

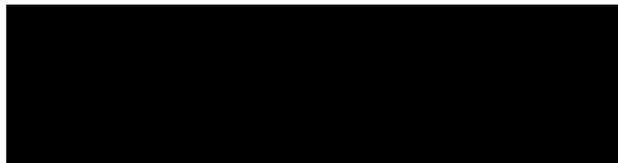
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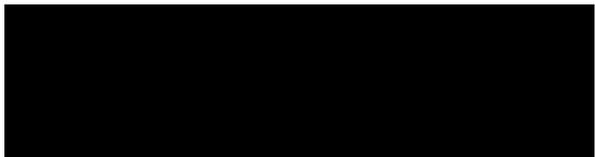


FILE:  Office: VERMONT SERVICE CENTER Date: MAY 21 2005

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 materials 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a not-for-profit organization providing health-related services to minority communities in New York City. It seeks to employ the beneficiary as a service coordinator and to classify her 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 ground that the proffered position does not qualify as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 and an accompanying letter the petitioner described itself as a not-for-profit organization funded by the New York State Department of Health that provides a variety of health-related services to developmentally delayed and disabled children in New York City. The petitioner stated that it was established in 2000, had 18 staff employees, and subcontracted another 400 healthcare providers. The petitioner indicated that it needed a service coordinator for its early intervention program to coordinate initial service, evaluation, and ongoing services for the program participants and their families. In its initial letter and in the subsequent response to the RFE, the director listed the duties of the position, and the number of hours per week each duty would take, as follows:

- Prepare and present primary evaluations and reports to licensed psychologists, speech and language pathologists, etc. – 5 to 6 hours.
- Interview and provide information and answer questions of Early Intervention (EI) participants and their families, inform parents of program information and information regarding participants' rights – 10 to 12 hours.
- Participate and assist in the development and coordination of activities within the EI program by consulting with licensed therapists and the family – 5 to 6 hours.
- Attend the Individualized Family Service Plan (IFSP) meeting with the parents and provide choices to the family on the right service plan for the development of the child, and ensure that the child and family receive all services agreed upon – 4 to 5 hours.
- Assist families in the process of evaluation of child's development status and help parents understand the result of diagnostic information obtained from the evaluations – 3 to 4 hours.
- Coordinate therapeutic services received by the child and monitor the development of the child through the services, monitor services and maintain quarterly progress reports and semi-annual IFSP reviews – 5 to 7 hours.
- Maintain proper documentation on families and children, and act as liaison between therapists and families and EI providers – 2 to 3 hours.
- Work together with city officials to decide necessary services for the child to achieve an age-appropriate level of development, help parents to facilitate the development of a transition plan for pre-school placement of three-year old children, and design and implement community-networking activities or other special programs – 2 to 3 hours.

The petitioner asserts that the service coordinator position requires a baccalaureate or higher degree in education, social work, psychology, or a related field, plus work experience. According to the petitioner, the beneficiary is qualified to perform the job by virtue of her bachelor of science degree in social work from New York University, granted in September 2002, plus her more than one year of internship experience as a social worker, together with her practical training as a service coordinator for the petitioner, in which capacity she had already worked for six months at the time the instant H-1B petition was filed.

Based on the duties of the proffered position, the director determined that it fit within the occupational category of social and human service assistants, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The *Handbook* did not indicate that a bachelor's degree in a specific specialty is normally the minimum requirement for entry into such a position, the director noted, and the job advertisements in the record indicated that bachelor's degrees in a variety of fields were acceptable for a service coordinator position. The record showed that the petitioner employed other

service coordinators with degrees in a variety of fields. Furthermore, the record did not demonstrate that the position was so specialized, complex, or unique that it could only be performed by an individual with a specialty degree or equivalent knowledge. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti v. Reno*, at 1165-66.

