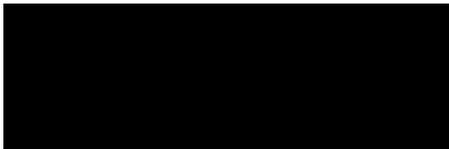


Identity data deleted to  
prevent clearly unwarranted  
disclosure of personal information

U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

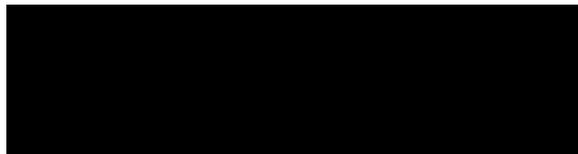


FILE: LIN 02 150 54155 Office: NEBRASKA SERVICE CENTER Date: OCT 01 2002

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 dental clinic that seeks to employ the beneficiary as a personnel manager. 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 was not a specialty occupation. On appeal, counsel submits a brief stating that the proffered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a personnel manager. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment; and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: use independent judgment to exercise authority on behalf of the clinic; interview and hire new personnel; provide orientation for new personnel; discipline, suspend, and/or discharge personnel; assign work to employees; resolve employee complaints and concerns; layoff, recall and/or transfer employees in accordance with clinic policy; establish performance standards and conduct performance appraisals; recommend awards and promotions for employees; enforce legal, regulatory, and department policies and procedures; act as liaison with local civic groups, community, health, and learning institutions; insure adherence to policies and quality improvement objectives; prepare and monitor the office budget; prepare status reports and financial statements; monitor activities and outcomes of the facility; develop short term goals and objectives for the clinic; and initiate and direct activities to enhance productivity. The petitioner requires a bachelor’s degree “in any related area” for entry into the proffered position. The petitioner will accept the beneficiary’s foreign degree equivalent in dentistry.

The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are varied, but essentially are general managerial duties performed by general and operations managers. The *Handbook* notes that the formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor’s or higher degree in business administration or liberal arts. Other executive positions, however, are filled by promoting experienced, lower level managers. Thus, it is possible to obtain a position as a general/operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. When degrees are required for employment, the degree may come from a wide range of educational disciplines. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations. In support of this assertion the petitioner submitted approximately 14 job advertisements. Of the advertisements submitted, however, only four are for positions similar to the proffered position. The

remaining advertisements are of little evidentiary value and will not be analyzed. One of the relevant advertisements is for an office administrator with a cardiology office, and requires a degree “or work history experience.” Another advertisement is for a clinical administrator and requires a bachelor’s degree in business, healthcare, nursing or a related field. A third advertisement is for a medical center operations manager and appears to have a requirement of a baccalaureate level education, but the advertisement copy is of such poor quality that it cannot be read. The fourth relevant advertisement is for an office manager with a six-doctor plastic surgery practice. It requires a business or healthcare degree. The number of relevant advertisements submitted is insufficient in scope to establish an industry standard. Furthermore, the advertisements do not establish that a degree in a specific specialty is required for the positions. In the above mentioned advertisements, degrees in business, nursing and healthcare are all deemed acceptable degrees, and the degrees deemed acceptable are not all closely related disciplines. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not established that it normally requires a degree or its equivalent in a specific specialty, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if this were the case, the proffered position still does not qualify as a specialty occupation. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines, as well as by those with no college degree at all. There is no requirement of a degree in any specific specialty.

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The duties described are routinely performed by general and operations managers in the industry.

The petitioner also asserts that previous agency decisions have classified similar positions as specialty occupations. This reference will not sustain the petitioner’s burden of establishing H-1B qualification in the petition now before the AAO. This record of proceeding does not contain the entire records of proceeding in the petitions referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting 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. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty. 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. In the present matter, the petitioner has offered the beneficiary a position as a personnel manager. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.