



U.S. Citizenship
and Immigration
Services

Dr



FILE: WAC 04 088 51710 Office: CALIFORNIA SERVICE CENTER Date: JUL 26 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

Mari Johnson

6 Robert P. Wiemann, Director
Administrative Appeals Office

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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 non-profit cultural and ethnic advancement organization dedicated to the preservation and dissemination within the United States of various aspects of Greek culture. In order to employ the beneficiary as a project director for Olympic events, the petitioner endeavors to classify him 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 not established 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 asserts that the director erred in denying the petition because the proffered position was “unequivocally misclassified” and is, “per se, a specialty occupation.”

In reaching its decision in this proceeding, 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 as annotated by counsel, counsel’s brief, and the documentary evidence submitted with the brief.

For the reasons discussed below, the AAO has concluded that the director was correct in denying the petition. Accordingly, the appeal shall be dismissed and the petition shall be denied.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as one 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.

Thus, it is clear that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in the specialty.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.” (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category.

The burden of proof in these proceedings rests solely with the petitioner (Section 291 of the Act, 8 U.S.C. § 1361), and to sustain the burden with regard to the specialty occupation issue here, the petitioner would have had to establish that the practical performance of the specific duties of the Olympic events project manager requires the theoretical and practical application of a body of highly specialized knowledge that is achieved only by attaining at least a baccalaureate degree or the equivalent in a specific specialty. The petitioner has not met this burden. It has presented the position’s duties in terms that are too general and abstract, as reflected by this excerpt on the proposed duties from the petitioner’s reply to the RFE:

For most of this time, the duties/percentages will be as follows:

Research U.S.-based Olympic Games events	10-15%
Communications liaison among concerned entities	15%
Research/designate demographics of athletic events participants	25-30%
Communications with media	20%
Analysis of funding of events/prepare reports to Board	25%

The third listed task is perhaps the most critical and technical. In short, we must carefully monitor the health and athletic ability of each participant in “our” events for us to be free of negligence in case there should be an accident or worse.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status only to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties.

The AAO recognizes the Department of Labor’s (DOL) *Occupational Outlook Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. It has been noted that counsel takes “emphatic issue” with the director’s finding that the proffered position is similar to the public relations specialist occupation as described in the *Handbook*, and that counsel insists that “[p]erhaps, 10% of the duties of the position overlap those of a Public Relations Specialist.” The decisive fact, however, is that the record provides no substantial information about the concrete tasks that would engage the beneficiary in the public relations or any other aspect of the proposed position. Consequently, the evidence of record is insufficient to establish the extent to which actual performance of the proposed position would accord with the duties of any of the various occupations described in the *Handbook*.

Furthermore, the record is so limited to generic and abstract descriptions of the proposed duties that it fails to establish that any particular body of highly specialized knowledge, and by extension, any baccalaureate degree or equivalent, is essential for performance of those duties.

The AAO accords no evidentiary weight to the occupational categories and codes that the California Employment Development Department (EDD) and the District of Columbia Department of Employment Services (DCDES) assigned for prevailing wage determination purposes. Those EDD and DCDES determinations are not relevant to the specialty occupation issue. They are not a product of the application of the provisions of the Act and CIS regulations on the specialty occupation question, and they were issued for a limited purpose – the assignment of a prevailing wage determination as part of DOL’s requirements for a labor condition application – that is unrelated to the status of the proffered position within the meaning of the Act and CIS regulation. Hence, these determinations have no bearing on this proceeding. Pursuant to 8 C.F.R. § 214.2(h)(4)(i)(B)(2), “[c]ertification by the Department of Labor Condition Application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation,” and such determinations are the province of the service center directors.

Also irrelevant are the executive position O*Net and OES/SOC codes that the EDD assigned to the proffered position for a prevailing wage determination (attachments 1, and 2) and the program manager code from DOL’s *Dictionary of Occupational Titles (DOT)* that the DCDES assigned for the same purpose (attachment 4). The AAO finds that the limited information in the record about the proffered position is insufficient to establish that the position substantially comports with the executive and program manager positions to which the EDD and DCDES occupational codings relate.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

The first alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and if that requirement 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 discussed above, the petitioner has not established that its project director position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

The degree requirements that the American Hellenic Council of California and [REDACTED] described for their Executive Director/Project Director and Project Director, respectively, include a wide range of distinctly different academic areas (musical arts, business administration, arts management, Fine Arts, and Mexican Studies), and, therefore, they are not indicative of an industry-wide requirement for a baccalaureate or higher degree in a specific specialty.

The director was correct in discounting the job vacancy advertisements that the petitioner submitted into the record. The information in these documents indicates that, regardless of some sharing of a generic job title, the positions are substantially different from each other and from the proffered position as described in the record. Because the evidence does not establish that the advertised positions are parallel to the proffered position, they are not probative of an industry-wide educational requirement in parallel positions.

Finally, the letter from the Director and Assistant Professor of the [REDACTED] Sport Management Master's Program has no significant evidentiary value. According to the his letter, the professor based his opinion on "the duties and responsibilities as outlined in [the petitioner's] H-1B application letter." The AAO finds that the information about the proffered position in the cited letter of the petitioner is too vague and generalized to support an opinion about the position's educational requirements, and the professor provides no supplementary information about the proffered to substantiate his view that the position requires a master's degree in sports and fitness management. Also the professor's letter presents no persuasive reason to accord special deference to this professor's opinion about the proffered position. 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).

The petitioner also has not established that the proffered position qualifies under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The record contains no evidence to this effect.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor in this proceeding. As this is the first time that the petitioner has offered the program director position in question, the record cannot demonstrate that any educational requirement is an established part of the petitioner's hiring practices.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4), as the evidence of record has not established that proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. It is noted that counsel asserts his belief that "the tasks are so sophisticated and complex as to require attainment of at least a bachelor's level degree." However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The evidence of record does not support counsel's assertion, because the tasks of the position are not depicted with sufficient specificity to indicate the requisite specialization and complexity.

Because the petitioner has not established that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.