



U.S. Citizenship
and Immigration
Services

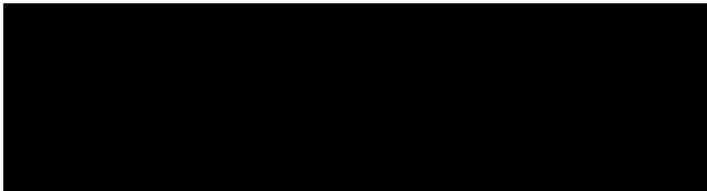


FILE: WAC 02 097 51880 Office: CALIFORNIA SERVICE CENTER Date: OCT 25 2004

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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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 State licensed facility for the developmentally disabled. It seeks to employ the beneficiary as a day program coordinator, 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, counsel submits a brief and additional information.

The first 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) the 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 day program coordinator. Evidence of the beneficiary’s duties was included with the Form I-129 petition and in response to the director’s request for evidence. According to this evidence the beneficiary would: participate in the planning and development of medically oriented rehabilitation programs including educational, occupational, and recreational activities; develop individual programs in accordance with the needs of each day care participant; render initial assessments of clients, determine his or her needs, and prepare a specific service plan to meet those needs; arrange for special provisions for care and supervision, including safety and guidance of clients with disabilities; implement and coordinate each program with administrators, activity directors, coaches, team leaders, caregivers, family members, volunteers, and food service workers while evaluating the participant’s changing needs and making necessary program adjustments; supervise and train volunteers and team leaders; be “on the floor” and available to participants and their families most of the time; meet with individual resident’s relatives to discuss learning progress and problems; prepare and implement tests to evaluate progress, record results, prepare reports to inform the administrator of individuals’ progress; and requisition instructional materials and teaching aids, such as books, toys, and games designed to stimulate learning. The petitioner requires a minimum of a master’s degree in education administration and supervision for entry into the proffered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief and indicates that the offered position satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 general managerial duties performed by general and operations managers in facilities for the developmentally disabled. The petitioner asserts on one hand that the proffered position is not that of a rehabilitation counselor and that, accordingly, the beneficiary is not subject to licensing as a counselor. On appeal, the petitioner states that while the offered position is not that of a rehabilitation counselor, the duties of the position are similar to those of a rehabilitation counselor and notes that rehabilitation counselors require a degree in a specific specialty. Counsel’s argument is unpersuasive. If the duties of the proffered position are essentially those of a rehabilitation counselor with some additional administrative responsibilities, the beneficiary would be required to hold a master’s degree in counseling and be licensed or certified by regulatory authorities. In this instance, the petitioner does not require a master’s degree in counseling for the proffered position, but finds that a master’s degree in education administration and supervision is suitable for entry into the position. As such, the position is obviously not that of a rehabilitation counselor as the petitioner deems the beneficiary qualified to perform the duties of the position with an education degree. The duties of the proffered position are in fact general managerial/administrative duties in a facility for the developmentally disabled.

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 copies of three job advertisements for counselor positions. These advertisements are, however, of little evidentiary value as the proffered position is not that of a rehabilitation counselor. The positions advertised are not parallel to the position offered in this instance. As such, the petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also asserts that a degree requirement is common to the industry in parallel positions among similar organizations in that the *Dictionary of Occupational Titles* awards the position an SVP rating of eight which is equivalent to four to ten years of education and experience. First, the SVP rating to which the petitioner refers is for the position of a rehabilitation counselor. The proffered position is not a rehabilitation counselor, but a manager in a facility for the developmentally disabled. Furthermore, the petitioner’s assertions regarding the DOT’s SVP rating for the offered position do not establish a degree requirement in the industry. An SVP rating is meant to indicate only the total number of years of vocational preparation

required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

The petitioner has not established that it normally requires a degree or its equivalent in a specific specialty for the proffered position, and offers no evidence in this regard. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 managers in facilities for the developmentally disabled. They are not unusually complex, unique, or specialized in the industry.

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.