

U.S. Citizenship  
and Immigration  
Services



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JUN 01 2008



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:

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:  
SELF REPRESENTED

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 medical billing and practice management firm that seeks to employ the beneficiary as a management/operation 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 beneficiary does not hold a master's degree and therefore does not meet any of the criteria to qualify to perform services in the specialty occupation. The petitioner submits a brief 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 documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management/operation 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 collecting, organizing and analyzing the company's current financial data and reports; assisting general manager in preparation of financial reports on a quarterly basis, including income statements, balance sheet, profit and loss, cash flow statement and report to the president (15%); preparing journal entries recording transactions, which include; bank transactions, allocation of various types of expenses and reconciliation entries; analyzing and examining company's priorities and resources, budget estimate and cost benefit; updating the financial management system with changes, financial and non-financial, to ensure that accurate and updated information is readily available; coordinating with corporate offices on matters relating to the review and translation of financial background information of those that are interested in becoming company's investors (10%); compiling and retrieving financial information of future investors, such as tax, cash flow, asset, etc. information may include the Form 1120, balance sheet, tax report, financial statement, business plan and other financial documents from foreign countries such as China, Taiwan, Singapore etc; integrating and helping analyze financial data, forms records reports, and financial background information and situation (15%); analyzing current company operational procedures and common office operations to determine existing/potential problems and developing possible solutions and improvements; gathering and organizing information on present operational problem; conducting operational effectiveness reviews to ensure functional systems are applied and functioning as designed; developing and updating functional or operational manuals outlining established methods of performing work in accordance with company policy; participating in panel with president in drafting the corporation's standard operational procedures for daily business operations and comprehensive operation plans for business expansion for the next three years; the plans will focus on reducing paperwork and workload as well as increasing profit and efficiency by cutting overhead cost (15%); contacting account representatives and gather services information and sales information; reviewing and summarizing the sales record and sales volume of each representative on a quarterly basis; assisting in analyzing market demands in both local market and nationwide market according to sales data (15%); collecting and organizing information on ordering activities, sales records and sales volumes; helping analyze the current market trends and service demands through examination of the data gathered; evaluating the possibility of adding new items to the company's existing catalogue and identify what type of items should be added in the future that would yield maximum profit; updating financial management systems with changes, financial and non-financial, to ensure accurate and updated information is readily available (10%); collecting and reviewing the company's tax form, financial statement, accounting system and be familiar with computer-based budgeting system; utilizing the knowledge of management systems and expertise in business administration to develop solution to the problem incurred (10%); assisting in analyzing company operations including client reception, follow-up procedures, ordering supplies, and common office operations to determine possible improvements (10%); gathering and organizing information on present operational problems; conducting operational effectiveness reviews to ensure functional systems are applied and functioning as designed; developing and updating functional or operational manuals, outlining established methods of performing work in accordance with company policy.

The petitioner indicated that the minimum educational requirement for the proffered position is a bachelor's degree or higher in business administration, management or finance.

The director requested additional evidence to establish that the proffered position qualifies as a specialty occupation. The director requested evidence that the proffered position is a common position required by

similarly sized offices with similar annual incomes. Additionally, the director asked for evidence that the petitioner's competitors normally require degrees for closely related positions to that of operation /management assistant.

The petitioner responded to the request and stated that the beneficiary must be well trained in business administration, management, economics, or finance so that she can analyze and revise the company's current operational procedures to "make our company better for the expansion plans that are currently in place." The petitioner listed college courses that would provide this type of knowledge and ability. The petitioner added "as specified by the complex job duties stated above, the position offered is more in line with a managerial and financial assistant position." The petitioner submitted previous H-1B petitions that had been approved by CIS for other petitioners and stated that these cases supported its contention that there are many similar organizations in the industry that have set the same degree requirement in parallel positions. The petitioner admitted that this is a newly created position.

The director determined that the proffered position reflected the duties of an operations research analyst found in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director noted that the petitioner had submitted several prior H-1B approvals for other beneficiaries as evidence, but that the approvals do not obligate CIS to approve a subsequent petition or relieve the petitioner of providing sufficient documentation to establish current eligibility. The director noted that a master's degree or higher is the normal minimum requirement for entry into this position and concluded that the beneficiary does not meet any of the criteria to qualify to perform services in the specialty occupation.

On appeal, the petitioner contends that the actual duties of an operation/management assistant in its office greatly deviates from the duties of a typical operation research analyst. The petitioner contends that the majority of the duties of the proffered position are focused on general administrative, financial and managerial administration. The petitioner submitted the section from the *Handbook* entitled administrative services manager to support its contention. Based upon the record of proceeding and the *Handbook*, the AAO agrees with the petitioner that the proffered position most closely resembles that of an administrative services manager.

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

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.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

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 service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion, as the *Handbook* indicates that educational requirements vary widely. Accordingly, 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 proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits previously approved H-1B petitions from different petitioners. However, each nonimmigrant petition is a separate proceeding with a separate record. 8 C.F.R. §103.2(b)(16)(ii). The petitioner noted that CIS approved other petitions that had been previously filed on behalf of other petitioners and beneficiaries. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals 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).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be 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).

The evidence fails to establish that a specific baccalaureate degree 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 proffered position are performed by administrative managers, a position that does not require a bachelor's degree in a specific specialty.

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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner 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 petitioner states that the level of specialization and complexity of the listed duties is "beyond those normally encountered in this particular occupation, which clearly demonstrates that the job offered cannot be performed by an individual whose educational training falls short of a baccalaureate degree." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner indicates that the majority of the listed duties are administrative. The petitioner stated that it had more than three employees and submitted a Form 1040 schedule C for tax year 2002 that indicated gross receipts of \$40,000. The petitioner has not sufficiently described the complexity of the listed job duties as related to the petitioner's business interests to establish that this position requires a degree in a specific specialty. Once again, the *Handbook* reveals that the duties of the proffered position are performed by administrative services managers, an occupation not requiring a bachelor's degree in a specific specialty.

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.

Although the director stated that the beneficiary is not qualified to perform the duties of the proffered position, because the position is not a specialty occupation, the beneficiary's qualifications need not be addressed.

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.