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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 03 111 53646 Office: VERMONT SERVICE CENTER Date: MAY 04 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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

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

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 law firm that seeks to employ the beneficiary as an administrative assistant. 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 proffered position did not meet the definition of a specialty occupation.

The petitioner submitted a timely Form I-290B on April 3, 2003 and indicated that a brief and/or additional evidence would be submitted to the AAO within 120 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 administrative assistant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 12, 2003 letter in support of the petition and the accompanying job description; and the petitioner's March 14, 2003 response to the director's request for evidence. According to the position description accompanying the February 12, 2003 letter, the beneficiary would perform duties that entail, in part: assisting the managing attorney in researching and establishing methods of improving work performance and workflow; analyzing operating practices to research and create new systems or revise office procedures and maintain accurate statistical records; assisting the managing attorney and other executives in staff capacity by coordinating office services, such as personnel, budget preparation and control, housekeeping, records control and special management studies; analyzing office operating practices to create new systems or revise established procedures; analyzing jobs to delimit position responsibilities for use in wage and salary adjustments, promotions, and evaluation of workflow; coordinating collection and preparation of operating reports, such as time and attendance records, terminations, new hires, transfers, budget expenditures, and statistical record of performance data; and coordinating collection of attorney and paralegal case progress reports. These duties were expanded in the March 14, 2003 letter to include: researching, developing and implementing the office's financial plan, including investment strategies, employee benefits, insurance, and pension plans; applying principles of accounting to analyze past and present financial operations and estimating future revenues and expenditures to prepare a budget; planning a study and collecting data to determine the costs of business operations; compiling and retrieving management data; coordinating and preparing the payroll when the accountant is unavailable; and interpreting the contracts for client services and discussing billing with the clients when the accountant is unavailable.

CIS notes that many of the responsibilities included in the March 14, 2003 letter were not included in the initial job description. 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). A petitioner cannot materially change the associated job responsibilities of a proffered position in order to satisfy statutory or regulatory requirements. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). Accordingly, the additional duties included in the March 14, 2003 letter cannot be considered part of the beneficiary's activities. The appeal will be adjudicated based on the original duties as stated in the February 12, 2003 letter, and the job description submitted with the petition.

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).

On appeal, the petitioner states that the proffered position is a specialty occupation, and submits Internet job listings that were "not available earlier" to support his assertion that many companies and government agencies require that administrative assistants possess a bachelor's degree. The petitioner also submits entries from the Department of Labor's *Dictionary of Occupational Titles (DOT),* and the petitioner's organizational chart. Citizenship and Immigration Services 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). The purpose of a Request for Evidence (RFE) is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. Specifically, the director requested "evidence showing that in your company or industry, a baccalaureate degree in a specific field of study is a standard minimum

requirement for the job offered." The petitioner failed to submit the requested evidence and now submits it on appeal. The petitioner does not explain why copies of listings from the Internet were not available earlier. The AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. The AAO notes, however, that the Internet listings would not have supported the petitioner's position. They are for support staff positions, exactly the type of position that the petitioner claims is not being offered to the beneficiary.

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 director found that the proffered position was not a specialty occupation because the job is most like a secretarial position, with some additional duties, but that a bachelor's degree would not be required to perform the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the proffered position would be as the managing attorney's "right hand person," and that other companies and government agencies require their administrative assistants to possess bachelor's degrees. The petitioner also asserts that the descriptions of a secretary and an administrative assistant are very different in the *DOT*. Finally, the petitioner states that its former administrative assistant had a bachelor's degree.

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 secretary, although there are some elements of the position description that are similar to those of an executive assistant or executive secretary. The position most closely matches that of an administrative services manager in the *Handbook*. The *Handbook* indicates that the educational requirements for administrative services managers vary widely, and that a baccalaureate or higher degree in a specific specialty, is not necessarily required for entry into the field.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for administrative assistants on appeal. As discussed above, these will not be taken into consideration. There is no other evidence in the record regarding the educational requirements for parallel positions.

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 its previous administrative assistant held a degree. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to 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 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. 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.

Beyond the decision of the director, the AAO notes that the position description submitted with the petition is very similar to the *DOT* description submitted on appeal. The petitioner has not provided enough detail to establish that the beneficiary would actually be working in a bona fide position. By describing the position in almost exactly the same terms as used in the *DOT*, the petitioner has not shown how its business would specifically use an administrative assistant or what the beneficiary would do in that position.

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.