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U.S. Citizenship
and Immigration
Services

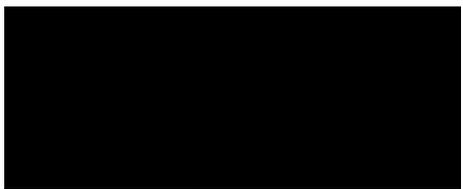


FILE: WAC 03 177 51542 Office: CALIFORNIA SERVICE CENTER Date: **OCT 29 2004**

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

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 home health agency that seeks to employ the beneficiary as an operations 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 because the proffered position did not qualify as a specialty occupation. On appeal counsel submits additional information stating that the proffered position does qualify as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position 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 an operations 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: plan, direct, and coordinate the operations of the company; formulate policies, manage daily operations, and plan the daily schedules and human resource requirements; ensure that the company’s operations are implemented in accordance with the policies established by the president; and oversee the activities of all employees and implement the organization’s policies on a daily basis. The petitioner requires a minimum of a bachelor’s degree in business administration, management, or a related field for entry into the proffered position.

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 essentially those noted for top executives/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 or 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. Positions requiring a college degree are filled 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion the petitioner submitted copies of three job advertisements. Copies of three job advertisements are insufficient in scope to establish an industry educational standard for the proffered position. Further, the advertisements submitted are not from companies similar in nature to that of the petitioner. Finally, of the three advertisements submitted, two state that a bachelor’s degree is required, but do not state that the degree need be in any particular discipline. The third advertisement states that a college degree is preferred, but not required, for the offered position. The

petitioner has failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations.

The petitioner offers no evidence to establish that it normally requires a degree in a specific specialty for the proffered position. Thus, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner asserts that the beneficiary will supervise other individuals who have a baccalaureate level education, and that the proffered position qualifies as a specialty occupation as a result thereof. For example, the petitioner would have supervisory authority over individuals holding degrees in medicine, dietetics, communicative disorders, social work, and occupational therapy. It is generally recognized that managerial positions may qualify as a specialty occupation if the manager will be supervising other individuals employed in specialty occupations, the reasoning being that an individual supervising degree holders in a specific specialty could reasonably be expected to hold a degree in that specialty as well. The degree holders to be supervised by the beneficiary, however, hold degrees in several different fields. The beneficiary does not hold a degree in any of the fields over which he will exercise supervisory authority, nor does the petitioner require him to do so, as the petitioner deems acceptable a degree in management or business administration for the position. A degree in a wide range of educational disciplines will qualify an individual to work in the proffered position. The beneficiary is not required to hold the same or similar degrees to those held by employees over whom he will have supervisory authority. The petitioner's contention in this regard, is not persuasive.

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 are routinely performed by general and operations managers/top executives in the industry with education in a wide range of educational disciplines.

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.