



U.S. Citizenship
and Immigration
Services

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FILE: LIN 03 009 51054 Office: NEBRASKA SERVICE CENTER Date: **OCT 25 2007**

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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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prevent unauthorized
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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 non-profit educational foundation. It seeks to employ the beneficiary as a foreign technical education specialist and endeavors to classify her 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, the petitioner submits a brief and additional information 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 proceedings 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 with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a foreign technical education specialist. Evidence of the beneficiary’s duties includes the Form I-129 petition, and the petitioner’s response to the director’s request for evidence. According to the evidence, the beneficiary would: assist with the authoring of technical course materials and the development of technical educational teaching aides for teaching computer engineering, electronics, and computer programming; assist with the translation of technical materials used by the petitioner’s educational programs in Spanish and mid-eastern languages; teach fundamental technical courses at the petitioner’s educational institutions; and assist with raising funds for the establishment of non-profit schools in middle eastern and Latin countries. The petitioner requires a minimum of a bachelor’s degree in computer engineering technology or a related field for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the U.S. 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 presented in such vague and generic terms, however, that it is impossible to determine precisely what tasks the beneficiary would perform on a daily basis, or the complexity of the tasks to be performed. For example, the petitioner states that the beneficiary will assist with the authoring of technical course materials and the development of technical educational teaching aides for teaching computer engineering, electronics, and computer programming, and will teach at petitioner sponsored institutions. There is no indication, however, as to what students will be taught, or the complexity of the educational materials and teaching aides to be authored. The record indicates that the petitioner is currently supporting one school project in Costa Rica. It is not known, however, at what educational level the school operates or precisely what type of support the petitioner lends to the school. If, in fact, the petitioner is offering teaching assistance or authoring educational materials for the school, the petitioner has not established that the assistance given is at a level that requires a baccalaureate level education in a specific specialty. The assistance could, indeed, be of a highly complex and technical nature. It could also be at a very basic level in a job training or vocational environment not requiring the skills of one with a baccalaureate level education in a specific specialty. Other duties to be assigned to the beneficiary include translation

services and fund raising. These duties are not fully explained in the record and the complexity of the duties cannot be ascertained.

It is incumbent upon the petitioner to describe the duties of the proffered position in such detail as to permit an analysis of the day-to-day functions to be performed by the beneficiary. This, the petitioner has failed to do. Simply going on the record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). As such, it is impossible to determine whether: a baccalaureate or higher degree is normally the minimum requirement for entry into the offered position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty; or knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish that the offered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1),(2), or (4). The petitioner does not assert that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the Form I-129 petition 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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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