

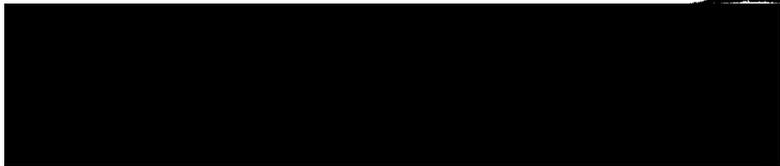
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U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



MAY 17 2005

FILE: EAC 04 263 50034 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 consular and immigration processing center that seeks to employ the beneficiary as an administrative legal secretary. 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 on the basis that the proposed petition did not qualify for classification as a specialty occupation. On appeal, counsel submits Form I-290B and supporting documents.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's RFE response; (4) the director's denial letter; and (5) the petitioner's Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative legal secretary. Evidence of the beneficiary's duties includes: the Form I-129; the employment contract; the RFE response; the Form I-290B; and the documents accompanying the Form I-290B. The Form I-129 set forth the job duties as "consular and immigration processing." The contract provided the following job description:

Prepare documents to be presented at DOS and CIS and local offices. Assist clients in consular processing requirements. Provide administrative duties as person in charge of the office and report to headquarters in Dominican Republic and main office in Union City, New Jersey.

The petitioner provided a more detailed description of the duties of the proposed position in the RFE response. The proposed duties were divided into nine categories:

1. Performs Secretarial-Assistant duties, such as screening calls and visitors (average 100 calls per day and 4 or 5 visitors); calls include from esat [sic] coast (Boston, all the [S]tate of Massachusetts, and also DC [a]rea and or from Upper Miami) [sic]. **30%**
2. Establishes, maintains, processes, and oversees files, routes office mail, answer inquiries, process and prepare documents to send to main office in Dominican Republic, and or US [c]onsulate in Santo Domingo [sic]. **20%**
3. Uses working knowledge of software programs to enter, revise[,] and produce a variety of documents; fill out and prepare forms. **10%**

4. Maintains financial record and accounts, bills clients, prepare[s] deposits, prepare reports, [and] balance[s] monthly statements and budget of the working unit and office expenses. **10%**
5. Orders supplies, arrange[s] conference calls, [and] make[s] travel arrangements for clients with appointments in main office or US consulate in Dominican Republic. **5%**
6. Translate[s] declaration or prepares documents involving legal terminology in immigration. **5%**
7. Performs cliente [sic] status, research for other purposes by gathering relevant information under direction or by compiling legal data from sources [such] as computer databases, digests, or practice manuals. **5%**
8. Performs other miscellaneous job duties as assigned. **5%**
9. Provides follow-up with appropriate [sic] authoritys [sic], under direction to ensure that compliancewith [sic] agreements, request information from attorneys[,] and other related issues. **10%**

The director denied the petition on the basis that the proposed position did not qualify as a specialty occupation, stating:

Although it appears possible that a fraction of the job duties may approach standards for work in a 'specialty occupation,' the job is primarily secretarial and administrative in nature.

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.

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 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. The AAO routinely consults the *Occupational Outlook Handbook* (the “*Handbook*”) for its information about the duties and educational requirements of particular occupations.

A review of the duties of the proposed position finds them to be closely aligned to the responsibilities of secretaries and administrative assistants as defined by the *Handbook*. The *Handbook*'s entry for these positions encompasses the job titles of executive secretaries, administrative assistants, legal secretaries, and medical secretaries.

In that the proposed position appears closely aligned to secretaries and administrative assistants, the AAO next turned to the *Handbook*'s discussion of the qualifications necessary for entry into that profession. The *Handbook* reports the following educational requirement for those seeking employment in the field:

High school graduates who have basic office skills may qualify for entry-level secretarial positions . . .

Secretaries and administrative assistants acquire skills in various ways. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. Many temporary placement agencies also provide formal training in computer and office skills. However, many skills tend to be acquired through on-the-job instruction by other employees or by equipment and software vendors. Specialized training programs are available for students planning to become medical or legal secretaries or administrative technology

specialists. Bachelor's degrees and professional certifications are becoming increasingly important as business continues to become more global.

