



U.S. Citizenship
and Immigration
Services

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prevent... granted
invasion of personal privacy

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JUN 01 2005



FILE: [REDACTED] Office: VERMONT 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 health care management company that seeks to employ the beneficiary as an executive 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 proposed position is not a specialty occupation and because the beneficiary is not qualified to perform the proffered position. On appeal, the petitioner states that the beneficiary is qualified for the proffered position.

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 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 serving as the executive assistant to the chief operating officer; maintaining scheduling, correspondence, travel arrangements; using the computer and maintaining the database; coordinating and attending meetings; and communicating with associates. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree and be able to handle the daily workflow.

The director determined that the proffered position is not a specialty occupation. The director stated that the proposed position resembles a secretary as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reflects that employers do not require a secretary to hold a bachelor's degree.

On appeal, the petitioner enhances the beneficiary's job duties by stating that she will study and analyze the laws and cultural practices regarding the administration of healthcare facilities in the United Kingdom, and will analyze and determine cultural trends and consumer habits, desires, and needs to improve productivity.

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.

In response to the request for evidence, the petitioner explains "a person with a baccalaureate is needed to handle the amount and speed of daily work flow." The petitioner requires a bachelor's degree, though it need not be in a specific specialty. As already stated, Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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. Furthermore, 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.

In light of the Act and regulations, the petitioner's educational requirement of a bachelor's degree is not enough to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): (1) that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position; (2) that a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; (3) that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position; or (4) show 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 in a specific specialty.

It is important to note that the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The AAO adjudicated this appeal based on the record that was before the director.

Because the proposed position is not a specialty occupation, whether or not the beneficiary qualifies to perform it is inconsequential in this proceeding.

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.