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FILE: WAC 03 214 52889 Office: CALIFORNIA SERVICE CENTER Date: OCT 06 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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 director of the service center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal because counsel had not presented issues for consideration on appeal. The matter is again before the AAO, on its own motion to reopen its previous decision on the basis of counsel's showing that he had filed a brief that should have been included in the record of proceeding and considered on appeal. The prior decision of the AAO is withdrawn. Upon consideration of the appeal, the appeal will be dismissed, and the petition will be denied.

The petitioner is a corporation that functions as a staffing agency providing persons to perform home care services. In order to employ the beneficiary as its human resources director, 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 on the basis that the petitioner had failed to satisfy any of the specialty occupation criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that the director erred in failing to recognize that the proffered position is a specialty occupation.

The director's decision to deny the petition was correct. The AAO bases its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 (Petition for Nonimmigrant Worker) and the supporting documentation filed with it; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] 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 [2] 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. (Italics added.)

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.

CIS has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In its July 1, 2003 letter of support, submitted with the Form I-129, the petitioner states :

[The petitioner] is a California corporation established in 1996. It is a staffing agency engaged in providing trained and qualified care providers to numerous households in the San Fernando Valley and surrounding communities. During our years in operations [sic], our company slowly but steadily grew. Today, we have in our employ more [than] 25 employees. Our gross income during 2002 approximated \$247,781.00 while our net income rose to \$9,481.00 during the same period.

The increased demand for our services, the increased awareness and preference for home care among elderly and disabled patients, the growing number of clientele and wider scope of operations exerted a positive impact on the company’s operations. Management came to the conclusion that it is high time for the company to hire a professional to handle personnel and human resources matters.

In its January 24, 2004 letter submitted in response to the RFE, the petitioner stated: “The Director of Human Resources in our company is required [to] develop, coordinate, and implement our personnel programs, including recruitment, compensation and/pay system, benefits, training and development of employee relations.” This letter described the proposed duties and their respective share of work time as follows:

- Formulate criteria for recruitment and selection of employees. Oversee screening, interviewing and testing of applicants. Determine suitability of candidates to job offered. Exercise wide latitude of discretionary decisions on hiring. Design the employment contract. 30%

Design, supervise and maintain the compensation and benefits package of our company, including system of performance management, rewards, cash and non-cash compensation. Conduct research on wage and salary trends to ensure that company’s rates are competitive and in compliance with existing laws and regulations. 15%

Develop and maintain other HR policies and guidelines specifically in the following areas: attendance monitoring, performance evaluation and rewards, employee discipline, employee development (career planning, succession planning and training), safety and separation. 20%

- Liaise between the company and prospective clients/families of clients. Analyze and match client requirements with qualifications and skills of company employees. 20%
- Provide records to comply with all state and federal employment laws. 10%
- Represent the company at personnel hearings and investigations. 5%

This letter of reply to the RFE also states that the beneficiary would “be responsible only to the President of the Company,” “supervise an interviewer and a clerk,” and “be coordinating with the Finance and Marketing Department.”

Preliminary to its evaluation of the evidence under the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO notes the following limitations in the evidence of record about the proffered position. As evidenced by the above listing of proposed duties from the record of proceeding, the petitioner describes the position and its duties in exclusively generalized and generic terms that do not relate any concrete information about either the specific work that the beneficiary would do for the petitioner, or the content and educational level of specialized knowledge that the beneficiary would apply in that work. Likewise, the issues that would engage the beneficiary are presented in exclusively abstract terms that do not relate the level of theoretical and practical knowledge that would actually be applied in addressing them.

Because their evidentiary weight is a factor in the evaluation of the record under several of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will here address the opinions about the specialty occupation issue

that are expressed in the January 7, 2004 letter from a university professor that is associated with the evaluation report produced by the Foundation For International Services, Inc.

The pertinent part of the professor's letter states:

Director of Human Resources jobs, because of their complexity and uniqueness, are considered to be specialty occupation positions normally requiring, as a minimum, the equivalent of a U.S. Bachelor's degree in Business Administration with Specialization in Human Resources Management, or a related degree. Such jobs require: **recruitment and retention of staff**; full supervision and maintenance of the firm's benefits programs; reviewing and making required and designed changes to the employment contracts; maintaining personnel records; acquiring and supervising all temporary staff; providing records to comply with all state and federal employment law; coordinating all payroll[s] and payroll taxes; conducting exit interviews to evaluate reasons for separations; representing the Company at personnel hearings and investigations; and performing as both an individual and team contributor. Many of these duties are specialized and require specialty occupational level practical and theoretical knowledge that must be quickly learned and then utilized in daily activities. Typically, Director of Human Resources positions, due to their specific interaction with diverse areas of the company, report directly to, and work with, senior management.

The demands of the job Director of Human Resources are so complex and specialized that the requirement of a Bachelor's degree in Business Administration with specialization in Human Resources Management, or its equivalent, is an industry standard. This requirement is common for organizations similar to [the petitioner].

