



U.S. Citizenship
and Immigration
Services

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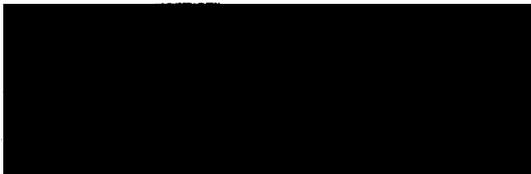


FILE: LIN 03 222 52946 Office: NEBRASKA SERVICE CENTER Date: OCT 08 2004

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:



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

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The service center 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 nonprofit community outreach organization that seeks to employ the beneficiary as an executive director. The petitioner 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 because the proffered position is not a specialty occupation, and because the evidence did not demonstrate that the petitioner's organization could support an executive director position as described in the record. On appeal, counsel submits a brief.

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 executive director. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 15, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: designing course material; directing the organization's activities; marketing programs and services; developing outreach programs; recruiting staff; formulating the budget and monitoring financial affairs; and serving as an ex officio board member. The petitioner indicated that a qualified candidate for the job would possess a bachelor of science degree in social science, psychology, or education.

The director found that the proffered position was not a specialty occupation, because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director noted that the job description was vague and generic, and the record did not provide specific examples of the petitioner's programs. Due to this ambiguity, the director was unable to make a determination regarding the nature of the job. Also, the director found that the petitioner's organization had only recently begun to function; thus, given the lack of overall information, it was not clear that the petitioner had sufficient work to occupy the beneficiary full time for three years.

On appeal, counsel states that a bachelor's degree is the normal minimum entry requirement for the proffered position. According to counsel, information from the Department of Labor's *O*Net* and the *Dictionary of Occupational Titles (DOT)* indicate that a degree is required to enter into the position. Counsel also points out that the evidence shows that the petitioner's organization will be able to provide sufficient employment to maintain the beneficiary occupied during the stated period.

As counsel brings up the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the AAO will analyze the evidence in light of this provision. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. Counsel compares the instant position to that of a social services manager. The *Handbook* does not indicate that a baccalaureate degree in a specific specialty is required for a social services manager job; it simply states that the most significant source of training is a bachelor's degree. The proffered position might also be compared to a general manager, a position that, according to the *Handbook*, accepts a variety of educational backgrounds, including business administration and liberal arts. The petitioner, in fact, stated that it would accept a bachelor's degree in social science, education, or psychology, which are not closely related specific specialties.

Counsel's reference to and assertions about the relevance of information from *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

On appeal, counsel asserts that the Internet job postings previously submitted support the contention that a bachelor's degree in a specific specialty is the normal minimum entry requirement for the proffered position. The AAO notes that neither of these two advertisements calls for a degree in a specific specialty. Thus, the advertisements have little relevance. The petitioner has not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

In addition, the evidence on the record does not establish any of the other three criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), which counsel did not address on appeal. The description of the petitioner's activities and the job duties listed do not demonstrate that a bachelor's degree in a specific specialty would be necessary for this position. It appears that individuals with a number of different educational backgrounds could perform these duties. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Although counsel submitted information showing that the petitioner was in possession of an additional source of funding, and provided additional explanations regarding the petitioner's planned activities, the AAO need not analyze this evidence. As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO 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.