

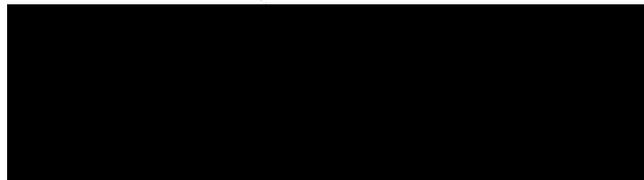
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U.S. Citizenship
and Immigration
Services



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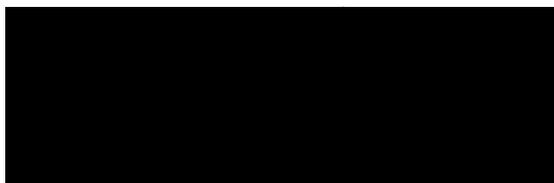
FILE: EAC 03-119-50796 Office: VERMONT SERVICE CENTER Date: DEC 15 2005

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner manages several cemeteries located in Pennsylvania, California, Maryland and Louisiana. It desires to extend its authorization to employ the beneficiary temporarily in the United States as an administrative assistant, at an annual salary of \$25,000, for three years. The director determined that the petitioner did not establish that the proffered position qualifies as a specialty occupation. The director also determined that the petitioner did not establish that the beneficiary is qualified to perform services in a specialty occupation and denied the petition.

On appeal, counsel states that it is simply wrong to readjudicate a previously approved petition and then deny the extension petition when there have been no material changes in the job duties. Counsel also states that the petitioner had already proved that the position requires at least a bachelor's degree and that it has been confirmed by the approval of the petitioner's I-140 Immigration Petition for Alien Worker filed on behalf of the same beneficiary. Counsel contends that the beneficiary's diploma and transcript had been submitted with the original H-1 petition. Counsel submits a brief and supporting documentation in support of the petitioner's position.

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), defines an H-1(b) temporary worker as:

an alien . . . who is coming temporarily to the United States to perform services in a specialty occupation described in section 214(i)(1) . . . and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that the intending employer has filed with the Secretary an application under section 212(n)(1). . . .

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.

Similarly, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) provides that:

Specialty occupation means 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A) establishes four standards, one of which an occupation must meet to qualify as a specialty occupation:

- (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) interpret 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-290B and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) Form I-129 and supporting documentation. The AAO reviewed the record in its entirety before issuing the decision.

The petitioner is seeking the beneficiary's services as an administrative assistant. In determining whether a position qualifies as a "specialty occupation" for purposes of the nonimmigrant H-1B visa, CIS will examine whether there is a general requirement of specialized study for the position, coupled with whether the position has complex and discretionary duties normally associated with the position. *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999).

As presented by the petitioner, the proffered position is complex in that it requires the individual to have advanced skills in order to administer the diverse needs of the business. The beneficiary's specific duties include providing high-level administrative support to the company's president through planning, managing and problem solving of daily operations; planning and analyzing data, coordinating projects, developing and overseeing systems; providing sales and marketing support and preparing financial overhead and expense reports. Additionally, the beneficiary supervises personnel from the different staffs and utilizes computer systems. The petitioner states that the responsibilities of the position have and continue to require an individual with a bachelor's degree. The petitioner also stated that the position requires a bachelor's degree in Business Administration.

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).

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 Department of Labor's *Occupational Outlook Handbook (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. The petitioner states that the proffered position is that of an administrative assistant. However, the duties that the beneficiary will perform are not those of an administrative assistant. A review of the administrative assistant job description in the *Handbook*, 2004-05 edition (pages 469, 470, and 471) confirms that the proffered position is not that of an administrative assistant. According to the *Handbook*, an administrative assistant, in part, is responsible for performing and coordinating an office's administrative activities, providing training and orientation for new staff, conducting research on the Internet, and operating and troubleshooting new office technologies. The AAO finds that the beneficiary's duties in the proffered position parallel those responsibilities of an administrative services manager, who manages the many services that allow the organization to operate efficiently. The *Handbook*, 2004-05 edition gives, on pages 21 and 22 the following information about the training of an administrative services manager:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager . . . In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees. Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience.

No evidence in the *Handbook* indicates that a baccalaureate degree, or its equivalent, in a specific specialty is required to perform the duties of the proffered position. Further, the petitioner has not demonstrated that to perform the duties of the proffered position, an individual requires a bachelor's degree in a precise and specific course of study that relates directly and closely to the position in question. The petitioner only requires a bachelor's degree but does not require a bachelor's degree, or its equivalent, in a specific specialty. The petitioner also states that the position of administrative assistant requires a bachelor's degree in business

administration. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). A general business administration degree as a job requirement rather than a particular specialization within the business specialties does not qualify a job as a specialty occupation because business administration is not a specialized field of study.

The information in the *Handbook* regarding an administrative service manager and the beneficiary's proposed duties demonstrate that a baccalaureate or higher degree, or its equivalent, is not required for entry into the position. The AAO also notes that there is no requirement for a bachelor's degree in a specialty to enter the occupation of administrative assistant, as discussed in the *Handbook* and by the director. Thus, the information contained in the record of proceeding does not establish that the position is a specialty occupation under the first criterion at 8 C.F.R. §214.2(h)(4)(iii)(A).

The record does not include any evidence that a degree requirement is common to the industry in parallel positions among similar organizations. The Petition for a Nonimmigrant Worker (Form I-129) reflects that the petitioner employs 13 persons. Form I-129 also reflects the petitioner's gross annual income as of the petition's filing date as \$1,000,000 and its net annual income as \$100,000. The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position among similar organizations. Thus, the petitioner has not established that the position is a specialty occupation under the first alternative prong of 8 C.F.R. §214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides a petitioner the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner has not established that the proposed duties require a degree in a specific specialty. The petitioner has not distinguished the position as unique from or more complex than an administrative assistant or an administrative service manager, two positions for which the *Handbook* indicates no requirement for a degree in a specific specialty.

The petitioner asserts that it normally requires an individual with a bachelor's degree for entry into the proffered position. In the president's affidavit, dated July 23, 2002, he states that the two individuals that previously held the position prior to the beneficiary had Bachelor of Art degrees. The petitioner does not state that the bachelor's degrees were in a specific specialty. Therefore, the petitioner has not shown that persons holding bachelor's degrees in a specific specialty were previously routinely hired for the proffered position. Consequently, the petitioner has not established the third criterion at 8 C.F.R. §214.2(h)(4)(iii)(A).

Finally, to the extent that they are depicted in the record, the duties of the proffered position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel states that since the original petition was found to be acceptable by CIS and the H-1B visa approved, the extension of the H-1B status should be approved as well. However, each nonimmigrant proceeding is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). The decision does not indicate whether the director reviewed the prior approval of the other nonimmigrant petition. If the prior nonimmigrant petition was approved based on the same set of facts that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm.1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Moreover, the AAO is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S. Ct 51 (2001).

As related in the discussion above, the petitioner has not established the proffered position is a specialty occupation. Accordingly, the decision of the director shall not be disturbed.

The petitioner has not established that the proffered position qualifies as a specialty occupation. Thus, the beneficiary's qualifications are immaterial.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Immigration and Nationality Act, 8 U.S.C. § 1361. Here, the petitioner has not met that burden.

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