



U.S. Citizenship  
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FILE: SRC 04 163 52012 Office: TEXAS SERVICE CENTER Date: JUN 16 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
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 college that seeks to employ the beneficiary as a library assistant. 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief 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 a library assistant. 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 duties that entail: lending and charging of library materials; shelving and organizing materials; helping visitors in selection and location of library materials; maintaining a specialized reserves Collection; processing Interlibrary Loan requests; issuing overdue notices and collecting fines; minor maintenance of reproducing equipment; performing electronic searches; and assisting the public with a wide variety of directional questions. The petitioner stated that the beneficiary qualifies for the proposed position because she has a working knowledge of library organization and terminology. The petitioner further stated that the beneficiary's knowledge and skills are consistent with a person holding bachelor's level degree and significant library experience.

The director issued a request for evidence noting that the information submitted with the petition did not adequately establish that the position met any of the criteria of a specialty occupation and referred to the Department of Labor *Occupational Outlook Handbook's (Handbook)* section on the occupation of library assistant. In response, the petitioner explained that the beneficiary had been promoted to reference librarian. As noted by the director, the petitioner submitted a new Form I-129 (without a filing fee), Labor Condition Application and a job description for a reference librarian.

The director determined that the proffered position was not a specialty occupation. As discussed above, the director noted that the petitioner submitted a second Form I-129 without a filing fee, and a new LCA for a reference librarian. The director noted that the original petition and LCA were for a library assistant. The director found that the petitioner attempted to change the position. According to the director, the duties of the proffered position are performed by library assistants, which is an occupation that does not require a baccalaureate degree in a specific specialty. The director stated that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field, and that the evidence of record is not persuasive in showing that the job offered could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the proffered position of library assistant is a specialty occupation. Counsel asserts that the employer normally requires a degree or its equivalent for the position. Additionally, counsel notes that the petitioner's minimum requirement of a bachelor's degree is neither unique, nor it is unusual. Counsel explains that the petitioner did not understand the immigration procedures and would like the second petition for a reference librarian position to be considered withdrawn.

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 first 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 *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.

The duties of the proffered position are most similar to those of library assistants - clerical as described in the *Handbook*. The *Handbook* does not indicate that this position requires a bachelor's degree. The *Handbook* notes that library assistants can be promoted to library technicians. The *Handbook* reveals that the position of library technician also does not require a bachelor's degree and notes that training requirements for library technicians vary widely ranging from a high school diploma to specialized post-secondary work. The *Handbook* further explains that some employers hire individuals with work experience or other training; other employers train inexperienced workers on the job. The *Handbook* also states that some employers require that technicians have an associate's or bachelor's degree.

Based on the above information from the *Handbook*, a baccalaureate or higher degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position, library assistant, or for entry into the position of a library technician.

The petitioner has submitted insufficient evidence to satisfy the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submits several job postings for library assistants. Although the petitioner highlighted several job openings requiring a bachelor's degree, many of these postings indicated that a bachelor's degree was required without specifying a degree in a specific specialty. Furthermore, the majority of the job postings submitted by the petitioner did not indicate that a bachelor's degree was required for the position of library assistant. 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. Therefore, the job postings do not support the petitioner's assertions that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has provided no evidence to satisfy the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the proposed position is so complex or unique that it can be performed only by an individual with a degree. Again, the duties of the proposed position are performed by library assistants or library technicians, which the *Handbook* reveals are occupations that do not require a baccalaureate degree.

The third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. Here, the petitioner states that it normally requires a baccalaureate degree, and submits an affidavit that its number of full-time library assistants is four, all of whom have a bachelor's degree. The petitioner submitted resumes of four individuals indicating that these individuals have a bachelor's degree in the following areas: education, business administration, western history and religion, and history. This information demonstrates that a degree in a variety of fields is acceptable to the petitioner for the proffered position. As noted above, CIS interprets the term "degree" as one in a specific specialty that is directly related to the proffered position. Furthermore, the petitioner has not provided proof of employment of these individuals. Therefore, the petitioner has not established that it normally requires a 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. The petitioner has provided no evidence that the nature of the duties is specialized or complex. The petitioner has not differentiated the duties of the proffered position from those duties normally required of a library assistant. Based on the *Handbook's* information, the duties of the proposed position are performed by a library assistant, which is an occupation that does not require a bachelor's degree.

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.