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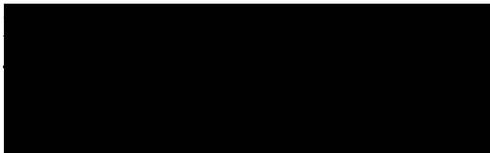
FILE: WAC 05 220 52304 Office: CALIFORNIA SERVICE CENTER Date:

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 property and casualty claims and loss cost management service provider, employs almost 2,000 people, and has gross annual income of approximately 213 million dollars. It seeks to employ the beneficiary as a claims examiner. Accordingly, the petitioner 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 determining that the position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the August 4, 2005 Form I-129 with supporting documentation; (2) the director's October 18, 2005 denial decision; and (3) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In an August 1, 2005 letter appended to the petition, the petitioner described the proposed job responsibilities of the position as "using [the petitioner's] proprietary methodology to assess claims and be responsible for handling the Workers Compensation caseload [from] inception to final settlement, including initial investigation of new claims to include recorded statements." The petitioner described the specific job duties as:

1. Review and investigate claim documents for both medical and indemnity workers compensation claims to determine compensability, establish reserves, and set course of claims management.
2. Employ appropriate claim management techniques and direct intervention (i.e., independent medical examinations, referral for rehabilitation, litigation, etc.) to effectively manage each claim. Negotiates settlements as appropriate. Documents significant activity and decision in each claim via on-line claim system.
3. Complete state reports and related filings.
4. Evaluate all pertinent information and work in conjunction with client to pursue most appropriate claim resolution.
5. Investigate and pursue third party recoveries on behalf of client.
6. May participate in litigation management of case/claims files.
7. Perform other duties as assigned.

The petitioner referenced the Department of Labor's *Occupational Information Network O*NET Online (O*NET)* that assigned a job zone of four to the position of claims examiner with a Specific Vocational Preference (SVP) of 7; the Department of Labor's *Occupational Outlook Handbook (Handbook)* description and educational training for the position of claims adjusters, appraisers, examiners, and investigators; and the California Employment Development Department's *Occupational Guide* that indicated that many employers required a bachelor's degree for the position of insurance adjusters, examiners and investigators, although some do not ask for a degree.

The petitioner also attached job announcements for the positions of: (1) a property claims examiner for an auto insurance company that indicated a college degree is preferred; (2) a claims examiner for an underwriter of specialty commercial insurance products to work with a dental insurance program team that was "looking for a Bachelor's Degree with a minimum of 5 years handling commercial medical professional liability claims;" (3) a claims examiner for an insurance company with a four year college degree or equivalent work experience preferred; (4) a liability claims examiner III for a claims management services firm with a baccalaureate degree from an accredited college or university preferred; and (5) a senior claims examiner for a national insurance company in its workers compensation unit with undergraduate studies in business administration or a related field and/or relevant professional certifications. The petitioner also provided the State of Michigan's Department of Civil Services job specifications for a claims examiner that indicated possession of a bachelor's degree in business administration, insurance, or a health related field as a requirement but noted that equivalent combinations of education and experience would be evaluated on an individual basis.

The director did not issue a request for further evidence but denied the petition on October 18, 2005 determining: that the *Handbook* did not indicate that the occupation of claims examiner required a baccalaureate degree in a specific specialty as a normal minimum for entry into the occupation; that the job listings submitted indicated only that a college degree is preferred but did not specify a particular field of study as appropriate to the proffered position and did not include sufficient information to determine the organizations advertising were similar to the petitioner; that the record contained no evidence that any industry-related professional association had made a bachelor's degree a requirement for entry into the field; that the California *Occupational Guide* discussing labor market conditions indicated that many employers prefer a bachelor's degree but did not show that a particular field of study is required; that the petitioner had not submitted documentary evidence establishing that the position is complex or unique; that the record did not contain corroborating evidence that the petitioner had required its past claims examiners to have a degree in a specific specialty substantiated by proof of their employment and educational backgrounds; and that the record did not distinguish between the duties to be performed by the beneficiary and the duties normally performed by claims examiners or how the proffered position's duties were more specialized and complex. The director concluded that the petitioner had failed to establish that the duties of the proffered position satisfied any of the four requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A), thus establishing the position as a specialty occupation.

