



U.S. Citizenship
and Immigration
Services

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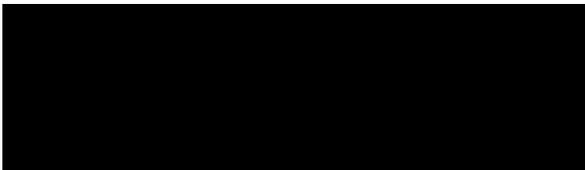


FILE: EAC 02 294 53034 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 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 not-for-profit association providing services to the developmentally disabled. In order to employ the beneficiary as a client coordinator, 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation, and (2) the beneficiary is qualified to serve in a specialty occupation.

On appeal, counsel contends that the director erred, and that the evidence of record establishes both that the proffered position is a specialty occupation and that the beneficiary is qualified to serve therein. For the reasons discussed below, the AAO has determined that the director was correct. Accordingly, the appeal will be dismissed and the petition will be denied.

In reaching its decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documentary evidence submitted with the brief.

The specialty occupation issue will be addressed first.

It appears that counsel contends that the type of bachelor's or higher degree required to qualify a position as a specialty occupation does not have to be in a specific specialty with a body of highly specialized knowledge directly related to the position. At page 2 of the brief counsel states, in part:

Contrary to the Service contention, the Standards [at 8 C.F.R. § 214.2(h)(4)(iii)(A)] do not require a degree or its equivalent in a narrow field of study to qualify the position for a specialty occupation. Rather[,] the Standards outline the alternative ways of establishing the complexity and specialization of the duties that warrants [sic] the requirement of a Bachelor's degree. . . .

This view is without merit.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as one 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.

Thus it is clear that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the specialty.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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.” (Italics added.)

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.

In accordance with the statutory and regulatory provisions to which 8 C.F.R. § 214.2(h)(4)(iii)(A) is related, Citizenship and Immigration Services (CIS) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category. In the present matter, the evidence demonstrates that the petitioner has proffered a position which requires neither the theoretical and practical application of a body of highly specialized knowledge nor the type of specialized degree which signifies the attainment of such knowledge.

The evidence presented about the specific duties of a proffered position is always a critical factor in CIS determinations on the specialty occupation issue. The petitioner's Form I-129 described the proposed duties as follows:

Client Coordinator: responsible of [sic] the overall coordination and direction of program staff and participants. Responsible of [sic] the development and maintenance of positive relationships with funding sources, fellow providers, schools training sites, employers, participants and their families, and staff.

In response to the RFE, the petitioner provided this expanded description of the duties:

- Write admission summary and social service intakes, develop and write individual services plan
- Follow up quarterly client review meetings and family conference, monthly summary notes
- Review all services rendered on a monthly basis, review all goals, determine if emergency case conference needs to be convened
- Assist participants and their families in assessing services such as Social Security, Medicaid, and other
- Arranges for the use of community resources and coordinates and provides liaison between the client and the community, including medical services, home health agencies, community social agencies, and other generic resources
- Complete Individuals [sic] Service Reporting Form for Senior Program
- Complete Agency Quarterly Summary of Services and Individuals Served for [the] Senior Program
- Work directly with clients
- Assist client to make optimal adaptation to utilization of positive change in environment
- Responsible for participants['] integration into the community

In the letter of support (at page 2) that it submitted with the Form I-129, the petitioner noted that it "employs 10 other Client Coordinators." The petitioner's RFE reply (at page 2) acknowledged that these persons "possess Bachelor's degrees in widely diverse fields such as Psychology, Education, Mental Health, Philosophy, Business Administration and Fine Arts."

As will be evident below, the AAO does not concur with the director's speculative comments to the effect that it may be that the proffered position requires a bachelor's degree in psychology. The comments are not supported by the evidence of record, and they are inconsistent with the director's finding that the petitioner had not established that the proffered position is a specialty occupation.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This provision assigns specialty occupation status only to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position's duties. The totality of the evidence, including the petitioner's explanations for the necessity of a baccalaureate degree, does not establish that the proffered position normally requires that particular type of bachelor's degree or equivalent that is the distinguishing feature of a specialty occupation: one in a specific specialty with a body of highly specialized knowledge. The evidence of record indicates that the petitioner did not issue its requirement for a bachelor's degree in order to obtain candidates with a body of highly specialized knowledge required for performance of the position. Rather, the record demonstrates that the petitioner primarily sought an employee with heightened skills in areas such as reading comprehension, analytical thinking, and communication. These skills are associated with a wide range of baccalaureate programs irrespective of the body of knowledge that they convey.

The AAO discounts counsel's assertion (brief, at pages 2, 3) to the effect that the client coordinator position requires certain teaching abilities that are ingrained by an education degree. The totality of the evidence does not support this contention. Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO also finds that none of the three Internet printouts from the National Organization for Human Services Education (NOHSE) support the proffered position as a specialty occupation.

The first NOHSE document, entitled "The National Organization for Human Services Education," is a self-promotional presentation aimed at attracting new members to that organization. This document has little relevancy to this proceeding beyond general information it provides about NOHSE as the organization that produced the other two NOHSE documents in the record.

