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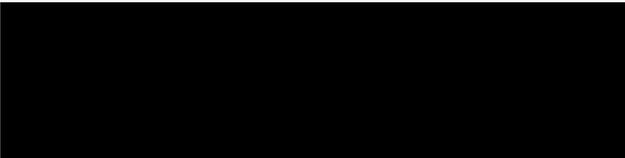
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FILE: WAC 03 180 50076 Office: CALIFORNIA SERVICE CENTER Date: **DEC 09 2005**

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

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 residential facility for the mentally disabled that seeks to employ the beneficiary as a part-time human resources specialist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not 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.

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 part-time human resources specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's May 8, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's May 8, 2003 letter, the beneficiary would perform duties that entail: conducting studies and evaluating current organizational system for improvements; conducting manpower forecasts and budgeting; devising a performance evaluation report; and developing employee programs to reduce job-related stress and other factors. The petitioner's owner/administrator indicated that she preferred to hire an individual with a bachelor's degree.

The director found that the proffered position was not a specialty occupation because the job is not a human resources specialist position; it is an office manager position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, under the category of Office and Administrative Support Worker Supervisors and Managers, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position is that of a human resources specialist, and is not an office manager or an office and administrative support worker supervisor or manager, as the beneficiary will not manage or supervise any employees. Counsel states further that the proposed duties, which entail training employees, analyzing training needs, designing training programs, and researching pertinent employee seminars and workshops, are so complex as to require a bachelor's degree.

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 turns first to 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Counsel's assertion that the proffered position is that of a human resources specialist is noted. Due to the various inconsistencies found in the record, however, the exact nature of the proffered position is unclear. On appeal, counsel states: "[T]he Human Resources Specialist must have the well developed judgment needed to supervise, evaluate and train the staff of the adult residential care facility" Counsel also states: "[The beneficiary] will not be responsible for supervising *any* employees." (Emphasis in the original.) Furthermore, in counsel's April 30, 2004 letter, he states: "With regard to current employees, [the beneficiary] will plan, direct, supervise, and coordinate the personnel and their training at [REDACTED] In view of these inconsistencies, it is not clear whether or not the proffered position entails supervisory duties. Furthermore, in counsel's April 30, 2004 letter, he states that the beneficiary will "work forty hours a week at a full time

position.” This information conflicts with the information reflected on the petition that the proffered position is a part-time, 20-30 hours per week job. In the same letter, counsel asserts that the beneficiary “will be responsible for the supervision of 64 staff members.” This assertion conflicts with counsel’s assertion on appeal that the beneficiary will not supervise any employees. It also conflicts with the number of the petitioner’s employees reflected on the petition, which is 12, and the employees reported on the petitioner’s quarterly wage report for the quarter ending on December 31, 2003, which are: 12 for October; 11 for November; and 12 for December. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Furthermore, even if the AAO were to conclude that the proffered position is that of a human resources specialist, the position would still not qualify as a specialty occupation. A review of the *Handbook*, 2004-2005 edition, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a human resources, training, and labor relations manager or specialist. Employers usually seek college graduates from a variety of educational backgrounds in filling entry-level jobs. Many employers prefer applicants 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. The wide range of acceptable degrees precludes consideration of the occupation as a specialty occupation under the first criterion.

Regarding parallel positions in the petitioner’s industry, the petitioner submitted Internet job postings for various positions related to human resources. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements include human resources positions for hospitals and for a manufacturing business. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertisements. Furthermore, this information is not convincing evidence that the position of a human resources specialist is a specialty occupation in this case, based on the discrepancies discussed above. Thus, the advertisements have no relevance. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record indicates that the proffered position is a new position, the petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

The director also found that the beneficiary was not qualified to perform a specialty occupation because the beneficiary does not hold a related bachelor's degree. On appeal, counsel states, in part, that the beneficiary qualifies for the proffered position because she possesses the equivalent of a baccalaureate degree in psychology. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for office and administrative support supervisory and managerial positions. Most businesses fill office and administrative support supervisory and managerial positions by promoting office or administrative support workers from within their organizations. Furthermore, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty is required for human resources, training, and labor relations managers or specialists. In this case, the record contains a copy of the beneficiary's foreign bachelor's degree in psychology. The record, however, does not contain an evaluation of the beneficiary's credentials from a service that specializes in evaluating foreign educational credentials as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Furthermore, due to the discrepancies discussed above, the exact nature of the proffered position is unclear and, therefore, the AAO is unable to determine whether the beneficiary is qualified to perform the correspondent duties. Nevertheless, the petition may not be approved because the proffered position is not 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.