On appeal counsel for the petitioner indicates that the petitioner has various levels of claims examiners/adjusters and that the beneficiary's job duties include:

Analyze and process general liability claims by investigating and gathering information to determine the exposure on the claim.

Assess liability and resolve claims within evaluation, negotiate settlement of claims up to designated authority level and make claim payment.

Process complex and technically difficult liability claims.

Calculate and assign timely and appropriate reserves to claims and continue to monitor reserve adequacy throughout the life of the claim.

Coordinate vendor referrals for additional investigation and/or litigation management.

Assign reserve values to claims and monitor reserve adequacy.

Use appropriate cost containment techniques including strategic vendor partnerships to reduce overall cost of claims for clients.

Manage claim recoveries of all types, including but not limited to subrogation. Report claims to the excess carrier.

Frequently communicate claim activity and processing with the ill or injured party and the client.

Refer cases as appropriate to supervisor and management.

Maintain professional client relationships.

Maintain a quality assurance program to support the Total Performance Management initiative and the consistent delivery of quality claims service.

Counsel also provides an overview of the knowledge that claims examiners apply in reviewing medical and disability claims, reading doctors' summaries and emergency room reports, focusing on various local and jurisdictional issues, and analyzing and creating reserves and interacting with claimants and their attorneys. Counsel points out that the *Handbook*, the *O*NET*, and the California EDD all indicate that a bachelor's degree is preferred for the proffered position and that the claims examiner position should not be confused with that of an adjuster or claims clerk. Counsel also attaches excerpts from several career websites that indicate a bachelor's degree may be necessary but is almost always preferred and also notes that there is no single program of study to prepare for the occupation although certain courses may assist in performing in specific areas of the industry. Counsel asserts that CIS insistence on education in a specific specialty or expertise is contrary to the trend in the industry and the regulations. Counsel also attaches the same job announcements submitted with the petition and notes that all the advertisers are involved in the insurance industry. Counsel suggests that the mere mention of a bachelor's degree in the educational level portion of an advertisement is the same as requiring a bachelor's degree. Counsel also provides a list of the names and educational levels of the seven claims examiners located in the petitioner's Pasadena, California office, noting that the seven claims examiners have bachelor's degrees. Counsel asserts that the duties of a claims examiner are so specialized and complex that a bachelor's degree is mandatory. Counsel contends that the petitioner's claims examiners communicate with all parties involved and continuously monitor and manage all of the issues that can affect the cost of a claim and that the work typically includes:

[I]nvestigation, review, evaluation and processing of claims, mak[ing] recommendations for resolution, contact[ing] the agents, claimants, and policy holders. They identify the underlying principles, reasons, or facts of information by breaking down information or data into separate parts, assess the value, importance, or quality of things or people and analyze information and evaluate results to choose the best solution and solve problems. They rely a lot on experience and judgment of the Claims Examiner to plan and accomplish goals and perform a variety of complicated tasks. A certain degree of creativity and latitude is expected. The Claims Examiners investigate, evaluate and settle claims, applying technical knowledge and human relation skills to effect fair and prompt disposal of cases and contribute to the reduced loss ratio. Thus it is imperative that they have a bachelor's degree or its equivalent in Business Administration, Finance, and Insurance or in a related area.

Counsel lists the *O*NET's* suggested skills, knowledge or abilities for this position and asserts that CIS has erred in holding that the nature of the job is not so complex that it requires a bachelor's degree.

Counsel's assertions are not persuasive. The AAO observes that 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 AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO agrees that the descriptions of duties for the proffered position align with that of a claims examiner, not a claims clerk, as reported in the *Handbook*. In this instance, as noted by the director and acknowledged by counsel, the *Handbook* reports:

Training and entry requirements vary widely for claims adjusters, appraisers, examiners, and investigators. Although many in these occupations do not have a college degree, most companies prefer to hire college graduates. No specific college major is recommended, but a variety of backgrounds can be an asset.

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A legal background can be beneficial to someone handling workers' compensation and product liability cases. A medical background is useful for those examiners working on medical and life insurance claims.

