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Washington, DC 20529



**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAR 15 2005

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:



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 service center director 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 recruitment firm that seeks to employ the beneficiary as a chemical engineering recruiter. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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. Counsel submitted a timely Form I-290B on October 24, 2003 and indicated that a brief and/or additional evidence would be submitted to the AAO within 90 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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 a chemical engineering recruiter. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 3, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the petitioner's July 3, 2003 letter, the beneficiary would perform duties that entail: seeking out, interviewing, screening, and recruiting job applicants to fill chemical engineering job openings; contacting chemical engineering departments in colleges to arrange on-campus interview and provide information on company facilities and job opportunities to potential applicants; obtaining work history, education, training, job skills, and salary requirements; screening and referring qualified applicants to hiring personnel for follow-up interviews; performing reference and background checks and notifying applicants of employment considerations; filing and maintaining a database of employment records; and projecting yearly recruitment expenditures for budgetary control. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in chemical engineering or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so specialized and complex as to require a baccalaureate degree. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the *Handbook* clearly states that the proffered position, which is a recruiter of chemical engineers, is a specialty occupation. Counsel states further that the record contains expert opinion letters and Internet job advertisements as supporting documentation. Counsel also states that that the director concluded unfairly that the petitioner did not provide copies of the degrees for the petitioner's other employees, as such documentation was not requested of the petitioner.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position is similar to that of a placement specialist. The AAO does not concur with counsel that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree in a specific specialty is required for a placement specialist job. A wide range of educational backgrounds is suitable, including a well-rounded liberal arts education. Although the *Handbook* also indicates that some jobs may require a more technical or specialized

background in backgrounds such as engineering, science, finance, or law, the petitioner has not demonstrated that the proffered position is so specialized and complex as to require a degree in a specific specialty. It is further noted that although in his September 8, 2003 letter counsel states that all of the petitioner's recruiters who place professionals have degrees in their respective areas of expertise, the record contains no evidence to support his claim. 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). Furthermore, although counsel states on appeal that the director unfairly concluded that the petitioner had submitted no evidence to demonstrate the educational background of its current recruiters, the petitioner still has not provided such evidence. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for placement specialists/recruiters. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. For example, one of the positions is that of recruiter for the "Biotech/Scientific practice" of a leading Boston area specialty recruiting firm, HireMinds LLC, that requires a degree in biology, chemistry, or a related discipline. Another position is that of scientific recruiter for the scientific division of the [REDACTED], one of the largest staffing services firms in the United States, which requires a bachelor's degree in biology, chemistry, or an equivalent thereof. The record does not contain any evidence that the proposed duties of the proffered position are as complex as the advertised positions. In this case, the petitioner, which is a recruitment firm that was established in 1987, currently has four employees and a gross annual income of \$555,407. The petitioner's brochure indicates that it provides placements in the hospitality and food service industries. Although counsel states in his September 8, 2003 letter that the petitioner is now recruiting chemical engineers due to employer demand in this area, the record contains no evidence to support this statement. 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). In view of the foregoing, the advertisements have no relevance.

The record also contains two letters from individuals employed in the recruiting industry. Both writers assert that positions such as the proffered position require a baccalaureate degree in chemical engineering. Neither writer, however, provides any evidence in support of her assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As the record does not contain any evidence of the petitioner's past hiring practices, the petitioner has not met its burden of proof in this regard. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.