The professor's letter has no evidentiary significance. Neither the letter nor any other part of the record contains evidence establishing the professor's competency to declare the educational requirements for director of human resources positions. The professor provides no factual foundation for his opinion, such as treatises, authoritative studies, or Department of Labor (DOL) publications or statistics. The record does not establish the professor's competency in the application of the specialty occupation standards of the relevant CIS regulations. The professor's letter is conclusory, that is, it does not inform the reader of how the professor analyzed the general job functions to determine their requirement for at least a bachelor's degree in a specific specialty. The professor's pronouncement that "Directors of Human Resources . . . are considered to be specialty occupation positions" does not identify the considerer. Nor does the professor cite any CIS precedent decisions to support his assertion. The professor does not reveal the analysis behind his determination that "the demands of the job Director of Human Resources are so complex and specialized" as to require a specialty degree. The professor's letter indicates that his only familiarity with the particular position that is the subject of this proceeding is "the H-1B petition from [the petitioner] which includes the position duties for Director of Human Resources." As reflected in the previous discussion of the generality of the petition's duty descriptions, the petition's descriptions provide no concrete details about, and are accompanied by no illustrations of, the type of work that the beneficiary would actually perform. There is no evidence of record that corroborates the professor's self-endorsement as "a recognized authority according to

INS regulations.”¹ As indicated in the discussion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) below, the professor’s opinion is inconsistent with the DOL’s *Handbook’s* information about the human resource director occupation. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO will address all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), although counsel’s brief only argues satisfaction of the first.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position’s duties.

The AAO consulted the 2006-2007 edition of the *Handbook*, which it recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. To the limited extent that they are described in the record, the proposed duties accord with those of a human resources generalist, discussed as follows in the *Handbook’s* 2006-2007 edition:

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require a broad range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer’s needs. In a large corporation, the top human resources executive usually develops and manages human resources programs and policies. (Executives are included in the *Handbook* statement on top executives.) These policies are usually implemented by a director or manager of human resources and, in some cases, a director of industrial relations.

However, as reflected in the following excerpts, the *Handbook* indicates that possession of at a bachelor’s degree, or its equivalent, in a specific specialty is not a normal requirement for entry into human resources positions. The introductory “Specific Points” bullets to the section “Human Resources, Training, and Labor Relations Managers and Specialists” state:

- In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations; other

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority’s opinion must state: (1) the writer’s qualifications as an expert; (2) the writer’s experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

- For many specialized jobs, previous experience is an asset; for more advanced positions, including those of managers, arbitrators, and mediators, it is essential.
- Keen competition for jobs is expected because of the plentiful supply of qualified college graduates and experienced workers.

The narrative in this *Handbook* section includes these statements reflecting that a bachelor's degree, or its equivalent, in a specialty is not a normal minimum requirement for human resources positions:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably because of the diversity of duties and levels of responsibility. 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.

Many colleges and universities have programs leading to a degree in personnel, human resources, or labor relations. Some offer degree programs in personnel administration or human resources management, training and development, or compensation and benefits. Depending on the school, courses leading to a career in human resources management may be found in departments of business administration, education, instructional technology, organizational development, human services, communication, or public administration, or within a separate human resources institution or department.

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example. Most prospective human resources specialists should take courses in compensation, recruitment, training and development, and performance appraisal, as well as courses in principles of management, organizational structure, and industrial psychology. Other relevant courses include business administration, public administration, psychology, sociology, political science, economics, and statistics. Courses in labor law, collective bargaining, labor economics, labor history, and industrial psychology also provide a valuable background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems also is useful.

[T]he field offers clerical workers opportunities for advancement to professional positions. Responsible positions occasionally are filled by experienced individuals from other fields, including business, government, education, social services administration, and the military.

The spectrum of acceptable educational credentials referenced in the job advertisements that the petitioner submitted into the record includes college degrees with no specific major required, and so corroborates the *Handbook's* observation to the effect that a bachelor's degree or its equivalent *in a specific specialty* is not normally required for the type of position proffered here.

For the reasons addressed above, the AAO finds that the professor's letter is not probative of any criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), and it shall not be further discussed.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which assigns specialty occupation status to a position that requires at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS 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)).

As discussed above, the *Handbook* does not indicate that the proffered position is one for which there is an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The job advertisements from other employers are not persuasive. At most, they reflect the fact that a wide spectrum of degrees is acceptable in human resource management positions. Also, the information about the duties and responsibilities of both the advertised positions and the one proffered here is too general to support a meaningful comparison between them, or a conclusion that the positions are parallel in their actual performance and knowledge requirements. Finally, the number of advertisements is not sufficient to establish an industry-wide practice.

The record's information about the proffered position and its duties, which is consistently general and generic, does not convey the complexity, uniqueness, or specialization required to qualify a position as a specialty occupation under either the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The evidence of record fails to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) by distinguishing the proffered human resource director position as so unique from or more complex than other such positions that it can be performed only by an individual with at least a bachelor's degree in a specific

specialty. As earlier discussed, the *Handbook* indicates that human resources managers hold a wide variety of educational credentials along a wide spectrum of specialty and non-specialty degrees. The petitioner has not established complexity or uniqueness that would place the proffered position among those requiring a specialty degree.

The petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) because the evidence of record does not establish that the specific duties are so specialized and complex that their performance requires knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. As already discussed, the record provides no evidence of the substantive nature of any specific duties. As the level of specialized knowledge required for the proffered position is not evident, no normal association with any specialty degree has been established.

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

This criterion has several evidentiary elements. First, the petitioner must demonstrate that it has an established history of hiring for the proffered position only persons with at least a bachelor's degree or equivalent. Second, this bachelor's degree or equivalent must be in a specific specialty that is characterized by a body of highly specialized knowledge. Third, the petitioner must also establish that both the nature and the level of highly specialized knowledge that the bachelor's degree or equivalent signifies are actually necessary for performance of the proffered position. The evidence of record satisfies none of these elements.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision on this issue shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

ORDER: The AAO decision of February 8, 2005 is withdrawn. The appeal is dismissed. The petition is denied.