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20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
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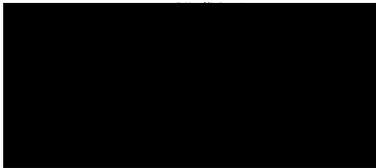
FILE: LIN 03 226 52576 Office: NEBRASKA SERVICE CENTER Date: FEB 23 2005

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 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 is a travel agency that seeks to employ the beneficiary as an executive administrative assistant. 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 a brief and previously submitted and 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 executive administrative assistant. 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 aiding the executive staff by coordinating office services such as personnel, the budget, housekeeping, and records; improving office procedures and policies by attending management seminars; analyzing operating practices such as record keeping, forms, and the office's layout to suggest improvements; evaluating the office's workflow and reviewing programs used by the travel industry; coordinating operating reports such as terminations, new hires, transfers, budget expenditures, time-and-attendance, and performance; preparing reports for presentation to executives; reviewing and answering correspondence; assisting in preparing the budget and annual reports; conducting employee orientation and planning training programs; directing services such as maintenance, supplies, mail, and files; and using the computer to compile, store, and retrieve data. The petitioner stated that the beneficiary is the ideal candidate based on her experience and knowledge of travel agencies. The beneficiary holds a bachelor's degree in social sciences from Ritsumeikan University in Kyoto, Japan.

The director determined that the proffered position was not a specialty occupation. According to the director, none of the beneficiary's coursework at Ritsumeikan University relate to the duties of the proposed position, and noted that the beneficiary's travel agent diploma was never submitted. The director found the job openings and evidence from the *Dictionary of Occupational Titles (DOT)* unpersuasive in establishing that the proffered position qualified as a specialty occupation. Referring to the entry about secretaries and administrative assistants in the Department of Labor's (DOL) online version of the *Occupational Outlook Handbook* (the *Handbook*), the director stated that it shows that a specific bachelor's degree is not required for entry into such occupations, and that skills for administrative assistants are commonly taught in two-year vocational schools. The director stated that the evidentiary record did not establish that the petitioner usually requires a bachelor's degree in a subject relating to administrative assistants; that a baccalaureate degree in a specific subject is common to the industry in parallel positions; or that 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 a specialized area.

On appeal, counsel states that proposed position is a specialty occupation. Counsel contends that the *Handbook* separates executive administrative assistants from ordinary administrative assistants. Counsel states that the beneficiary's education and experience or her experience alone satisfies the SVP 8 requirement. Counsel refers to Dr. Kenneth Knight's evaluation to establish that the beneficiary's duties and her education are "well tied in with specialty occupations," and states that the evaluation establishes that the nature of the beneficiary's 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. Counsel contends that the submitted job advertisements establish that an executive administrative assistant requires 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 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)).

Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT*. However, 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 because the DOL has assigned it a specific SVP rating in the *DOT*.

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.

As already discussed, the AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the duties of the proposed position are performed by secretaries, executive secretaries, and administrative assistants. The *Handbook* states that specific job duties vary with experience and titles. According to the *Handbook*:

Executive secretaries and administrative assistants, for example, perform fewer clerical tasks than do other secretaries. In addition to arranging conference calls and scheduling meetings, they may handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff.

The *Handbook* states that secretaries and administrative assistants use personal computers to create spreadsheets, compose correspondence, manage databases, and create presentations, reports, and documents by using desktop publishing software and digital graphics—all tasks previously handled by managers and professionals.

The *Handbook* reports that high school graduates who have basic office skills may qualify for entry-level secretarial positions, and that secretaries and administrative assistants acquire skills in various ways such as high school vocational education programs, and 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. The *Handbook* explains that bachelor's degrees and professional certifications are becoming increasingly important as business continues to become more global.

The petitioner 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, executive administrative assistant. The *Handbook* plainly reveals that employers do not require secretaries and administrative assistants, the job category which the proffered position falls within, to possess a bachelor's degree in a specific specialty.

The evaluation from Dr. Knight is not persuasive in establishing the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). The evaluation stated that the executive administrative assistant/executive secretary:

would be considered a specialty occupation that normally requires the equivalent of a U.S. [b]achelor's or a related degree.

However, Dr. Knight submitted no evidence that would support his statement. 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). In addition, Dr. Knight does not state that a bachelor's degree in a specific specialty is required for the proffered position. As previously mentioned, 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. Consequently, the evaluation from Dr. Knight fails to 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, executive administrative assistant.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the record contains Dr. Knight's evaluation and the job advertisements. The AAO has already discussed the shortcomings with Dr. Knight's evaluation. The job advertisements from the training and visualization center, Esterline Technologies, Samaritan North Lincoln Hospital, and Air France require a bachelor's degree, though not in a specific specialty. Mill-Run Tours, Inc. requires a bachelor's degree in liberal arts. As stated by the court in *Matter of Micheal Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Because the advertisement simply requires a bachelor's degree in liberal arts, without indicating a specific field of concentration, it cannot be used to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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. Again, the *Handbook* reveals that the duties of the proposed position are performed by secretaries, executive secretaries, and administrative assistants, occupations that do not require a bachelor's 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.

The petitioner fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it establish 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 *Handbook* reveals that the duties of the proposed position are performed by secretaries, executive secretaries, and administrative assistants, occupations that do not require a bachelor's degree.

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.