



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: WAC 02 279 54946 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 residential care facility for the elderly that seeks to employ the beneficiary as a facility health services analyst. The petitioner, therefore, 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 states that the proffered position qualifies as a specialty occupation and submits additional and previously submitted evidence.

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 a facility health services analyst. Evidence of the beneficiary's duties includes: the Form I-129; attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing and analyzing facility activities to evaluate and improve services; establishing work schedules and staff assignments; analyzing facility policies and procedures; establishing evaluations of performance; developing instructional materials; analyzing the implementation of programs and services and reporting deviations; developing and maintaining a records management system; making budget recommendations; preparing the monthly analysis of activities and performance reports; reviewing resident records to consult with medical personnel and professionals about the medical needs of residents; and inspecting facilities for emergency readiness and health and safety compliance. The petitioner's August 26, 2002 letter indicated that a candidate must possess a "bachelor's degree or higher."

The director determined that the proffered position was not a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director mentioned that the Form I-129 petition indicated that the petitioner employed 25 employees, and later reduced this number to 5 employees. The director stated that based on the evidentiary record, he did not believe that the petitioner employed 5 employees. Referring to *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), the director stated that doubt cast on any part of the petitioner's proof may compel CIS to re-evaluate the reliability and sufficiency of the other evidence submitted with the petition. In reviewing the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*, the director mentioned that the petitioner requested that the DOL assign the proposed position the occupational code of 169, which is shown under the heading of administrative specializations. Referring to the DOL's *Occupational Outlook Handbook (the Handbook)*, the director stated that the proposed duties are performed by an administrative services manager, an occupation that does not require a bachelor's degree in a specific specialty. Finally, the director did not find the submitted evidence persuasive in establishing that the proffered position qualified as a specialty occupation.

On appeal, counsel claims that the proffered position is a specialty occupation. Counsel asserts that the petitioner earned a combined gross income of \$382,579 in 2002 by operating three elderly-care residential care facilities, and that the petitioner now seeks to coordinate its services by employing a facility health services analyst. Citing to several prior AAO decisions and the *Handbook*, counsel states that the proposed duties are performed by a health services manager. Counsel claims that the *Handbook* reports that a bachelor's degree is sufficient for some health services manager positions. In the case of *Young China Daily v. Chappell*, 742 F.Supp. 552 (N.D. Cal. 1989), counsel claims that the court determined that (1) an employer's size has no rational relationship to the need for a professional; and (2) the newness of the position is irrelevant in determining whether a position is a specialty occupation. Finally, counsel mentions that the beneficiary is qualified to perform the duties of the proffered position.

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 first considers 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)).

As previously mentioned, 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. In the August 26, 2002 letter, the petitioner stated that its job requirement for the position was a "bachelor's degree or higher." In the document entitled "Notice of Job Opening," the petitioner indicated that it required a "[b]achelor's degree" and at least two years of related experience. Counsel's September 10, 2002 letter stated that the position clearly requires a "[b]achelor's degree or higher." This shows, unquestionably, that candidates for the proffered position are not required to possess a bachelor's degree in a specific specialty. Consequently, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the evidentiary record reveals that the petitioner simply requires a bachelor's or higher degree, without indicating a specific specialty. Accordingly, the petitioner cannot establish that it requires a baccalaureate or higher degree in a specific specialty that is common to the industry or that its position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The petitioner, therefore, fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the employer establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. As discussed, because the record discloses that the petitioner merely requires a bachelor's degree or higher, without indicating a specific specialty, it fails to establish the third criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, although the petitioner requires that a candidate possess a bachelor's degree or higher, it failed to indicate that the degree must be a specific specialty. Accordingly, the petitioner cannot establish that the

nature of the specific duties is so specialized and complex that the knowledge required to perform the duties 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)(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 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.

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