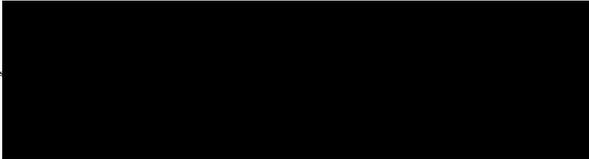


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FILE: WAC 03 069 51200 Office: CALIFORNIA SERVICE CENTER Date: DEC 09 2005

IN RE: Petitioner:
Beneficiary:



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 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, a provider of home health care services with 100 employees, seeks to employ the beneficiary as a human resource training specialist. 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation and that the beneficiary is unqualified to perform the duties of a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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:

An 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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS does not rely simply upon the position’s title. The specific duties of the proposed position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the beneficiary and make a determination as to whether the proposed position in fact qualifies for classification as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In its April 30, 2004 response to the director’s request for additional evidence, the petitioner stated that the beneficiary would spend 15 percent of her time designing tests for job applicants to determine their qualifications and suitability for positions and determine the abilities of new employees; she would spend 25 percent of her time studying employees’ performances and making recommendations to management, devising a plan to most efficiently utilize the skills of employees, and acting as a liaison between management and the labor force; she would spend 15 percent of her time meeting with employees, and management to gather data through interviews and studies of present company policies and procedures; she would spend 15 percent of her time revising company policy, working conditions, and personnel management in order to create the most effective and efficient workplace environment to ensure employees’ satisfaction with their jobs, utilizing her knowledge of personnel management and psychology; and she would spend the remaining 30 percent of her time training employees by conducting classes that provide them with tools to perform their duties.

On appeal, counsel contends that the proposed position qualifies for classification as a specialty occupation, and that the director erred in denying the petition. Counsel also contends that the beneficiary is qualified to perform the duties of a specialty occupation.

In determining whether a proposed 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 AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In its discussion of the occupational grouping “Human Resources, Training, and Labor Relations Managers and Specialists,” the *Handbook* states the following:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization. However, many enterprises are too large to permit close contact between top management and employees. Human resources, training, and labor relations managers and specialists provide this link. In the past, these workers have been associated with performing the administrative function of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers juggle these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies. Senior management is recognizing the importance of the human resources department to their financial success.

In an effort to improve morale and productivity and to limit job turnover, they also help their firms effectively use employee skills, provide training opportunities to enhance those skills, and boost employees' satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the office, dealing with people is an essential part of the job.

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require a broad range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs. In a large corporation, the top human resources executive usually develops and coordinates personnel programs and policies. (Executives are included in the *Handbook* statement on top executives.) These policies usually are implemented by a director or manager of human resources and, in some cases, a director of industrial relations.

The duties of the proposed position appear closely aligned to those of human resources, training, and labor relations managers and specialists, as discussed in the *Handbook*.

The proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a demonstration that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As conveyed earlier in this decision, 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 proposed position. A review of the *Handbook's* discussion regarding the credentials necessary in order to enter this field reveals that a baccalaureate degree *in a specific specialty* is not required:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties of a proposed position, it does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific course of study.

Accordingly, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The AAO has reviewed the job postings submitted by counsel in response to the director's request for evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these job postings are from organizations similar in size or scope of operations to the petitioner. The [REDACTED] provides satellite communications products and services. While no information is submitted regarding the company advertising through the [REDACTED] the AAO notes that [REDACTED] describes itself as a "specialty pharmaceutical recruiting firm." [REDACTED] is a capital solutions firm. No information has been submitted regarding the company advertising its vacancy directly through Monster.com.

The AAO is presented with no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner, a provider of home health care services, in size or scope of operations.

Moreover, the postings do not verify that there is an industry-wide requirement for a degree in a specialty, as none of the postings state that a bachelor's degree in a specific specialty is required. As noted previously, CIS interprets the term "degree" to mean not just any in any field, but one *in a specific specialty* that is directly related to the proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform the duties of a proposed position, it does not qualify as a specialty occupation. *Matter of Michael Hertz Associates* at 558.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Again, the *Handbook* reveals that the proposed position is analogous to those of human resources, training, or labor relations specialists or managers, which are occupations that do not require a degree in a specific specialty. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than similar positions at organizations similar to the petitioner. Counsel appears to concede this point on appeal, stating that "[E]vidence of unique or complex duties is not required in a case in which the Department of Labor agrees that the minimum requirement for the position is a bachelor's degree in the relevant field or a related field."

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

To qualify under this criterion, evidence to support the assertion that the petitioner normally requires a degree or its equivalent must be presented. Since this is a newly-created position, the petitioner cannot establish eligibility under the third criterion.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. As previously discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree in a specific specialty for human resources, training, and labor specialist or manager positions, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex than those of the aforementioned positions. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will not disturb the director's denial of the petition.

As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are inconsequential.

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.