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U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 197 50683 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



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

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 dental clinic, with offices in Santa Monica and Calabasas, California and six employees. It seeks to hire the beneficiary as an administrator for its facilities. The director denied the petition because he determined the record did not establish that the beneficiary was qualified to perform the duties of a specialty occupation.

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

Although the director found the petitioner's position to be that of a medical and health services manager, and, therefore, a specialty occupation, the AAO's review of the duties of the proffered position has not led it to these same conclusions. As a result, the initial 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, the 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 must examine the ultimate employment of the alien. *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 duties of the position actually require 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 administrator. Evidence of the beneficiary’s duties includes: the Form I-129 and a May 22, 2002 letter of support from the petitioner.

The description of the proffered position provided by the petitioner in its Form I-129 states that the beneficiary will direct the administration of its dental care facilities within the authority of state administrators and its governing board. It elaborated on this statement in its May 22, 2002 letter, noting that an administrator would be required to:

- Administer fiscal operations, such as budget planning, accounting and establishing rates for dental care services;
- Direct training and hiring of personnel;
- Negotiate for improvements to facilities, including adding state of the art dental equipment;
- Direct and coordinate activities of administrative staff, dental personnel and services; and
- Develop policies and procedures for business activities.

To make its determination whether the employment just described by the petitioner qualifies as a specialty occupation, the AAO turns 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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 his denial, the director, relying on the 2002-2003 edition of the DOL *Handbook*, determined that the duties of the proffered position were those of a medical and health services manager, an occupation that generally requires those seeking employment to have a master’s degree in a related field. In reaching its own conclusions regarding the proffered position, the AAO has relied upon the 2004-2005 edition of the *Handbook*. The *Handbook*, at pages 55-56, states the following with regard to medical and health services managers:

Healthcare is a business and, like every other business, it needs good management to keep it running smoothly. The occupation, medical and health services manager, encompasses all individuals who plan, direct, coordinate, and supervise the delivery of healthcare. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help to manage an entire facility or system....

Large facilities usually have several assistant administrators to aid the top administrator and to handle daily decisions. Assistant administrators may direct activities in clinical areas such as nursing, surgery, therapy, medical records, or health information....

Clinical managers have more specific responsibilities than do generalists, and have training or experience in a specific clinical area. For example, directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor’s degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work; develop reports and budgets; and coordinate activities with other managers.

Based on this discussion, the AAO finds the occupation of medical and health services managers to include those professions that, in some way, provide direction and oversight in the delivery of healthcare. This description does not, however, cover every occupation in the healthcare industry. As the AAO finds the duties of the proffered position, as described by the petitioner, to be administrative and financial in nature, it concludes that the position is not that of a medical or health services manager.

Instead, the AAO finds the proffered position to be closely aligned to the occupation of administrative services managers who work in various types of employment settings across the U.S. economy. The *Handbook*, at page 21, states the following with regard to the responsibilities of those who work as administrative services managers:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services These workers manage the

many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers . . . develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service Mid-level managers also may be involved in the hiring . . . of employees

In small organizations, a single administrative services manager may oversee all support services

Administrative services managers who work as facility managers plan, design and manage buildings and grounds in addition to people. They are responsible for coordinating the physical workplace with the people and work of an organization Although the specific tasks assigned to facility managers vary substantially depending on the organization, the duties fall into several categories, relating to operations and maintenance, real estate, project planning and management, communication, finance, quality assessment, facility function, technology integration and management of human and environmental factors

As to whether a baccalaureate or higher degree, or its equivalent, is the minimum requirement for employment as an administrative services manager, the *Handbook*, at page 22, states:

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. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance

Although the *Handbook* describes the varying educational requirements for the occupation of administrative services manager as including a baccalaureate degree requirement for employment in highly complex services, it does not indicate that such a degree, or its equivalent, is normally the minimum requirement for entry-level employment in the occupation. The AAO, therefore, concludes that the petitioner cannot establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). In

that the proffered position is closely aligned to the occupation of administrative services manager, which does not impose a degree requirement, rather than that of a medical and health services manager, the AAO withdraws the director's finding that the petitioner has established its position as a specialty occupation.

The AAO now turns to a consideration of whether the petitioner, although unable to establish its proffered position as a specialty occupation under the first criterion, may qualify it under one of the three alternative criteria remaining: a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. However, a review of the record finds the petitioner has not attempted to establish its position as a specialty occupation based on a degree requirement within its industry, nor does it claim to have previously employed degreed individuals in the position of administrator. The AAO, therefore, will consider whether the duties of the proffered position, as described by the petitioner, can meet the "specialized and complex" threshold of the fourth criterion.

In its May 22, 2002 letter of support, the petitioner describes the proffered position as being "highly specialized and complex." However, the AAO's review of the position's duties does not lead to a conclusion that they are so specialized and complex that they would require a higher degree of knowledge and skill than would normally be expected of administrative services managers who work in a range of highly responsible positions across private industry and government. Accordingly, the AAO finds that the position does not qualify as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO will now address the beneficiary's qualifications.

On appeal, counsel states that the beneficiary possesses two degrees awarded by universities in The Philippines, including a doctorate in dental medicine, and more than seven years of experience in the administration of dental care facilities. Counsel asserts that the beneficiary's combined degrees and experience qualify her to perform the duties of the petitioner's proffered position. The AAO agrees that experience, if related to a specialty occupation and appropriately documented, may, when combined with education, provide the equivalent of a baccalaureate or higher degree for the purposes of meeting the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) – have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a U.S. baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For the purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may establish that the beneficiary holds the equivalent of a U.S. baccalaureate or higher degree by submitting evidence to meet one or more of the following requirements at 8 C.F.R. § 214.2(h)(4)(iii)(D):

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which

has a program for granting such credit based on an individual's training and/or work experience;

- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting that the length of the beneficiary's training and/or work experience is the equivalent of four years of college-level training, the petitioner must also establish that the beneficiary's training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. The petitioner must also document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Counsel has submitted documentation related to the beneficiary's training and employment, as well as copies of her academic records, to support his contention that her education and experience qualify her to perform the duties of a specialty occupation. The record does not, however, include an evaluation of these materials by an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit, as required by the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D). Further, the documentation provided by counsel does not provide

the type of detailed employment history, as described above, that would allow the AAO to conduct its own determination of the beneficiary's qualifications under the fifth criterion at 8 C.F.R. § 2143.2(h)(4)(iii)(D). Accordingly, the evidence in the record, as noted by the director in his denial, is insufficient to establish the beneficiary's qualifications to perform the duties of a specialty occupation.

On appeal, counsel raises concerns over the director's statement that a certification submitted by counsel was not supported by the beneficiary's employment records. Counsel notes that the director did not request these records. While counsel states that the director should have issued another request for evidence, the AAO notes that a director is required to issue a request for evidence only when initial evidence of eligibility is missing. 8 C.F.R. § 103.2(b)(8).

For reasons related in the preceding discussion, the petitioner has failed to establish its proffered position as a specialty occupation. Accordingly, the AAO, although it has withdrawn the director's finding regarding the nature of the proffered position, 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.