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U.S. Citizenship  
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[Redacted]

FILE: WAC 03 238 50103 Office: CALIFORNIA SERVICE CENTER Date: MAR 18 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:  
[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 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 licensed residential care facility that provides board and care for the elderly. In order to employ the beneficiary as a human resources (HR) coordinator, 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 accepted the proffered position as a specialty occupation but denied the petition on the basis that the petitioner had failed to establish that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

Contrary to the director's finding, the petitioner has failed to establish that the proffered position is a specialty occupation. The AAO bases this determination on its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (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 (with its annotations by counsel), and counsel's brief and its attached documents. Therefore, the AAO exercises its discretion to affirm the denial of the petition on a ground not cited by the director but supported by the record of proceeding. The appeal shall be dismissed, and the petition will be denied.

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’s August 1, 2003 letter of support (at pages 2 to 5) outlined five distinct areas of tasks and responsibilities to which the beneficiary would have to attend in order to coordinate all of the petitioner’s human-resources related processes. The HR System Implementation and Administration area is described as the planning and execution of all phases of the petitioner’s HR processes. Recruiting and Staffing encompasses: establishing staffing needs; determining the positions to be filled and developing the related job descriptions and minimum requirements; writing job postings and advertisements; developing outside recruiting resources; recruiting, screening, and recommending candidates for employment; and assisting in improvement of employment procedures, policies, and forms. Training and Development includes responsibility for: identifying training needs; planning, developing, and negotiating training strategies with management and external providers; hiring training consultants; overseeing the budget for training resources; overseeing the cost-effectiveness of training; assessing training effectiveness; and monitoring industry trends. Compensation and Benefits includes a list of tasks and responsibilities required for establishing, assigning, and administering benefit plans for eligible employees. The Legal Compliance component of the position involves tasks aimed at ensuring the petitioner’s compliance with federal, state, and local legislation related to the petitioner’s treatment of its employees. Associated duties include review and oversight of the petitioner’s

policies towards its employees, monitoring hiring practices, helping to resolve employment relations issues, and responding to and investigating employee complaints of discrimination. According to the letter of support (at page 5), the proffered position “requires the services of an individual with a high level of knowledge and understanding of human resource skills, management and development, requiring a least the possession of a bachelor’s degree.”

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 *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the petitioner’s submitted copy of the 2000-2001 *Handbook* edition’s section on human resources, training, and labor relations specialists and managers. The proffered position comports with the HR generalist occupation as described in that section of the *Handbook*. However, the *Handbook* indicates that, while employers of HR generalists and other human resources, training, and labor relations specialist positions usually seek college graduates, they do not normally require a degree in a specific specialty. The opening paragraph of the 2000-2001 *Handbook*’s section on training, qualification, and advancement (at page 59) is illustrative:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Many colleges and universities have programs leading to a degree in personnel, human resources, or labor relations. Some offer degree programs in personnel administration or human resources management, training and development, or compensation and benefits. Depending on the school, courses leading to a career in human resources management may be found in departments of business administration, education, instructional technology, organizational development, human services, communication, or public administration, or within a separate human resources institution or department.

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example. Most prospective human resources specialists should take courses in compensation, recruitment, training and development, and performance appraisal, as well as courses in principles of management, organizational structure, and industrial psychology. Other relevant courses include business administration, public administration, psychology, sociology, political science, economics, and statistics. Courses in labor law, collective bargaining, labor economics, labor history, and industrial psychology also provide a valuable

background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems also is useful.

The additional evidence that the petitioner submitted into the record, including other employers' job advertisements and publications on the uses of a psychology degree and on the educational requirements for human resource positions, are consistent with the *Handbook*. They indicate that, while a psychology degree is suitable for human resource positions such as the one proffered here, it is not normally required. Also the range of acceptable degrees reflected in the evidence of record indicates that the possession and application of highly specialized knowledge in a specific specialty is not a normal minimum requirement for entry into positions such as the one proffered here. Rather, as indicated by the range of distinctly different college degrees that employers find acceptable, employers value college degrees for the enhanced generalized skills that they usually signify in areas such as oral and written communication, critical thinking, and problem solving.

As the evidence of record does not establish that a bachelor's degree, or its equivalent, in a specific specialty is normally a minimum entry requirement for the proffered position, 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 with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

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 any specific specialty. Also, the record does not include any submissions from firms or individuals in the industry attesting that they routinely employ and recruit only persons with at least a bachelor's degree in psychology or a closely related field.

The job vacancy announcements are not persuasive. These documents are too few to establish an industry-wide standard. Also, the job vacancy advertisements in the record mirror the *Handbook's* information:

they indicate too wide a range of acceptable baccalaureate degrees to be indicative of an industry-wide requirement for a degree in a specific specialty.

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), which provides an employer the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record does not demonstrate this performance requirement, as it fails to establish that the proffered position is unique from or so much more complex than the normal range of human resources specialist positions that, as already discussed, do not require such a degree.

The petitioner has not presented evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

Finally, the petitioner has not satisfied 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 any more specialized and complex than those performed by human resources specialists in general, and the *Handbook* indicates that such positions do not normally require a degree in a specific specialty.

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 to deny the petition 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.