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U.S. DEPARTMENT OF HOMELAND SECURITY  
U.S. Citizenship and Immigration Services

U.S. Department of Homeland Security  
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Washington, DC 20529



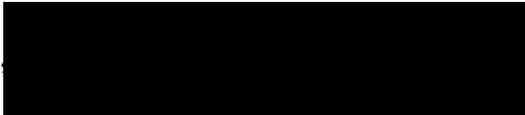
U.S. Citizenship  
and Immigration  
Services

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FILE: LIN 03 161 51516 Office: NEBRASKA SERVICE CENTER Date:

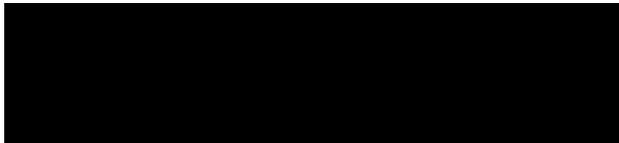
IN RE: Petitioner:  
Beneficiary:



JUN 16 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:



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*

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 home health care provider that seeks to employ the beneficiary as a management information analyst. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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 a management information analyst. Evidence of the beneficiary's duties includes: the I-129 petition; a position opening notice posted March 10, 2003; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: acting as senior liaison between the petitioner's various corporate affiliates; coordinating and improving business and operating processes and procedures; gathering and analyzing information and recommending improvements in various business functions; and developing operational manuals and conducting employee orientation. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position of management analyst was not a baccalaureate degree or its equivalent in a specific specialty. The director noted many educational fields provide a suitable background for entry into this position. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the evidence establishes the second and fourth criteria described above. Counsel asserts that the degree requirement is common to the industry, and that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree. Upon review of the record, however, the petitioner has not established the two criteria addressed on appeal, nor either of the other two criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

First, the AAO notes that the petitioner's requirement for a bachelor's degree in business administration does not constitute a requirement for a specific specialty. 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. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Second, regarding the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), that a degree requirement is common to the industry in parallel positions among similar organizations, the record contains Internet job postings for various positions, including e-business analyst, relationship marketing supervisor, application analyst, director of information systems, webcare system analyst, and business development analyst. These positions do not appear to be parallel to the instant position, nor is there any evidence to show that the employers issuing those postings are similar to the petitioner. In addition, as the director noted, the advertising employers do not require one specific specialty for the various positions. Thus, the advertisements have little relevance. The record also does not include any evidence from professional associations regarding an industry standard. The petitioner has, thus, not established the first part of the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Finally, the evidence does not establish the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4). 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 counsel contends that the evidence meets this criterion, the statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). The evidence on the record 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 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.