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U.S. Citizenship
and Immigration
Services

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APR 03 2007

FILE: LIN 05 211 50731 Office: NEBRASKA 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.

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 non-profit national testing organization. In order to hire and employ the beneficiary as a human resource assistant, the petitioner filed this change-of-employer H-1B petition in order to extend the beneficiary's stay as a nonimmigrant temporary 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 establish that the proffered position satisfied any specialty-occupation qualifying criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel contends that, contrary to the director's decision, the evidence of record substantiates that the proffered position is a specialty occupation.

The AAO finds that the director's decision to deny the petition was correct: 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). Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO bases this determination on its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (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; counsel's brief on appeal, in the form of a January 6, 2006 letter to the service center; and the documents submitted as enclosures to the brief. The appeal shall be dismissed, and the petition will be denied.

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.

Citizenship and Immigration Services (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.

As Appendix A to the Form I-129 the petitioner lists the following duties proposed for the beneficiary:

1. Compile and keep personnel and Exam Candidate records
2. Record data for each employee and Exam Candidates, such as address, weekly earnings, absences, Candidate personal information, school records, etc.
3. Compile and Type reports from employment and school records
4. Search Candidate files and furnish information to authorized persons
5. Review Americans With Disabilities Act issues and make recommendation

6. Supervise the scheduling process
7. Supervise and review the qualification of Candidates

The petitioner's September 26, 2006 letter in support of the petition, which was submitted with the Form I-129 and resubmitted as part of the response to the RFE, includes these statements about the proffered position:

[The petitioner] would like to employ [the beneficiary] in the position of Candidate Services Coordinator. Reporting to the Chief Operations Officer, [the beneficiary] would be responsible for supervising and managing the candidate services division, management employment activities, improving customer services relationships, maintaining administrative ties with various osteopathic teaching institutions, managing the online testing program and investigating and solving customer[-]related issues with regard to [the petitioner's] services. Specific duties would include: i) maintain employee and candidate records; ii) monitor candidate services and investigate candidate issues; iii) analyze statistical data and reports in relation to ADA [Americans with Disabilities Act] issues for improvement of policies and practices; iv) coordinate with the Director of Information Systems to ensure seamless operation of the online system; [and] (v) reconcile examination payment with the Director of Finance and Human Services.

The [proffered] position requires the theoretical and practical application of highly specialized knowledge in the areas of business administration and human resources management. The nature of the analytical and technical tasks which must be performed requires skills which are usually associated with the attainment of at least a Bachelor's degree in Human Resources Management, Business Administration, Sociology, a closely related social sciences or liberal arts discipline, or the equivalent in work experience. Similar professionals [employed by the petitioner] have at least a bachelor's degree in Human Resources, Business Administration, Sociology, a closely related social sciences or liberal arts discipline, or the equivalent in work experience.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 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.

As is standard in its consideration of the possible specialty-occupation status of a particular position, the AAO consulted the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations on which it reports. The AAO finds that, as described in the record, the proffered position comports with the occupation of human resources manager as described in the 2006-2007 *Handbook's* section "Human Resources, Training, and Labor Relations Managers and Specialists." With regard to such positions the *Handbook's* information indicates that, while a college degree is usually required, a major or academic concentration in a specific specialty is not.

This excerpt from the *Handbook* indicates that possession of at least a bachelor's degree, or its equivalent, in a specific specialty is not a normal requirement for entry to the type of position that is the subject of the present petition:

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, human resources 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 human resources 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.

The documentary evidence that the petitioner submitted into the record does not refute the *Handbook's* information to the effect that a bachelor's degree or its equivalent is not normally required for the type of position proffered here.

As the evidence of record does not establish that a bachelor's degree, or its equivalent, in a specific specialty is normally a minimum entry requirement for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for 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 petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for a bachelor's degree in a specific specialty.

The job advertisements are not persuasive. They are too few to establish an industry-wide standard, and they are comprised of employers outside the petitioner's industry. Also, these job advertisements mirror the *Handbook's* information: they indicate too wide a range of acceptable baccalaureate degrees to be indicative of an industry-wide requirement for a degree in a specific specialty. One advertisement states only a preference for a bachelor's degree, and does not specify a major or academic concentration; the other only requires a bachelor's degree in "a related field," without specifying the majors or academic concentrations encompassed by that term.

Contrary to counsel's view, the prior employer's successful H-1B petition on behalf of this beneficiary is not probative of an industry-wide standard. Further, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which qualifies a position that is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record does not demonstrate this performance requirement, as it fails to establish that the proffered position is unique from or more complex than human resources positions that do not require such a degree.

The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which qualifies positions for which the petitioning employer demonstrates a history of exclusively recruiting and hiring only persons with at least a baccalaureate degree or its equivalent in a specific specialty. The petitioner does not provide documentary proof of its recruiting and hiring practices. Also, there is no evidence to substantiate the degree-equivalency credentials of non-degreed persons that the petitioner hired on its determination of work experience equal to college credits. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, the range of degree majors that the petitioner states that it requires of “similar professionals” – which includes undesignated social sciences and liberal arts degrees - is too wide to indicate a position that requires at least a bachelor’s degree in a specific specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not demonstrated that the proposed duties are any more specialized and complex than those performed by the range of human resource managers recognized by the *Handbook* as working without a degree in a specific specialty.

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 to deny the petition 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 appeal is dismissed. The petition is denied.