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U.S. Citizenship
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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:
[Redacted]

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 California 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 nursing facility for the developmentally disabled, with five employees. It seeks to hire the beneficiary as an administrative assistant. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as an administrative assistant. Evidence of the beneficiary’s duties includes: the Form I-129; a September 24, 2003 letter from counsel; and counsel’s March 9, 2004 response to the director’s request for evidence.

At the time of filing, the petitioner stated that the beneficiary would be required to analyze management policies, procedures and practices; recommend and implement revisions in policies, procedures and practices to improve workflow, simplify reporting procedures, or implement cost reductions (30%); analyze operating reports such as billings and collections; attendance records; worker performance evaluation; budget and expenditures in order to make recommendations to increase efficiency and productivity (30%); make regular consultations with administrator and other officials and staff to implement recommendations to management (25%); set-up and implement mechanisms such as personal consultations with staff and officers and questionnaires to determine efficiency of new policies and analyze results for further changes (15%).

The petitioner indicated that a bachelor’s degree or higher and at least two years experience in the job or a closely related position was required for the position. Counsel stated that the proposed duties are synonymous with that of an operations research analyst found in the Department of Labor’s *Occupational Outlook Handbook (Handbook)*.

The director issued an extensive request for evidence specifically requesting a more detailed job description and information pertaining to the petitioner. The director request a more detailed description of the petitioner’s business organization including published material which outlines, in detail, the products or services provided by the company. Additionally, the director requested copies of the petitioner’s federal income tax returns, state income tax returns, the California state Form DE-6 Quarterly wage report and the federal quarterly wage report and payroll summary. The director requested a copy of the petitioner’s line and block organizational chart showing its hierarchy and staffing levels as well as a list of all employees.

In response, counsel expanded on the listed duties of the proffered position which would include: consulting the CEO/owner, administrator, facility manager regarding policies on admission of clients; the need for services of, and compensation for consultants, managed care policies and reviewing existing policies on these matters; consulting finance officer regarding budget and expenses; consulting maintenance regarding inventory and storage of supplies; consulting the registered nurse regarding managed care policies; consultation with finance officer regarding billings, collectibles, and expenses; reviewing financial records to determine variances in budgets unauthorized and unnecessary expenses; review payroll records vis-a-vis attendance records; consult personnel manager regarding salaries, wages, per diems, work performance and evaluation, services rendered by consultants; attend bi-monthly consultations with staff and officers; coordination with personnel manager regarding work evaluation, finance officer regarding budget and expenses; attend meetings with administrator and CEO/owner regarding day-to-day implementation of facility policies including healthcare and management issues.

The petitioner submitted copies of the school transcripts and degree for the beneficiary. The beneficiary holds a bachelor of science degree which has been determined to be equivalent to a bachelor of science degree in nursing from an accredited institution in the United States. Counsel stated that the petitioner is a licensed nursing facility and has one location. The petitioner provided copies of its federal and state tax returns for the tax year 2002. The petitioner stated that it has five full-time employees including the beneficiary. The petitioner contends that it has eleven consultants and submitted a list of its consultants. The petitioner did not submit any employment contracts or other evidence of the consultants' employment. The petitioner submitted an organization chart for one residential facility.

In his denial, the director noted that the duties of the position appear to reflect many of those performed by Operations Research Analyst as described in the *Handbook*. However, the director was not convinced that the beneficiary would actually perform the claimed duties and noted that the petitioner's reliance on a list of duties resembling those of an Operations Research Analyst taken from the *Handbook* to establish the proffered position as a specialty occupation was misplaced. The director noted that Operations Research Analysts are employed on a contracted basis as consultants for no more than the brief time necessary to research, compile and identify the client's or employer's potential markets and make recommendations to its management. The director found that the evidence failed to establish that the petitioner engages in the type of business for which an Operations Research Analyst would normally be required on a full-time or part-time basis for any length of time. Further, the director found that the record was insufficient to establish that the petitioner had the organizational complexity to substantiate a position for a full-time Operations Research Analyst.

On appeal, counsel confirms that the petitioner operates a residential care facility and restates the previously described position duties. Counsel states that the director erred in concluding that the beneficiary will not be performing the position duties. Counsel asserts that "absent proof that the beneficiary will not perform the duties of the position, denial of the subject petition based on this assertion is misplaced." Counsel contends that 60% of the beneficiary's time shall be spent on analysis of management policies, procedures and practices and business operations to find ways to improve workflow, productivity and reduce cost. Counsel explains that while the petitioner is a small organization, it needs access to the same professional resources which large companies require in order to effectively run its business.

On appeal, counsel contends that there is a reasonable need for the position and that the proffered position of administrative assistant is a specialty occupation within the meaning of the regulations.

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*, 812 F. Supp. 872, 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 refers to an unpublished decision to support his contention that the position of an administrative assistant is a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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. Counsel contends that this employer normally requires a degree or its equivalent for the position. Counsel states that CIS has previously approved this petition and that this is an extension. Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve 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). Neither CIS nor any other 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).

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. Counsel asserts that the "above listed responsibilities for the proffered position indicates a complexity that is beyond what is normally encountered in usual administrative assistant positions such that knowledge required to perform said duties is associated with the attainment of a baccalaureate or higher degree." Without documentary evidence to support the

claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The majority of the listed duties are routinely performed by administrative services managers. The AAO notes that the petitioner has five employees and submitted a business license to operate a home care facility with six beds. Although counsel stated that the beneficiary would make regular consultations with the finance officer regarding billings, collectibles, and expenses, the record does not contain evidence of how this duty requires a degree in a specific specialty as required by the statute.

It cannot be concluded 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. 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.

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.