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U.S. Citizenship
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Services

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FILE: LIN 04 225 51924 Office: NEBRASKA SERVICE CENTER Date: **APR 03**

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.

for Michael T. Kelly
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 software consulting and contracting company that seeks to employ the beneficiary as a technical recruiter. 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 under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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:

[A]n 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.

The petitioner, a software consulting and contracting company with 23 employees, was established in 1996. It proposes to hire the beneficiary as a technical recruiter. In its August 4, 2004 letter of support, the petitioner stated that the duties of the proposed position would include recruiting qualified information technology consultants for placement in technical positions; working with account managers to assess market needs and client requirements in the information technology sector; developing and carrying out sourcing and staffing strategies; identifying candidates from all available sources to match market requirements; conducting technical interviews to assess candidates' credentials and areas of specialty; and establishing final placements with clients, ensuring that orientation paperwork and contracting agreements are in place.

The director issued a request for evidence, requesting further evidence to establish that the proposed position qualifies for classification as a specialty occupation. The director noted that the record contained only a "brief" description of the duties of the proposed position, and a "very brief" description of the company and the services it provides. The director requested a more complete and detailed description of the duties to be performed by the beneficiary, as well as the percentage of time to be devoted to each task.

In its September 27, 2004 response, the petitioner did not offer further details regarding the duties of the proposed position. Rather, a list of duties identical to those offered in the August 4, 2004 letter of support was submitted. Although this list did include the percentage of time to be devoted to each of the six tasks, no further details or information were submitted. The petitioner justified its degree requirement as follows:

Perhaps the simplest and most concise reason we could give for explaining why the job of technical recruiter requires a specialized degree in computer science or its equivalent is that it 'takes one to know one.' Because the job of the technical recruiter will be to assess the technical skills of applicants for positions within our company to determine whether or not they have the skills needed to perform effectively in the marketplace, it follows directly that the recruiter himself must have a sufficient technical background to be able to ask appropriate questions of technical applicants, evaluate their answers[,] and make proper follow up inquiries so as to be able to tell whether or not the person that they are speaking to 'really knows his stuff,' or, if they are being 'snowed.' To be able to perform this function one must be capable of working as a computer professional in this field and, in our opinion, this includes, at minimum, possessing a bachelor's degree in computer science or its equivalent in education and experience.

Likewise, to be able to effectively represent the client to potential customers, it is equally important that the recruiter be a computer professional. For example, the recruiter must sufficiently well understand the nature of the project which the customer wishes completed to be able to tell them such basic things that every customer wants to know such as how many consultants would be required for the project and how much it will cost. This in turn requires the sort of in-depth background in the field of computer science which can only be

gained through a specialized degree in the field or its equivalent in education and experience.

No additional information regarding the duties of the position was submitted.

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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

In response to the director's request for evidence and again on appeal, counsel asserts that the proposed position is similar to that of an employment interviewer, as that position is described in the *Handbook*. In his denial, the director agreed with this characterization of the position.

The *Handbook's* discussion of the duties of human resources, training, and labor relations managers and specialists 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. . . .

Employer relations representatives, who usually work in government agencies, maintain working relationships with local employers and promote the use of public employment programs and services. Similarly, *employment interviewers*—whose many job titles include *personnel consultants*, *personnel development specialists*, and *human resources coordinators*—help to match employers with qualified job seekers.

Although the beneficiary will not be working in a government agency, the AAO agrees with counsel and the director that, due to the unique nature of the petitioner's business, the duties of the proposed position are similar to those of employment interviewers.

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. See *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 specialty.

While he did not cite *Michael Hertz Associates*, the director did note that the lack of a requirement for a degree in a specific specialty precluded the position from classification as a specialty occupation under this criterion. On appeal, counsel submits an excerpt from the 2001-2002 *Handbook's* discussion of the duties and educational requirements for services sales representatives. This excerpt states that "[c]ompanies selling computer, engineering, health or other highly technical services generally require a bachelor's degree appropriate to their field."¹

However, the duties of the proposed position as set forth in the initial submission and in response to the director's request for evidence do not support a finding that they are analogous to those of services sales representatives, and the AAO will disregard this excerpt. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification within the requested category. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Furthermore, despite the RFE's request for more specific information, the petitioner chose to limit information about the proffered position to general and generic descriptions that do not indicate that the position is one for which at least a bachelor's degree, or its equivalent, in a specific specialty would be a minimum entry requirement.

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.

However, no evidence to satisfy this prong has been submitted. 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.

¹ The AAO notes that, unlike the 2001-2002 version, the 2006-2007 *Handbook* does not have a chapter devoted to services sales representatives.

However, the AAO is unable to make such a determination, as the petitioner has failed to provide a job description sufficiently detailed to allow the AAO enter into such an analysis.

At the time of filing, the petitioner offered a vague and generic description of the beneficiary's duties. The director requested a more detailed description in his request for evidence, but it was not provided. Rather, the petitioner reiterated the job duties provided in the initial submission. This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests.

The AAO is therefore unable to evaluate whether the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. For example, while the petitioner states that the beneficiary would recruit qualified information technology consultants for placement in technical positions, it offers no information regarding these technical positions. In order for the AAO to make a determination under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), it must have a detailed description of the duties of the proposed position.

Therefore, the AAO cannot establish that the proposed position qualifies for classification as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position 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 proposed 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 such evidence has been presented. Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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.

As was the case under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the AAO is unable to establish that the proposed position qualifies for classification as a specialty occupation under this criterion due to the vague and generic nature of the petitioner's description of the duties of the proposed position.

Counsel asserts on appeal that the proposed position qualifies for classification as a specialty occupation under this criterion:

The specific specialty in the technical recruiter position is to identify qualified computer professionals within an interview process. It would not be possible to test qualified candidates without the knowledge of the position itself. To this end, we ask that the AAO consider the fact that the recruiter for this position requires knowledge of the specific duties of the computer-related industry for which he will be recruiting.

The AAO is unable undertake the analysis requested by counsel. Counsel, in essence, asks the AAO to consider the specialized nature of the positions for which the beneficiary would recruit, and approve the position on that basis. Counsel, however, has provided no information regarding these positions. Without such information, the AAO certainly cannot undertake such an analysis. If counsel wishes to establish the petitioner's proposed position as a specialty occupation on the basis that the positions for which the beneficiary would recruit require degrees, then counsel must provide evidence that those positions do in fact require them, as not all "computer professional" positions require degrees. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

To the extent that they are depicted in the record, the duties of the position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. There is no information in the record to support a finding that the proposed position is more specialized and complex than the general range of employment interviewer positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty.

Therefore, the evidence in the record does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), or (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. 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.