



U.S. Citizenship
and Immigration
Services

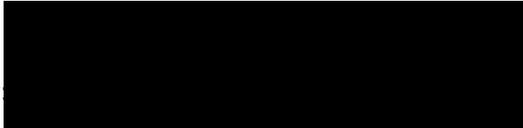
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FILE: EAC 03 175 50540 Office: VERMONT SERVICE CENTER Date: NOV 29 2005

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:

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 condominium association and seeks to employ the beneficiary as an activities administrator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits the Form I-290B and supporting documents.

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.

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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an activities coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform certain duties in the absence of the director of community activities: such as achieving a proper balance in programmed activities that will give all residents of the petitioner an equal opportunity to participate and to utilize their facilities in the manner and to the degree they desire; keeping the chair of the activities committees and management, as appropriate, informed concerning the status of scheduled events, budgeting for scheduled events, and the status for "Activities" bank accounts; being responsible for the coordination between other departments for adequate maintenance, clean up etc. of all of the petitioner committee sponsored events, party room and gazebo rentals, Youth Center and recreational amenities of billiards, ping-pong. The petitioner listed the position duties as including: providing for inspections of the recreational facilities and equipment including identifying and coordination of custodial, maintenance, procurement and security requirements through channels; insuring that custodial, maintenance repairs and procurements have been satisfactorily completed; assuring that any revenues or expenses incurred with any event are properly charged to that event; preparing monthly financial statement and dispersing to the general manager, board president, committee chairperson and finance committee chair by the second Thursday of each month; assisting in the preparation of monthly activities "wheel" to be distributed to the community or before the 25th of each month; preparing closed circuit, elevator and any other promotional materials needed for upcoming committee sponsored events; post activities in locked bulletin board within reasonable time for notification to the community; and attending monthly committee meetings in the absence of the director of community activities. The petitioner indicated that the position required a bachelor's degree.

The director issued a request for evidence to establish that the job offered qualifies as a specialty occupation. The director indicated that any higher education degree combined with work experience would be sufficient to perform the job duties of the position. The director requested evidence that the position meets one of the above listed criteria.

In response, the petitioner submitted letters of support from various residents of the community and its condo association indicating that the beneficiary performs her duties well and is well liked by the community.

The director denied the petitioner finding that the petitioner has not established that the proffered position is a specialty occupation.

On appeal, the petitioner asserts that its condominium association is unique because it is large enough to support full-time positions in its activities office. The petitioner submits position openings for positions similar to the proffered position to support its contention that the position requires a bachelor's degree. The petitioner indicates that it has more than 3,000 residents and a board of directors as well as various committees. The petitioner submitted a recent resolution from its board approving a historian for its association. The petitioner asserts that the many youth events planned by the beneficiary have been more successful because of her degree in history.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers 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; 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 often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (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)).

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 refers to the *Handbook* for the duties of particular occupations and the education, training, and experience normally required to enter into and advance within the occupations.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example, mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

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. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion, as the *Handbook* indicates that educational requirements vary widely. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner has not provided evidence to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted various internet job postings for event administrators, recreation coordinator and activities coordinator. The postings are for different types of companies such as REI specializing in sportswear and recreation equipment and homeowner's associations. Some postings indicate that a bachelor's degree is preferred without indicating the specific specialty. This evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations. Consequently, the petitioner's statement fails to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the proffered position is performed by an administrative service manager, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties are similar to those in the *Handbook* for an administrative services manager, an occupation that does not require a specific baccalaureate degree. The petitioner has not submitted evidence that the duties of the proffered position are more complex than what is the normal industry wide minimum requirement for entry into the occupation. The evidence of record is insufficient to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

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.