



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE: WAC 02 238 55849 Office: CALIFORNIA SERVICE CENTER Date:

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:

[Redacted]

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.

Handwritten signature of Robert P. Wiemann in black ink.

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 cosmetic container decorator 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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 May 22, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: coordinating personnel, budget and administrative functions, such as budget preparation and control, housekeeping, and records control; studying methods to improve workflow, simplify reporting procedures or implement cost reductions; analyzing unit operating practices, such as record keeping systems, forms control, budgetary requirements and performance standards to create new systems or revise established procedures; studying methods of improving work measurements or performance standards; coordinating the collection and preparation of operating reports, such as time and attendance records, termination, new hires, transfers, budget expenditures and statistical records of performance data; preparing reports including conclusions and recommendations for solving administrative problems; assisting in the preparation of budget needs and annual reports of the organization; issuing and interpreting operating policies; preparing interdepartmental or customer letters and memos; maintaining all confidential information in an appropriate manner; recording meeting minutes and distributing action lists; researching, compiling, analyzing and summarizing data for special projects and/or reports such as start up and downtime reports and inventory reports; compiling and typing statistical reports; maintaining calendars and scheduling meetings and/or appointments; planning travel arrangements for members of the operations department; monitoring budget variances in operations departments and informing the plant manager and the management staff of their status; completing expense reports; maintaining office supplies; and verifying and processing invoices. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or a related field.

The director found that the proffered position was not a specialty occupation because the job was most like a customer service representative in the telecommunications industry. 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 was not a baccalaureate degree or its equivalent in a specific specialty. 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, counsel states that the proffered position has nothing to do with the skills of a customer service representative, and the petitioner is not in the telecommunications industry. Counsel cites the Department of Labor's *Dictionary of Occupational Titles (DOT)*, which assigns the position of administrative assistant an SVP rating of 7, which according to counsel, requires a degree to enter into the position. In addition, counsel states that the position meets all four of the regulatory criteria to be considered a specialty occupation. Finally, counsel provides an expert opinion letter from a professor of management and information systems, who states that the position should be considered a specialty occupation.

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 concurs with counsel that the proffered position is not similar to a customer service representative. In reviewing the *Handbook*, however, it appears that the director simply made a mistake regarding the position title in his decision. The segment that the director quoted is from the entry on Office and Administrative Support Worker Supervisors and Managers. The AAO does find that some of the duties of the proffered position are similar to those described in that entry of the *Handbook*. In addition, the position has elements of an administrative assistant, found in the *Handbook's* entry for Secretaries and Administrative Assistants. A review of both of the job descriptions in the *Handbook* confirms that no evidence indicates that a baccalaureate or higher degree, or its equivalent, is required for either job.

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. The *DOT's* SVP rating does not indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

On appeal, counsel provides an opinion letter from a professor of management, who states that it is industry standard to hire individuals with bachelor's degrees in business administration as administrative assistants. 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 opinion letter is in conflict with the other available evidence, and so, shall not be considered.

Regarding parallel positions in the petitioner's industry, the petitioner submitted six Internet job postings for administrative assistants. Two advertisements had no educational requirement, two stated that either a bachelor's degree or experience was required, and two stated that a bachelor's degree was required, but listed no specific specialty. These postings do not support the petitioner's assertion that a bachelor's degree is a common requirement in the industry. In addition, there is no evidence to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record 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, counsel states this is a newly created position; therefore, the petitioner is not able to meet this criterion.

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.

The AAO notes that counsel asserts that the AAO and the federal courts have previously determined the position of administrative assistant to be a specialty occupation. CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

This record of proceeding does not contain all of the supporting evidence submitted in the prior cases. In the absence of all of the corroborating evidence contained in that record of proceeding, the information submitted by counsel is not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

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, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position, no such determination may be made without review of the original record in its entirety.

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.

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