The information about the human services workers educational programs in the second NOHSE document, entitled "Human Service Education," is inconsistent with counsel's contention that the proffered position is a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). This is clearly evident in the range of educational and training programs which the document cites for human service workers, which include certificate and associate degree programs as well as baccalaureate degrees; the broad range of academic departments providing degree programs for human service work; the broad range of subject areas covered within degree programs (such as "courses in English, history and the sciences, especially the social sciences"); and the skills which these educational programs aim to develop, such as "interviewing," "observing and reporting pertinent information," "conducting groups," "implementing [not creating] treatment plans," "consulting with other workers and agencies," "mobilizing and utilizing community

resources,” “problem solving,” and “advocating for clients.” That the human services worker occupation does not require the practical and theoretical application of a highly specialized body of knowledge required to qualify as a specialty occupation is aptly communicated by the statement (at page 2 of the document) that human services education and training programs were created “not to train another group of specialized professionals but to develop an entirely new kind of worker, the ‘generalist.’”

The third NOHSE document, entitled “The Human Services Worker: A Generic Job Description,” presents six types of “major generic knowledge, skills, and attitudes that appear to be required in all human services work.” The AAO finds that this particular information indicates a type of job that requires an application of generic skills and abilities - such as planning, problem solving, sensitivity to values, and effective oral and written communication - that do not involve the understanding and application of a body of highly specialized knowledge that could be obtained only by achieving at least a baccalaureate degree or the equivalent in a specific specialty.

The AAO recognizes the Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. In its deliberations in this proceeding, the AAO consulted the 2004-2006 edition of the *Handbook* and determined that the duties of the proffered position substantially comport with those described for social and human services assistants at pages 197, 198. While recognizing that “some jobs may require a bachelor’s or master’s degree in human services or a related field such as counseling, rehabilitation, or social work” and that employers “[I]n general” require a baccalaureate or higher degree for advancement, the *Handbook* clearly observes that a baccalaureate or higher degree is not a normal requirement for entry-level positions:

While a bachelor’s degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers’ requirements. Some jobs may require a bachelor’s or master’s degree in human services or a related field such as counseling, rehabilitation, or social work. [Excerpt from page 198.]

In short, because the evidence does not establish that a baccalaureate or higher degree, or the equivalent, in a specific specialty is normally the minimum requirement for entry into the proffered position, the petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status if the evidence establishes the position as one for which there is a specialty degree requirement which is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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 discussed above, the evidence of record does not align the proffered position with an occupation for which the *Handbook* reports a degree in a specific specialty as a minimum entry requirement. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The letter from the staffing company that "hires, trains, and leases entry-level workers" for positions such as the one proffered here identifies a requirement for a baccalaureate degree, but not in any particular academic area. In fact, the staffing company letter indicates that bachelor's degrees in such distinctly different fields as psychology, social work, mental health, education, sociology, philosophy, arts, or human services would be acceptable.

The job vacancy advertisements in the record from other employers are too few to establish that there is an industry-wide hiring requirement for degrees in a specific specialty. Furthermore, they do not refute the contrary evidence that resides in the educational backgrounds of the petitioner's current client coordinators.

The AAO also finds that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, 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 in a specific specialty. To the extent that that it is depicted in the record, the proffered position comports with the type of entry-level human services position for which the *Handbook* indicates that there is usually no requirement for a bachelor's degree in any area of study. Also, the evidence of record decisively demonstrates that the proffered position can be and is being performed by persons without a bachelor's degree in a specific specialty.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) is not a factor in this proceeding, as the evidence about the proposed duties and those who have been hired to perform them establishes that the petitioner has not normally required a degree in a specific specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties and the types of degree held by the petitioner's currently employed client coordinators clearly establish that the duties are not so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Because the petitioner has failed to establish that the proffered position meets any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb that portion of the director's decision that is based upon the specialty occupation issue.

The director was also correct in his decision to deny the petition on the ground that petitioner failed to establish that the beneficiary is qualified to serve in a specific specialty.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As licensure is not an issue, paragraph B (“completion of the degree described in paragraph (1)(B) for the occupation”) is the pertinent provision. The paragraph to which it cites is Section 214(i)(1)(B) of the Act, 8 U.S.C. § 1184(i)(1)(B), *supra*, which refers to “a bachelor’s or higher degree in the specific specialty.” Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C), states that, to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Counsel maintains that the beneficiary is qualified to perform requisite specialty-occupation services by virtue of her holding the foreign equivalent of a U.S. bachelor’s degree in history with a minor in education (as attested to by the e-Val Reports evaluation of the beneficiary’s educational records). Aside from the fact that the proffered position is not a specialty occupation, a baccalaureate or higher degree in history and/or education is not “a degree in the specific specialty” as required by section 214(i)(2)(B) of the Act, 8 U.S.C. § 1184(i)(2)(B), *supra*, or a “degree required by the specialty occupation” as required by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), *supra*. Notwithstanding counsel’s contention to the contrary, this type of degree does not endow a person with highly specialized knowledge that he or she must possess and apply in order for him or her to perform as a client coordinator within the meaning of Section 214(i)(1) of the Act, 8 U.S.C.

§ 1184(i)(1). Not only is there no persuasive evidence in the record to support counsel's position, but also the petitioner's hiring history of individuals with diverse degrees contradicts it.

In summary, the director was correct in denying the petition on both of the grounds stated in his decision.

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.