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which provides that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The *Handbook* finds that secretarial and administrative assistant positions impose no specific degree requirement on individuals seeking employment. The "increasingly important" standard described in the *Handbook* is not synonymous with the "normally required" standard set forth by the regulation.

Nor does the position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been submitted to establish, nor has the petitioner contended, that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second prong of this regulation requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding. The overwhelming majority of the duties are very similar to those set forth in the *Handbook*. The only job function that sets the proposed position apart from other secretarial positions is the requirement that the beneficiary have familiarity with the customs and practices of the United States consulate in Santo Domingo, Dominican Republic. However, this qualification would be earned not by completing a course of study leading to a baccalaureate or higher degree, but rather through work experience.

Therefore, the petitioner cannot establish the proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, no evidence has been submitted to establish, nor has the petitioner contended, that it normally requires a degree or its equivalent for this position. As such, the proposed position does not qualify as a specialty occupation under this criterion.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of administrative assistants or legal secretaries. Again, the single distinguishing characteristic that sets the proposed position apart from

other administrative assistant or legal secretary positions is the requirement that the beneficiary be familiar with the customs and practices of the United States consulate in Santo Domingo. However, as noted earlier, such familiarity is not attained via a baccalaureate or higher degree, but rather through work experience. Moreover, this distinguishing characteristic comprises a small fraction of the duties of the proposed position. As such, the proposed position does not qualify as a specialty occupation under this criterion.

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). The petition was properly denied.

It is noted that the petitioner submitted no additional evidence on appeal to rebut the director's finding that the proposed position does not qualify for classification as a specialty occupation; the documentation submitted on appeal consisted solely of copies of documents already contained in the record.

Beyond the decision of the director, the AAO has determined that the beneficiary does not qualify to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States 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.

The petitioner is seeking the beneficiary's services as an administrative legal secretary. As proof of the beneficiary's qualifications for the proposed position, the record contains the following: a copy and English translation of the beneficiary's bachelor's degree in business administration; a copy of a "Certificate of Appreciation" issued by the United States Department of State (the beneficiary's current employer); copies of reviews evaluating the beneficiary's performance at her current job; a letter of recommendation from the beneficiary's current employer; a copy of the beneficiary's resume; a document entitled "Alien's Present Occupation and Summary of Prior Work Experience;" a "Certificate of Complete [sic]." issued by the International Association for Students of Economics and Commerce; a certificate from the National Council for Superior Education; a letter informing the beneficiary that she had been selected for inclusion in the 2000 edition of *International Who's Who of Professionals*; and a

letter of recommendation and certificates of completion from the Law Office of Cabral & Diaz (a former employer).

The beneficiary earned her degree abroad, so she is unqualified under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

Turning to 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the AAO concludes that the beneficiary does not qualify to perform the duties of a specialty occupation under this criterion, either. The record does demonstrate that the beneficiary received a bachelor's degree in business administration from the Pontificia Universidad Catolica Madre y Maestra, located in the Dominican Republic, in 1999. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (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 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.

No evidence has been submitted to establish, nor has the petitioner contended, that the beneficiary's foreign degree qualifies under 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1), (2), (3), or (4).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates

who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The resume submitted with the petition traces the beneficiary's work history from 1996 onward, for a total of eight years (the petition was filed in October 2004). The formula utilized by CIS is three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. A baccalaureate degree from a United States institution of higher education would require four years of study, so the beneficiary would need to demonstrate at least 12 years of work experience in order to qualify for its equivalency. The beneficiary cannot meet this threshold.² As such, she does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), as it has never been asserted that she holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation.

Finally, the beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), which requires a demonstration that the beneficiary has the education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States 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. As noted above, the AAO has determined that the

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

² Since the beneficiary does not qualify under this mathematical formula, the AAO did not analyze whether her previous experience satisfied the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i), (ii), (iii), (iv), or (v).

proposed position is not a specialty occupation. As such, the beneficiary's prior experience is irrelevant for the purpose of determining eligibility under this criterion, since that work experience was not in a specialty occupation.

Therefore, none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C) are satisfied. The petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation. The petitioner has also failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will 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.