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**U.S. Citizenship  
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FILE: WAC 04 183 53972 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 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 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 provider of home health services that seeks to employ the beneficiary as a human resources manager. 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 does not qualify as a specialty occupation. On appeal, the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a human resources manager. Evidence of the beneficiary’s duties was set forth in the petitioner’s letter filed in support of the Form I-129. According to this evidence the beneficiary would:

- Plan and carry out policies relating to all phases of personnel activity: recruit, interview, and select employees to fill vacant positions;
- Investigate accidents and prepare reports for insurance carriers;
- Plan and conduct new employee orientation to foster a positive attitude toward company goals;
- Keep records of insurance coverage, pension plans, and personnel transactions such as hires, promotions, transfers, and terminations;
- Conduct wage surveys within the labor market to determine competitive wage rates;
- Prepare budgets of personnel operations;
- Meet with supervisors to resolve grievances;
- Write separation notices for employees separating with cause and conduct exit interviews to determine the reasons behind separations;
- Prepare reports and recommend procedures to reduce absenteeism and turnover;
- Represent the company at personnel related hearings and investigations; and

- Contract with outside suppliers to provide employee services, such as canteen, transportation, or relocation services.

The petitioner does not state that it requires a degree in any specific specialty for entry into the offered position, but finds the beneficiary qualified for the position by virtue of his foreign bachelor's degree in education, and master's degree in business administration.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for human resource managers. The *Handbook* notes that because of the diversity of duties and level of responsibility associated with these positions, the educational backgrounds of individuals filling them varies considerably. When filling entry-level jobs, employers usually seek college graduates. Many prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background, or a well-rounded liberal arts education. It is, therefore, apparent that a bachelor's degree in a specific specialty is not required for entry into the position. A degree in any number of disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted evidence from the Department of Labor's *O\*NET*, the California Employment Development Department (CEDD), and Human Resources Development Canada (HRDC). None of these resources establish that a degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations.

The *O\*NET* states that most human resources manager positions require a four-year bachelor's degree, but some do not. The *O\*NET* does not state that positions requiring degrees require that the degree be in any particular educational discipline.

The CEDD states that entry-level positions in human resources normally require a four-year college degree. It notes that preferred degrees could vary from business administration with a human resources specialization to industrial relations or sociology. Other employers look for a well-rounded background and choose liberal arts graduates. Like the *O\*NET* and *Handbook*, the CEDD does not state that the degree need be in any particular educational discipline.

HRDC states that a university degree or college diploma in a field related to personnel management, such as business administration, industrial relations, commerce or psychology, or completion of a professional development program in personnel is required for human resources specialist positions. Again, individuals qualify for the position by obtaining degrees in a wide range of unrelated fields, and by development programs not equivalent to a bachelor's degree.

The petitioner also submitted one job advertisement for a human resources manager. The advertised position required a bachelor's degree in human resources or a related field. The advertisement was not, however, from an organization similar in nature and scope to that of the petitioner, and the position is not parallel to that of the proffered position in level of responsibility. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. It states that the company's office manager has heretofore performed the human resources management functions, and that this person is a college graduate with over 20 years of business experience. The petitioner fails to identify the degree obtained by this individual, or to establish that the 20 years of business experience are in the human resources management field. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties are routine for the position in the industry and regularly performed by individuals with education in a wide range of unrelated fields, and by individuals who do not hold bachelor's degrees. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.