720 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



JAN 22 2004

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:

SELF-REPRESENTED

*identifying data deleted to
prevent identity unwarranted
invasion of personal privacy*

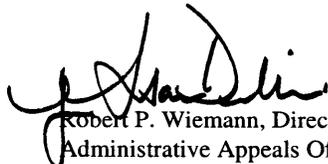
INSTRUCTIONS:

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 service center director 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 an international nurse recruitment company that seeks to employ the beneficiary as an employment, recruitment, and placement 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief and additional evidentiary documentation.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 an employment, recruitment and placement specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 8, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: screening, interviewing and sometimes testing of job applicants, primarily registered nurses from the Philippines, for placement in healthcare facilities in the Midwest. The job description also noted responsibilities for the coordination of an orientation for new hires and assistance in the assimilation of registered nurses into the job sites and communities in which they would be placed. The petitioner indicated that a qualified candidate for the job would possess, at a minimum, a baccalaureate degree in business or a related field.

The director found that the proffered position was not a specialty occupation because the petitioner had not established any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that there were no defined standards for entry into a public relations career. The director also stated that the minimum requirement for entry into the proffered position was not a baccalaureate degree or its equivalent in a specific specialty.

On appeal, the petitioner submits a letter from Dr. Ross E. Azevedo, Associate Professor, Human Resources and Industrial Relations Department, University of Minnesota. Dr. Azevedo states that, based on a review of the materials provided to him by the

petitioner, the proffered position appears to require an individual with at least a bachelor's degree and possibly a master's degree or equivalent experience. The petitioner also submits a letter from Stuart Chalmers, President, Tremcon, Inc. Austin, Texas. Mr. Chalmers states that the position requires an individual with a baccalaureate degree due to the complexity of both human resources and nursing problem areas that may need to be resolved. Mr. Chalmers also points out the importance of hiring an individual with a baccalaureate degree based on cultural reasons.

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 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. The AAO does not concur with the director that the proffered position is that of a public relations manager. The position is more analogous to the human resources, training, and labor relations managers and specialists classification, described in the *Handbook* on page 60. With regard to training or academic credentials for recruiters, on page 62, the *Handbook* states:

Because of the diversity of duties and level of responsibility, the educational background of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, employers usually seek college graduates. Many prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded

liberal arts education.

The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. Cf. *Defensor v. Meissner*, 201 F. 3d 385 (5th Cir. 2000).¹ (Emphasis added.) Both the *Handbook* and the letter submitted by the petitioner from Dr. Azevedo clearly establish that a baccalaureate degree is required for entry into the proffered position; however, neither establishes that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no additional documentation. The record also does not include any evidence from professional associations regarding an industry standard, or 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. On appeal, the petitioner states that the proffered position is a new position and thus it cannot provide any documentation with regard to prior hires in the proffered position.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Although Dr. Azevedo mentions in his letter the importance of hiring an

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *id.* at 387.

individual from the Philippines to provide stronger assistance in the petitioner's orientation program, and Mr. Chalmers notes the importance of having an employee who speaks other Filipino languages and understands the Filipino culture, these qualities of the beneficiary do not necessarily establish that the duties of the position are either specialized or complex. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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.