As the AAO has long determined, a generic four-year degree does not qualify a job as a specialty occupation. When a job, like that of a claims examiner, can be performed by a range of degrees or a degree of generalized title, without further specification, 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 specialized field of study. CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position.

The petitioner's reference to the *O*NET's* job zone four rating and the SVP level of 7 does not establish that a baccalaureate degree or its equivalent is the normal minimum requirement for an entry-level position. The AAO does not consider the *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of a claims examiner would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO also acknowledges the petitioner's reference to the California Employment Development Department's (EDD) *Occupational Guide*; however, the EDD although noting that many employers require a bachelor's degree for the position of insurance adjusters, examiners and investigators, notes that some do not ask for a degree. Further, the EDD does not indicate that the potential candidate for any of these positions must have a bachelor's degree in a specific discipline.

The AAO further acknowledges counsel's assertion that the trend in the industry is to require a bachelor's degree for the performance of the work but to not require a specific program of study. However, the suggestion that the industry trend is to require a bachelor's degree does not establish that the occupation currently requires a bachelor's degree. The various documentation submitted including the *Handbook*, the *O*NET*, and the California EDD, all fail to report that a college degree is required to perform the duties of a claims examiner. Second, the information in the various career websites indicating that the industry does not require a specific program of study to qualify to perform this occupation further demonstrates that the occupation is not a specialty occupation. The excerpt from the State of Michigan's Department of Civil Services job specifications while noting the importance of a bachelor's degree in business administration, insurance, or a health related field also notes that combinations of education and experience will be evaluated on an individual basis. The AAO finds from the documentation submitted that some employers prefer to hire candidates with a bachelor's degree and in a limited number of cases, the employer may require a candidate to possess a bachelor's degree; however it is the desire, experience, or training of a particular individual that the employer uses to orient the individual to a specific area of the occupation, not that the occupation requires a specific field of study. In the instant matter, the petitioner has not provided substantiating evidence that the proffered position requires a specific area of study or experience to perform the duties of the position.

The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into a claims examiner position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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 the instant matter, the petitioner has not submitted opinions from professional associations or businesses that demonstrate that employers require a bachelor's degree to perform the occupation of a claims examiner or that a particular field of study at the university level provides the required educational background to perform the position. Again, the materials submitted suggest that it is the discipline of a four-year course of study that many employers prefer and is most relevant to the position of a claims examiner; not that the degree must be in a particular discipline.

The petitioner has submitted five job announcements from other insurance companies advertising for various types of claims examiners. Counsel's assertion that the mere mention of a bachelor's degree in the text headings of an Internet advertisement means that the employer requires a bachelor's degree is not persuasive. Each of the job announcements submitted state specifically whether the company prefers or requires a four-year degree. Three of the job announcements specifically state that the companies prefer a college degree but do not indicate that it is required. One of the job announcements indicates that the company is looking for a bachelor's degree but also indicates that the company is looking for an individual with experience. One of the job announcements indicates that the successful candidate must have undergraduate studies in business administration or a related field but does not indicate that the successful candidate must have completed the undergraduate studies. A review of the job announcements confirms that many employers prefer the successful applicant for the position of a claims examiner to have some university-level education but also confirms that the work experience of an individual is the determining factor in employment. These job announcements and the information from other sources in the record do not establish that a degree in a specific discipline is commonly required in the industry in parallel positions among similar organizations. The record, accordingly, fails to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner and counsel have provided descriptions of the proffered position that correspond to the duties of a claims examiner. Neither counsel nor the petitioner has provided information that distinguishes the proffered position from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 degree or its equivalent for the position. On appeal, counsel for the petitioner lists seven individuals and indicates these individuals hold bachelor's degrees. However, the petitioner has not provided copies of the individual's diplomas or evidence that the employees' degrees are in specific

disciplines that relate directly to their positions. Moreover, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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. The petitioner has provided voluminous information relating to its type of business. However, the petitioner also provides descriptions of the duties of the proffered position that list the routine tasks of a claims examiner for an insurance company. The petitioner has not provided information or documentary evidence to demonstrate how the duties of the proffered position are so specialized or complex, that the knowledge to perform the duties requires the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO has determined that the proffered position is not 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.