

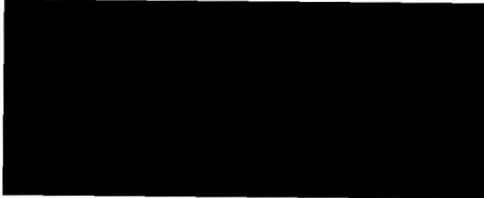
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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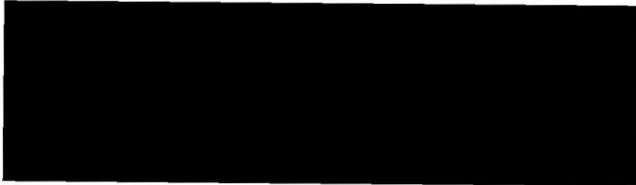
FILE: WAC 03 033 52066 Office: CALIFORNIA SERVICE CENTER Date: **APR 11 2006**

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 service center director denied the nonimmigrant visa petition, and the petitioner filed an appeal. The Administrative Appeals Office (AAO) withdrew the director's decision and remanded the matter for further examination as to whether the proffered position was a specialty occupation. The director denied the petition and certified his decision to the AAO. The director's decision will be affirmed. The petition will be denied.

The petitioner is a residential program for the elderly that seeks to employ the beneficiary as a records management analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 the beneficiary is not qualified to perform a specialty occupation. In a subsequent appeal, the AAO withdrew the director's decision and remanded it to the director for further examination of issues related to the nature of the proffered position.

The director requested additional evidence from the petitioner, but received no response. The director subsequently denied the petition because the petitioner had not established that the proffered position is a specialty occupation.

Pursuant to 8 C.F.R. § 103.2(a)(13):

If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. . . .

The record reflects that on September 12, 2005, the director requested additional evidence from the petitioner concerning the instant petition. As no response was received, the director denied the petition.

Counsel does not submit any additional evidence on certification.

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; (5) Form I-290B and supporting documentation; and (6) the director’s certified decision. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a records management analyst. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s October 28, 2002 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 determining efficient records management procedures and timetables for transferring records to archival storage or inactive status. The petitioner indicated that the beneficiary is a qualified candidate for the job because she possesses a bachelor’s degree in secretarial administration.

The director found that the proffered position was not a specialty occupation because the job is not a management analyst position; it is a file clerk position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As the petitioner did not respond to the director’s request for additional evidence or submit any additional evidence on certification, the petitioner, therefore, has not overcome the objection of the director. As such, 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 director’s January 12, 2006 decision is affirmed. The petition is denied.