



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 02 225 53223 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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.

A handwritten signature in cursive script that reads "Mari Johnson".

For 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 a physical therapy firm. In order to employ the beneficiary as a practice manager, the petitioner 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 on the basis that the petitioner had failed to establish that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director's decision was erroneous, in that the evidence of record at the time of the director's decision, and additional evidence submitted on appeal, clearly demonstrate that the position in question is a specialty occupation.

In reaching its decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B (with its annotations by counsel), counsel's brief, and the evidence presented on appeal. Upon consideration of the entire record, including all of the material submitted on appeal and at the earlier stages of the proceeding, the AAO has concluded that the director's denial of the petition was correct, as the evidence of record is insufficient to establish the proffered position as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal will be dismissed and the petition will be denied.

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 evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This provision assigns specialty occupation status to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The letter of support that the petitioner’s manager filed with the Form I-129 provided this description of the proposed duties:

The duties of the position are responsibility for patient process functions, accounting functions, human resource functions and facility management; liaison with new patients to explain insurance coverage requirements and monitor their experience; maintain statistics and analyze new ways to grow the practice. . . .

According to the petitioner’s response to the RFE, the proffered position would supplement this eight-person staff: (1) Owner Physical Therapist, (2) Senior Physical Therapist, (3) Staff Physical Therapist, (4) Business Manager, (5) Office Administrator, (6) Billing Administrator, (7) Billing Administrator Assistant, and (8) Typing Support.

The AAO recognizes the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. To the extent that they are described in the record, the proposed duties comport with the general duties that the 2004-2005 edition of the *Handbook* attributes to the medical and health service management occupation. The *Handbook*’s treatment of that occupation indicates that, depending upon the size and complexity of the particular health services operation involved, a particular health service management position’s educational requirements may range from a master’s degree, on the high end of the spectrum, to on-the-job experience in lieu of formal education, on the low end. The evidence of record, including the staff configuration, duty descriptions, and business context in which the practice manager would be placed, does not establish the proffered position among those that would require a degree in a specific specialty.<sup>1</sup>

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<sup>1</sup> The growth in staff and business that counsel reports for the period after the filing of the Form I-129 are irrelevant to this proceeding. 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).

As the evidence of record does not refute the *Handbook's* information about the requirements for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status if the evidence establishes the position as one for which there is a specialty degree requirement which is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As already discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

Also, the job vacancy advertisements submitted into the record do not establish that positions normally require at least a bachelor's degree, or the equivalent, in a specific specialty. The advertisements are too few to establish what employers industry-wide normally require. Also, the advertisements do not all identify a bachelor's degree in a specific specialty, or the equivalent, as a minimum hiring requirement. For instance, it is noted that one advertisement seeks a registered nurse (an occupation that does not require a bachelor's degree); one requires a bachelor's degree in business administration, which, as explained below, is not a degree in a specific specialty; and one only requires a bachelor's degree, without specifying any particular major or concentration of studies.

The fact that only a requirement for a degree in a specific specialty will satisfy this first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) is critical. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong provides that "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." The petitioner has not shown the proffered position to be unique in comparison to or more complex than health service management positions that can be handled without a degree in a specific specialty.

Next, 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 – is not a factor in this proceeding, as the position is being offered for the first time.

Finally, the evidence does not satisfy the criterion at 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 them is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record about the proposed duties does not demonstrate such specialization and complexity. As the *Handbook* indicates, there are health service manager positions – such as “physician’s offices and some other facilities”- whose performance does not require a bachelor’s degree in a specific specialty. The petitioner has not demonstrated that its practice manager position is not one of those.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director’s denial of the petition.

Beyond the decision of the director, it is noted that it was upon an educational evaluation that the petitioner premised the beneficiary’s qualification to serve in a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C). The educational evaluation is unacceptable as evidence that the beneficiary has achieved the U.S. degree equivalent degree for which the evaluation vouches.

Closely reading [REDACTED] evaluation indicates that he claims only the authority to *evaluate* whether an educational institution “is to grant college level credit for training and/or courses taken at other U[.]S[.], or international universities.” This is insufficient to qualify [REDACTED] opinion as evidence under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), that is, as “[a]n evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experiences.”

Although [REDACTED] letter is submitted as an evaluation by a foreign-degree evaluation service, Morningside Evaluations and Consulting, it does not qualify for consideration as such. [REDACTED] based his evaluation on the beneficiary’s experience alone, but, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), evaluations by credentials evaluation service merit consideration only to the extent that they evaluate education.

CIS uses an evaluation by a credentials evaluation organization of a person’s foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Also, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Furthermore, the U.S.-degree equivalent that [REDACTED] opined that the beneficiary has attained is a bachelor’s degree in business administration. As indicated in the earlier discussion of business administration degrees, a generalized degree in business administration is not recognized as a degree in a specific specialty.

Accordingly, even if the AAO adopted [REDACTED] opinion and recognized the beneficiary as holding the equivalent of a U.S. degree in business administration, the beneficiary would not be qualified to serve in a specialty occupation.

For these additional reasons, the petitioner may not be approved.

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.