On appeal the petitioner contends that the service center misconstrued the duties of the proffered position and mistakenly stated that "the petitioner's job description indicates that the beneficiary would be serving as a liaison between senior citizen clients and social workers," whereas the job description clearly indicates that the position involved services for young children. The petitioner asserts that the various degrees held by its other service coordinators are all closely related to the job responsibilities and that a bachelor's degree in education or human services is a basic requirement of New York State law for certification as a service coordinator in an EI program.

The AAO agrees with the director that the proffered position fits within the *Handbook's* occupational category of social and human service assistants. That occupation is described, in pertinent part, as follows:

Social and human service assistant is a generic term for people with a wide array of job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of professionals from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work . . . .

Social and human service assistants provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. They . . . monitor and keep case records on clients and report progress to supervisors and case managers.

Social and human service assistants play a variety of roles in a community. They may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer a food bank or emergency fuel program . . . . They review clients' records, ensure that they take correct doses of medication, talk with family members, and confer with medical personnel and other caregivers to gain better insight into clients' backgrounds and needs . . . .

*Handbook*, 2004-05 edition, at pages 197-98. While the director did mischaracterize the proffered position as a “liaison between senior citizen clients and social workers,” as the petitioner pointed out in the appeal, the director correctly determined that the duties of the position reflected those of a social and human service assistant, as described in the *Handbook*.

As for the educational requirements of the occupation, the *Handbook* states as follows:

While a bachelor’s degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. Certificates or associate degrees in subjects such as social work, human services, gerontology, or one of the social or behavioral sciences meet most employers’ requirements. Some jobs may require a bachelor’s or master’s degree in human services or a related field such as counseling, rehabilitation, or social work.

*Id.* at 198. According to the *Handbook*, therefore, different jobs in the field require different educational credentials and a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry-level social and human service assistants. The petitioner has submitted copies of an “Early Intervention Memorandum” from the New York State Department of Health and pertinent excerpts from New York State law in support of its assertion that a bachelor’s degree in education or human services is the basic requirement for certification of a service coordinator in New York City EI program. The referenced documentation does not support the petitioner’s assertion. Rather, the code at 10 NYCRR 69-4.5(b)(1) provides that “[a]ll early intervention service coordinators” must have “a minimum of one of the following educational or service coordination experience credentials:

- (i) two years experience in service coordination activities as delineated in this Subpart (voluntary or part-time experience which can be verified will be accepted on a pro rata basis); or,
- (ii) one year of service coordination experience and an additional year of experience in a service setting with infants and toddlers with developmental delays or disabilities; or,
- (iii) one year of service coordination experience and an associate’s degree in a health or human service field; or
- (iv) a bachelor’s degree in a health or human service field.”

Thus, applicable law specifies that two years of experience or one year of experience and an associate’s degree in a related field can qualify an individual for an EI service coordinator position in New York City. Accordingly, the record does not support the petitioner’s contention that the proffered position requires a bachelor’s degree in a specific specialty. The service coordinator position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), there is no documentation in the record indicating that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. Nor does the record show that the proffered position in this case is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the record includes two advertisements by the petitioner in the New York Times for EI service coordinator positions in 2001 and 2003, the first of which specified that a bachelor's degree in education, social work, psychology, or a related field, plus one year of relevant experience was required, and the second of which specified that a bachelor's degree in education or human services was required. The petitioner states that it has nine service coordinators in all, whose bachelor's degrees from U.S. and foreign universities are in the following academic disciplines: social work, communications, social sciences, history, English, education, physiology, medicine, psychology, and sociology. Thus, the petitioner's past hiring practices clearly demonstrate that a broad spectrum of academic degrees is suitable for service coordinator positions. Accordingly, the record does not establish that the petitioner normally requires a degree or its equivalent in a specific job-related specialty, as required for the proffered position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of a service coordinator are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree in a specific specialty. The record clearly demonstrates that knowledge acquired through a wide variety of baccalaureate degrees is acceptable preparation for a service coordinator position. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record fails to establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

**ORDER:** The appeal is dismissed. The petition is denied.