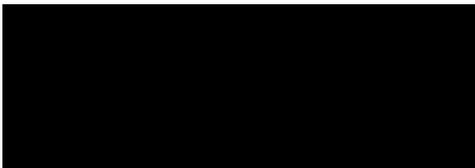




U.S. Citizenship  
and Immigration  
Services

D-2



14 2004

FILE: LIN 03 111 50796 Office: NEBRASKA SERVICE CENTER Date:

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.

*Mari Johnson*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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**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 pharmaceutical and health care services company that seeks to employ the beneficiary as a contracts assistant. 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, the petitioner states that the proffered position 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.

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 contracts assistant. Evidence of the beneficiary's duties includes, in part: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing contract files for accurate pricing and product information to assist the petitioner's distribution centers; analyzing contracts to determine their impact on existing contracts; auditing contracts to determine and resolve pricing errors; communicating with vendors and group purchasing organizations to resolve contract discrepancies; and ensuring contracts are accurate such as verifying product and price changes, and additions and deletions. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in business administration, economics, or a closely related field.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the positions in the job postings were too varied in nature to establish that a specific degree is the normal requirement for entry into the proffered position. The director could not determine whether the petitioner always requires a specific degree for the proffered position. Last, the director mentioned that the petitioner's job description did not demonstrate that 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.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel maintains that the Department of Labor's (DOL) *Dictionary of Occupational Titles* (DOT) finds that a contract specialist – a similar position to the one at hand – qualifies as a specialty occupation.

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)).

There is no evidence in the record that would establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel relies upon the *DOT* (4th Ed., Rev. 1991) to assert that the proffered position is a specialty occupation. However, the *DOT* 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.

The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOL's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of reliance on the *DOT*.

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.

As described by the petitioner, the job description is vague and lacks specificity. Therefore, we cannot determine whether a specific baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the contracts assistant position. In the May 8, 2003 letter the petitioner mentioned that the beneficiary must have the ability to:

make appropriate pricing changes and to quickly resolve contract discrepancies and related transactional errors. For instance, if pricing changes were not correctly entered into the computer system at the appropriate time in accordance with the terms specified in a particular contract . . . .

Yet, the petitioner does not elaborate on the beneficiary's duty to "make appropriate pricing changes" and "resolve contract discrepancies" other than to state that pricing changes need to be timely and "correctly entered into the computer system." Entering data into a computer system is purely administrative; employers would not require that an employee hold a specific bachelor's degree to perform data entry. Nor are the duties to "analyze contract documents to determine the impact, if any to existing contracts" and "audit and analyze contract files to determine and resolve pricing errors" adequately described by the petitioner. Given that the duties of the proffered position are vague and undefined, we believe that the petitioner cannot establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The submitted job postings fail to establish the first criterion: a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position. As previously discussed, 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. Only two of the eight submitted postings - Bae Systems and Boehringer Ingelheim - require a

bachelor's degree in a specific specialty. The AAO, however, cannot determine whether the duties in the postings are similar to those of the proffered position given the lack of specificity in the petitioner's job description. We wish to note that the posting from Eaton Corporation stated "the ideal candidate will possess a college degree in [b]usiness [a]dministration, [a]ccounting, or [e]ngineering." The AAO does not consider the descriptive adjective "ideal" to mean that Eaton Corporation *requires* a candidate to possess a college degree in business administration, accounting, or engineering.

The evidence in the record is insufficient to establish the second criterion: that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. The deficiencies in the evidence – the submitted postings and the petitioner's vague job description - have already been discussed at length.

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. Similarly, there is no 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. In its February 12, 2003 and May 8, 2003 letters the petitioner never attested that it normally requires a specific bachelor's degree.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish 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. Again, because the description of the proffered position is vague and undefined, the petitioner cannot establish that the nature of the specific duties of the contracts assistant 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 in a specific specialty.

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.