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U.S. Citizenship
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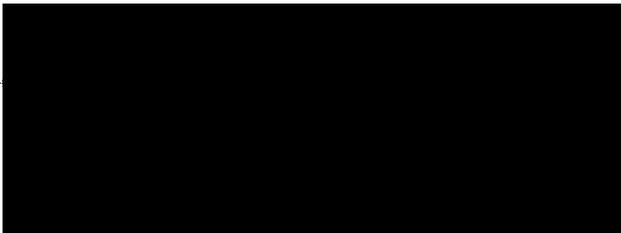


FILE: LIN 03 256 51687 Office: NEBRASKA SERVICE CENTER Date: SEP 2 2008

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

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 provides travel assistance services. It seeks to employ the beneficiary as an international case manager. 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 submits additional 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 an international case manager. Evidence of the beneficiary's duties includes: the Form I-129; the 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 training, coaching, and developing assistance coordinators and contract specialists; maintaining assistance coordinator work schedules; working with human resources to handle employee conflicts; providing feedback to assistance coordinators on case handling and customer complaints; conducting annual performance appraisals; using quantitative methods to analyze and interpret statistics on timeliness, casework, telephone queues, client calls, and break/meeting schedules; interpreting and analyzing contract provisions and resolving contract issues with teams; implementing enhancements to team procedures to support contract requirements and improve team efficiency; documenting and updating team procedures and serving as a liaison to marketing, training, and quality units; overseeing 5-10 employees. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in business with a specialization in international business or a related field, and be fluent in the Japanese and English languages.

The director determined that the proffered position was not a specialty occupation. The director stated that although the petitioner claims that the duties of the proffered position are similar to those of a social worker, the duties are not similar enough to require a degree in a specific field. The director mentioned that the salary of the proffered position is only \$29,000 whereas the *Handbook* reports that the salary for a social worker is \$31,470. According to the director, the petitioner never established a past practice of requiring the services of a person with a bachelor's degree or higher in a specialized area, that similar companies have this requirement, or that the proposed duties are so specialized and complex that the knowledge required to perform the position is usually associated with the attainment of a bachelor's degree or higher in a specialized area. The director noted that CIS had previously denied the petitioner's H-1B petition to employ the same beneficiary for the position of assistance coordinator.

On appeal, counsel refers to *Unico American Corp. vs. Watson*, 1991 WL 11002594 (C.D. Cal.) to state that CIS should give deference to the employer's view and consider its evidence, and not rely simply on "standardized government classification systems." Pointing to the submitted position evaluation, counsel asserts that it establishes the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the director failed to examine the duties of the proffered position. Counsel maintains that the beneficiary was recently promoted to the position of international case manager. Finally, counsel contends that the director's concern about the salary of the proffered position is contrary to the law, and that the salary is proper.

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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner's September 5, 2003 letter stated that the duties of the proffered position are similar to those of a social worker as described in the *Dictionary of Occupational Titles (DOT)*. This statement is not convincing. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply based on information in the *DOT* about a casework supervisor.

According to the *Handbook*:

Social work is a profession for those with a strong desire to help improve people's lives. Social workers help people function the best way they can in their environment, deal with their relationships, and solve personal and family problems. Social workers often see clients who face a life-threatening disease or a social problem. These problems may include inadequate housing, unemployment, serious illness, disability, or substance abuse. Social workers also assist families that have serious domestic conflicts, including those involving child or spousal abuse.

None of the beneficiary's duties are even remotely similar to those of a social worker. The beneficiary will oversee 5-10 employees providing referrals for emergency medical services such as medical and dental services, medical case monitoring, medical repatriation, and air ambulance and funeral services. Obviously, the beneficiary will not oversee employees helping others with life-threatening diseases or social problems such as substance abuse, disability, unemployment, or domestic conflicts such as child or spousal abuse. Because the petitioner fails to establish that the duties of the proffered position are parallel to those of a social

worker, it cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

In the denial letter, the director mentioned that the salary of the proffered position is only \$29,000 whereas the *Handbook* reports that the salary for a social worker is \$31,470. The AAO notes that the amount of the proffered salary is irrelevant in determining whether a position qualifies as a specialty occupation. *Young China Daily vs. Chappell*, 742 F. Supp. 552, 554 (N.D. Cal. 1989).

The AAO further notes that counsel's reference to *Unico American Corp.* is misplaced. Unpublished opinions are not considered binding precedent.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations – the evidentiary record contains an expert opinion letter by Dr. James S. Gould, Professor of Marketing at Pace University. In the letter, Professor Gould attested that the duties of the proffered position cannot be performed without bachelor's level training in business administration, international business or a related area, given the analytical, strategic, and procedural requirements of the position. Professor Gould further attested:

I believe that it is an industry standard for an organization engaged in business activities of the nature and scale of the prospective employer to hire an international case manager with such a background.

Noticeably, Professor Gould fails to submit independent evidence that would corroborate his assertions. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Consequently, the evidentiary weight of Professor Gould's statements is diminished.

The letter from the Associate Dean and Director of Graduate Programs at Pace University stated that Pace University faculty such as Professor Gould, have authority to grant college-level credit for training and experience. The letter is not persuasive. Determining whether to grant college-level credit for training and experience is wholly different from determining whether a position requires a bachelor's degree in a specific specialty.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

Counsel leans on Professor Gould's opinion letter to 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. The AAO has already discussed the shortcomings of Professor Gould's statements, and has explained the differences between the proffered position and a social

worker position. Because no other evidence in the record established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner failed to establish this criterion.

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.