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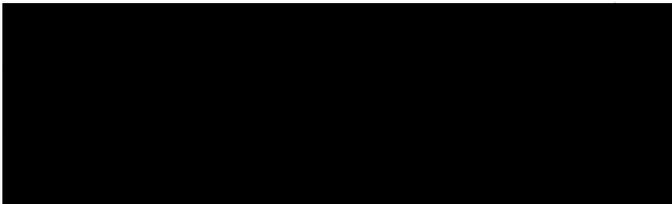
FILE: LIN 04 007 52124 Office: NEBRASKA SERVICE CENTER Date **JAN 03 2005**

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 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 non-profit children's summer camp. In order to employ the beneficiary as its program director, 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 the basis that the petitioner had failed to establish that the proffered position met the requirements of a specialty occupation. On appeal, counsel submits a one-page document on the petitioner's letterhead, dated December 16, 2003, to "underscore several points," namely that: all five of the petitioner's program directors over the past twenty years have held baccalaureate degrees, which the petitioner deems essential to the position; few persons hold degrees in camp administration, due to the relatively small size of the non-profit camping business; and the program director position requires a wide range of skills, including, but not limited to, the ability to manage the camp's budget and to organize the campers' transportation, housing, feeding, and training.

The AAO has determined that the director's decision to deny the petition was correct. The petitioner has not established that the proposed position is a specialty occupation as defined by the Act and its implementing regulations. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (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 and the aforementioned December 16, 2003 document, which is attached to the Form I-290B.

The Form I-129 provides this description of the proposed duties upon which the petitioner expounded in other submissions to the record:

Overall management of personnel; evaluate the need for new employees[;] prepare applications materials[;] conduct periodic recruitment of new personnel on a national level[;] prepare employment contracts & hire new employees[;] oversee all employment-related record keeping[;] & directly supervise all camp personnel; staff training & development[;] developing & implementing hiring & employment policies[;] evaluating camp personnel on [an] annual basis[;] & resolving any workplace conflicts that arise; authority to hire or terminate any camp employee in coordination with the camp director; administration of the camp's day-to-day operations; coordination of travel for staff & campers to and from the camp[;] planning & oversight of all off-season use of the camp[;] development & new partnerships & business opportunities[;] planning & supervising [the petitioner's] comprehensive safety plan[;] oversight of budgetary and inventory functions[;] planning & oversight of evening activities during the summer sessions[;] and oversight of maintenance & care of the camp.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 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.

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 specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

The AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO consulted the 2004-2005 edition of the *Handbook* for information relevant to the petitioner's camp program director position.

The director correctly determined that the proffered position has general manager aspects to it, and the *Handbook* information on general managers supports the director's determination that the general manager occupation is not one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty. See the 2004-2005 *Handbook* section on top executives, including general and operations managers, at pages 64-68. The AAO finds that the proffered position also falls within the scope of the 2004-2005 *Handbook's* section on recreation and fitness workers, at pages 393-395. In fact, the *Handbook* there expressly focuses on camp directors as persons who "typically supervise camp counselors, plan camp activities or programs, and perform the various administrative functions of a camp." However, the *Handbook* reports that in the private arena, where the proffered job is offered, "a bachelor's degree in any liberal arts field may be sufficient for some jobs in the private sector." The *Handbook* also indicates that studies in management, business administration, accounting, and personnel management are "helpful" (not required) for advancement to supervisory or managerial positions in recreational occupations. Therefore, the import of the *Handbook* is that the director correctly determined that the proffered position is not one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty.

The director correctly discounted the documents that the petitioner submitted from other sources on the specialty occupation issue. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The letters from the marketing professor at Seattle University and from the management professor at Seattle Pacific University have little evidentiary value. They are conclusionary: neither states an adequate factual basis for finding that the proffered position is one that normally requires a bachelor's degree in business with a major in management. Furthermore, neither the letters nor the attached resumes establish that these professors have specialized knowledge in the area of camp management or that their familiarity with the

private non-profit summer camp business extends beyond the limited material that the petitioner has submitted into this record. Furthermore, neither professor addresses the authoritative information of the *Handbook*, earlier discussed herein, that contradicts their findings. Nor do the professors address the fact that the letters submitted from the other camps indicate that, contrary to the professors' findings, they do not normally require the degree identified by the professors.

Because the evidence of record has not established that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, 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 to a proffered position requiring at least a bachelor's degree in a specific specialty that is common to the petitioner's 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 earlier in this decision, the evidence does not establish that the proffered position is one for which the *Handbook* indicates an industry-wide requirement for at least a bachelor's degree in a specific specialty. The director was correct to discount the letters from the other camps. None of them attest that its respective organization recruits and employs only individuals with at least a bachelor's degree in a specific specialty. In fact, the letters reflect that their three camps hire program directors with a variety of degrees without a common specialty (that is, a bachelor of arts degree in business administration with a major in marketing; a "degree in Business Studies"; and "an undergraduate degree.")

The AAO also found 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). This criterion provides that, instead of proving a specialty degree requirement common to the petitioner's industry, "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." While the proffered position is complex in the sense that it involves a variety of different duties, the evidence of record does not establish that it is unique from or more complex than similar positions that do not require a bachelor's degree in a specific specialty.

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty. The evidence of record does not establish the petitioner's history of recruiting and hiring exclusively persons with a specialty degree closely related to the duties of camp project director. It is noted that the petitioner asserts

that it has required a bachelor's degree for the past twenty years. However, the record lacks documentation (such as diplomas, transcripts, and educational evaluations of any foreign degrees) to establish both the accuracy of that assertion and the specific type of the degrees held. 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). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, as indicated early in this decision, to support a position as a specialty occupation, a degree requirement must be in a major or concentration of studies in a specific specialty that is required for job performance. Hence, the petitioner's reference to bachelor's degrees in general is misdirected.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The evidence of record does not demonstrate that the proposed duties are so specialized and complex as to require such highly specialized knowledge as that usually associated with a baccalaureate or higher degree in a specific specialty. The record lacks persuasive evidence that this is the case, and the three letters from other camps are direct evidence that it is not.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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