



U.S. Citizenship
and Immigration
Services

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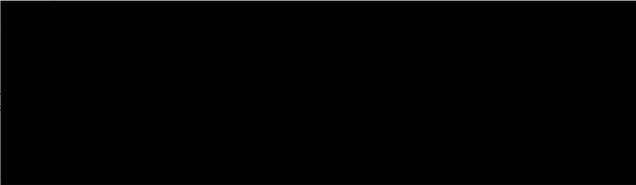


FILE: WAC 01 230 53157 Office: CALIFORNIA SERVICE CENTER Date: SEP 01 2004

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.

for *Mari Johnson*
Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy

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 physician that seeks to employ the beneficiary as a business analyst. 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 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 field 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 business analyst. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: define and analyze management and operational problems of the medical clinic including but not limited to billing, collection, and accounting; propose solutions using knowledge of business administration and finance to implement new systems and operational changes; determine and propose the necessary management systems, operational and organizational changes to increase profitability and maximize office and staff efficiency; evaluate implementation and effectiveness of management solutions and operating procedures developed; initiate computerization of patients' personal and medical information from two clinics using medical software to expedite transition from manual to electronic billing and accounting; supervise and train clinic staff in the medical software installed; monitor daily cash flow, income and expense, profit and loss, and make corresponding reports or recommendations to the owner; and propose plans, policies, and strategies to increase the patient base. The petitioner requires a minimum of a bachelor's degree in business 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 varied, but 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/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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion the petitioner submitted opinion

letters from: (1) [REDACTED]; (2) [REDACTED]; (4) and [REDACTED] opined that the proffered position was essentially that of a "business manager" which typically requires a minimum of a bachelor's degree in business for entry into the position. [REDACTED] opinion is based on his education and experience. He does not cite any industry study, survey or other research upon which his opinion is based. As such, his opinion is of little evidentiary value as it is in conflict with the information contained in the *Handbook* for the educational requirements of business/operations managers. As previously noted, the *Handbook* notes that degrees in a wide range of educational disciplines are acceptable for entry into similar positions. Acceptable degrees range from a general liberal arts degree to degrees in the business field. The position does not require a degree in a specific specialty. The remaining opinion letters are from physicians in small offices and simply state that they employ individuals with a bachelor's degree to run the business side of their medical practices. Three opinion letters from other physicians are insufficient in scope to establish an industry standard for the educational requirements of an office/business manager. 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 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. The performance of the duties of the position must involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner*, 201 F.3d 388 (5th Cir. 2000). This position does not. 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 business/operations managers in the industry.

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.