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U.S. Citizenship  
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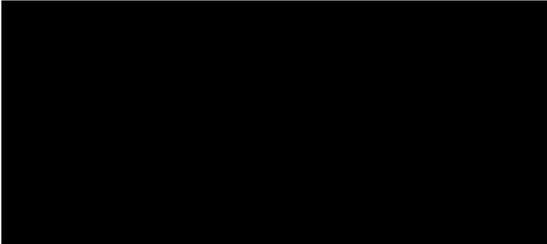


FILE: WAC 02 193 51129 Office: CALIFORNIA SERVICE CENTER Date: MAY 04 2004

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)(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

**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 corporation that provides research management and administrative services for therapeutic investigative sites and clinical trials. In order to employ the beneficiary as a clinical research coordinator, 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, 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 is a specialty occupation. On appeal, counsel submits a Form I-290B, annotated with reasons for the appeal, and a brief with documentary evidence attached.

In reaching its decision, the AAO considered the entire record of proceeding, 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, counsel's brief, and the documentary evidence attached to the brief.

The director's decision to deny the petition was correct. The record does not present an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. Furthermore, 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). These are crucial distinctions, in light of the petitioner’s focus on a wide range of bachelor’s degrees, rather than on a bachelor’s degree in a specific specialty.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) is satisfied where the evidence establishes that a baccalaureate or higher degree in a specific specialty, or its equivalent, is the normal minimum requirement for entry into the particular position. The evidence of record here does not reach this threshold.

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. The director saw the proffered position as essentially that of an administrative services manager as described in the *Handbook*, while counsel contends that the position more closely comports with the *Handbook*’s occupational category of medical and health services managers.

The *Handbook* indicates that the medical and health service managers occupational category applies to those who “plan, direct, coordinate, and supervise the delivery of healthcare” as part of the staff of a healthcare facility or healthcare system. Upon consideration of all the evidence of record about the proffered position, the AAO has determined that the proffered position has a much narrower scope. The following paragraph from the petitioner’s letter of support that was submitted with the Form I-129 and is quoted in counsel’s brief, fairly represents the major features that the record presents about the proffered position:

[The petitioner] is currently in the process of services and coverage expansion, thus we would like to employ a temporary Clinical Research Coordinator to perform diverse administrative and clinical possibilities requiring some analysis, sound judgement, and a high level of knowledge of study protocols, GCP [Good Clinical Practice] guidelines and Food and Drug Regulations. This position is responsible for coordination and management of clinical study activities while conducting a study and reports to the Principal Investigator. [The beneficiary] will obtain detailed knowledge of all components of study protocols through independent analysis and review of study to complete all study activities correctly and completely. Review project operations to ensure coordination of research efforts and responsibilities for proper performance during the study as well as the timely submission of compliance reports. Evaluate and select program participants according to specified criteria. Analyze reports to evaluate program effectiveness against preestablished inclusion criteria to determine qualified patients. Coordinate research and operating phases to meet clientele’s requirements . . . The minimum education, training, and experience necessary to perform this position is, for the worker to have a Bachelor’s degree in Social Sciences or equivalent of such a degree with experience in research.

As the proposed duties appear to involve some direct involvement in therapeutic studies under the direction of a Principal Investigator, the proposed duties exceed those of an administrative services manager. However, the

essential point is that the record does not establish that these duties comprise a position that normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for entry. The totality of the evidence does not align the proffered position with any occupation for which the *Handbook* reports a requirement of at least a bachelor's degree in a specific specialty.

The letters from the two medical doctors who are principal investigators have been considered. One principal investigator opines that a clinical research coordinator must hold "at least a Bachelor Degree in Medicine or one of the Social Sciences"; the other states that a clinical research coordinator "must have a college degree in one of the areas of medical, scientific, clinical or social sciences."

The opinions of the two principal investigators have no persuasive value. Each investigator states grounds for his opinion that relate to analytical and comprehensive skills rather than to a highly specialized body of knowledge attained by a baccalaureate or higher degree in a specific specialty. This focus is reflected in the wide range of appropriate degrees – including the broad range of social sciences – that the two investigators cited.

Finally, the fact that an H-1B petition may have been approved for a position similar to the one in question is not relevant. The favorable disposition of the other H-1B petition to which counsel refers is not relevant. Each petition must be evaluated on the basis of its own particular factual record. The AAO office is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Furthermore, CIS is bound to follow only AAO decisions which CIS has designated and published as precedent decisions. See 8 C.F.R. § 103.3(c).

Next, the petitioner has not presented evidence that would qualify the proffered position under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

There is no evidence to satisfy the first prong by a specific-specialty degree requirement that is common to the industry in parallel positions among similar organizations.

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 earlier, the evidence does not establish the proffered position as one for which the *Handbook* reports a degree requirement in a specific specialty.

There are no submissions from professional associations, but there are the two letters from the principal investigators of clinical research firms that have been discussed above. Because these letters present such a wide array of appropriate degrees, extending through the social sciences, they are not evidence of a common degree requirement. Furthermore, these two letters are too small a sample to be representative of an industry-wide hiring practice.

Next, the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which 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 descriptions of the position are in general terms that do not illuminate any job aspects that are sufficiently complex or unique to require a person with at least a baccalaureate degree in a specific specialty.

The evidence of record does not meet 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. It has been noted that the petitioner’s RFE reply provided a Form I-797A (Approval Notice) as evidence that a previous H-1B visa petition was approved for a beneficiary for the position proffered here. As this evidence is limited to only one previous hiring action, it is not sufficient to establish a normal course of hiring requirements.

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 as to require knowledge usually associated with the attainment of a baccalaureate or higher degree. To the general extent that they are described in the record, the proposed duties indicate no such complexity or specialization. Although counsel and the petitioner may state that the duties qualify under this criterion, the evidence of record does not support this evaluation. In this regard, it should be noted that simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Likewise, 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).

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 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.