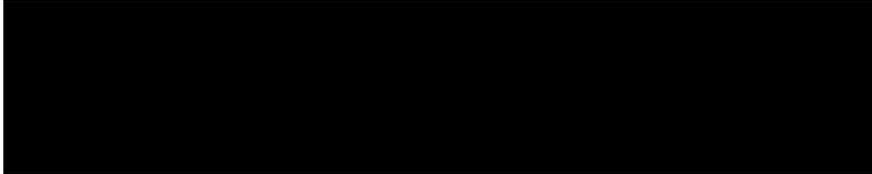




U.S. Citizenship
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FILE: WAC 03 046 50564 Office: CALIFORNIA SERVICE CENTER Date: **NOV 09 2005**

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 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 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 provider of home care services that seeks to employ the beneficiary as a human resources manager. 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 petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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 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.

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 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 proposed position.

In determining whether a proposed position qualifies as a specialty occupation, CIS does not rely simply upon the position’s title. The specific duties of the proposed position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the beneficiary and make a determination as to whether the proposed position in fact qualifies for classification as a specialty occupation. *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 position actually requires 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 record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s denial letter; (3) the director’s request for evidence (RFE); (4) the petitioner’s RFE response and supporting documentation; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In the letter of support submitted with the initial filing, the petitioner described the duties of the proposed position as follows:

[The beneficiary] will recruit and interview potential employees to determine the most qualified applicants for the positions offered. He will design and prepare testing for job applicants to determine their qualifications and suitability for the positions offered. He will also study employees’ performances and make recommendations to management. He will also devise a plan to most effectively utilize the skills of the firm’s employees and act as a liaison between management and [the] labor force. He will meet with employees and management and gather data through interviews and studies of present company policies and procedures regarding working conditions. Utilizing his knowledge of personnel management and industrial psychology, he will revise as needed company policy, working conditions and personnel management to create the most effective and efficient workplace environment to ensure employees’ satisfaction with the job.

On appeal, counsel contends that the proposed position in fact qualifies as a specialty occupation, and that the director erred in denying the petition. Counsel asserts that the director acted inappropriately:

The [director’s] decision is arbitrary, capricious, an abuse of discretion, a violation of the Due Process Clause of the United States Constitution, contrary to the agency’s statutes, contrary to the agency’s regulations, contrary to the agency’s case law, and contrary to the facts in the record of proceeding. [The director’s decision] is based solely on speculation, conjecture, and supposition.

In determining whether a proposed 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.

In its discussion of the occupational grouping "Human Resources, Training, and Labor Relations Managers and Specialists," the *Handbook* states the following:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization. However, many enterprises are too large to permit close contact between top management and employees. Human resources, training, and labor relations managers and specialists provide this link. In the past, these workers have been associated with performing the administrative function of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers juggle these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies. Senior management is recognizing the importance of the human resources department to their financial success.

In an effort to improve morale and productivity and to limit job turnover, they also help their firms effectively use employee skills, provide training opportunities to enhance those skills, and boost employees' satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the office, dealing with people is an essential part of the job.

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require a broad range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs. In a large corporation, the top human resources executive usually develops and coordinates personnel programs and policies. (Executives are included in the *Handbook* statement on top executives.) These policies usually are implemented by a director or manager of human resources and, in some cases, a director of industrial relations.

The duties of the proposed position appear closely aligned to those of human resources, training, and labor relations managers and specialists, as discussed in the *Handbook*.

As such, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a demonstration that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As conveyed earlier in this decision, 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 proposed position. A review of the *Handbook's* discussion regarding the credentials necessary in order to enter this field reveals that a baccalaureate degree *in a specific specialty* is not required:

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.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specific course of study.

Accordingly, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed 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.

On appeal, counsel submits several job postings to satisfy this prong of the second criterion. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these job postings are from organizations similar in size or scope of operations to the petitioner. Progress Energy is an energy company, Gambro appears to be a biotechnology company, AppleOne is a finance company, Best Buddies International is a company that provides friends and jobs to people with intellectual disabilities, McKesson Pharmaceutical is a pharmaceutical company, Composite Engineering provides structure design, engineering development, and manufacturing services, Booz Allen Hamilton is a global human resources services firm, Toll Brothers is a builder of luxury homes, C2 Portfolio is a human resources firm, National Starch & Chemical is the world's largest supplier of specialty adhesives to the microelectronics industry, St. Paul Travelers is an insurance company, General Electric is a global conglomerate with multifaceted business interests, Amtrak is a rail passenger service, Oakland University is an educational institution, Aramark provides managed services in food, facility and other support services, and uniform and career apparel, ComputerTraining.com is in the education industry, the American Heart Association is a nonprofit organization, Carson City Human Resources provides human resources work, Abbott Laboratories is a pharmaceutical company, Merck & Co. is also a pharmaceutical company, Blockbuster is in the retail/entertainment field, Sutter Health is part of a hospital system, Princeton University is an educational institution, ADP TotalSource is a human resources company, Stryker is a company that provides orthopedic and outpatient physical therapy services, Laureate Education (formerly Sylvan Learning Systems) is an educational services company, and the Tesoro Refining and Marketing Company operates a refinery.

No evidence is submitted regarding the size or scope of operations of Thomson, Georgia Cabling & Electric, Pegasystems, KCI Technologies, Mendocino Forest Products Company, Connelly Billiard Manufacturing, or the Suburban Mobility Authority for Regional Transportation.

The first unidentified company posting notice of its vacancy through Management Recruiters International is a manufacturer of automotive components and no information is provided regarding the second company. The unidentified company posting notice of its vacancy through Abacus Executive Recruiting is a manufacturer. The unidentified company posting notice of its vacancy through Ploeger Recruiting Services is a hospital with 760 employees. The unidentified company posting notice of its vacancy through Search Master is a staffing firm. The unidentified company posting notice of its vacancy through Act 1 is a law firm. Another posting lists the employer as “confidential.” Two postings fail to list the employer or provide any information about it.

The AAO is presented with no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered “similar” to the petitioner, a home care services company, in size or scope of operations.

Moreover, the postings do not verify that there is an industry-wide requirement for a degree in a specialty. For example, the job postings from Progress Energy, Best Buddies International, and C2 Portfolio do not state that a bachelor’s degree in a specific specialty is required. The job posting from Pegasystems states that, while a degree is required, it need only “preferably” be in human resources. As noted previously, CIS interprets the term “degree” to mean not just any in any field, but one *in a specific specialty* that is directly related to the proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the proposed position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates* at 558.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Again, the *Handbook* reveals that the proposed position is analogous to those of human resources, training, or labor relations specialists or managers, which are occupations that do not require a degree in a specific specialty. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet the third criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas. None of these items were submitted.

To qualify under this criterion, evidence to support the assertion that the petitioner normally requires a degree or its equivalent must be presented. Contrary to counsel’s assertion, the petitioner’s statement, with no supporting documentation, that it requires a master’s degree or higher for this position does not qualify the proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of

proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. As previously discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree in a specific specialty for human resources, training, and labor specialist or manager positions, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex than those of the aforementioned positions. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, counsel's assertion that the director's denial of the petition constituted a due process violation fails. Counsel has demonstrated no error by the director in conducting his review of the petition, nor any resultant prejudice that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975). As discussed previously, the petitioner has not met its burden of proof, and the denial was the proper result under the regulation.

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). 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.