



U.S. Citizenship  
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APR 04 2007

FILE: EAC 05 201 53104 Office: VERMONT 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:

SELF-REPRESENTED

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 operates three children's daycare centers. The petitioner seeks to employ the beneficiary as a Senior Program Director, and 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 based on a determination that the proffered position was not 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:

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.

U.S. 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). 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 record of proceeding before the AAO contains: (1) Form I-129, Petition for a Nonimmigrant Worker (Form I-129) and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the director’s RFE; (4) the director’s denial letter; and (5) Form I-290B, Notice of Appeal to the AAO (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 senior program director. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s response to the director’s RFE; and the Form I-290B and supporting documentation. According to the evidence the beneficiary would perform the following proffered position duties:

- Inspect and overlook daily operations of all centers (5%);
- Supervise, direct and guide directors from other centers (10%);
- Supervise general condition and upkeep of the building and grounds (10%);
- Develop and implement policies and objectives of the program in cooperation with the advisory committee (10%);
- Register new students and give facility tours (10%);
- Implement state and county licensing regulations (5%);
- Order and purchase all necessary equipment for the centers including computers, software, furniture, food, office and project supplies, and others (5%);
- Supervise and control data entry such as accounts ledgers, students and staff data, scheduling staff, and others (5%);
- Design, manage and maintain the centers’ web pages, search engine submission, replying to e-mail inquiries, and updating all the internal web contents (10%);
- Develop and update software programs for inventories, menus, curriculum and others (10%);
- Choose and install developmentally appropriate software (5%);

Provide hands-on training with appropriate software programs to assist teachers in becoming familiar and comfortable with the operations and features of hardware and software (10%).

The petitioner asserts that the proffered position requires a baccalaureate degree in a computer-related field, and that the beneficiary has a Bachelor of Science Degree in Computer Networking and is thus qualified to perform the proffered position duties.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns first to the criteria set forth 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; and 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 considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

*Top Executive* positions are discussed on pages 67-70 of the *Handbook* (2006-2007 Edition). Specifically, the *Handbook* provides on page 68, that:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. . . .

. . . .

The formal education and experience of top executives vary as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts.

The *Handbook* additionally states on page 69 that:

Many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs.

The *Handbook* describes a computer *Applications Programmer* position on page 105:

*Applications programmers* write programs to handle a specific job, such as a program to track inventory within an organization. They also may revise existing packaged software or customize generic applications which are frequently purchased from vendors. . . .

. . . .

[T]here are many training paths available for programmers . . . . Bachelor's degrees are commonly required, although some programmers may qualify for certain jobs with 2-year degrees or certificates. The associate degree is a widely used entry-level credential for prospective computer programmers . . . .

. . . .

In the absence of a degree, substantial specialized experience or expertise may be needed.

The AAO finds that approximately 60% of the proffered position's duties include general monitoring and management of the petitioner's business operations - duties analogous to those of a general or operational manager position, as set forth in the *Handbook*. Approximately 40% of the proffered position's duties involve designing and revising existing software for specific childcare center related purposes – duties analogous to those of an applications programmer. The *Handbook* reflects that the educational requirements for general or operational management positions vary widely, from a broad range of bachelor's degrees to, in some cases, no degree requirement at all. The educational requirements for an applications programmer also vary from a bachelor's degree, to an associate degree requirement, to no degree requirement at all. The petitioner has thus failed to establish that a baccalaureate or higher degree, or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position, as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish its proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must establish that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty.

The petitioner has submitted a copy of the county code educational requirements for child care center directors in the county in which the petitioner operates (Arlington County, Virginia) to establish its degree requirement as an industry norm. The Arlington County Municipal Code provision for child care center directors (Section 52-29) requires either a master's degree or bachelor's degree in child development or early childhood education or a related field. The county code provides further at §52-29(A)(1)(e) that in the absence of the above degrees and related experience, qualifications can also be satisfied by "two or more years of college with twelve college semester hours, or the equivalent quarter hours, in child development or early childhood education and five years of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles." Using the three-for-one ratio at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO finds that the minimum educational requirements for child care center directors, per the Arlington County Municipal Code, are not the equivalent of a four year baccalaureate degree. Moreover, the AAO notes that the director duties set forth in the Arlington County Municipal Code section 52-29(A)(2) are materially different than the described duties for the proffered position.<sup>1</sup> The AAO

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<sup>1</sup> Section 52-29(A)(2) provides that a director's duties include: program planning and evaluation; provision of necessary professional supportive staff to ensure that required child-staff ratios are maintained and a child development program is provided; direction and supervision of staff; provision of in-service staff development and education program; designation of an assistant director or head teacher to assume

thus also finds that the proffered position is not a child care center director position as defined by the cited code provision. This finding is supported by the fact that the petitioner does not require that the beneficiary's education, a bachelor's degree in computer networking, be in compliance with the Arlington County Code for child care center directors. The Arlington County Code regulations thus do not establish the position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

In addition to the above evidence, the petitioner submitted a letter from a child care training coordinator from the Arlington, Virginia Department of Human Services, Child and Family Services Division, to establish that a computer-related degree requirement as an industry norm. This evidence fails to establish that the position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The letter, signed by [REDACTED] states that:

Arlington County, AV Chapter 52-29 . . . mandates that each child care center shall have a director with Bachelor Degree, who has the necessary experience for the planning, conduct, and supervision of the operation of a child care center.

Farthar more, [sic] it is strongly recommended for large [sic] corporation such as AA DayCare, Inc. that owns and manages three daycare centers in Arlington County . . . to have a Program Director with a degree in a computer field in addition to early childhood education experience. The AA DayCare, Inc. has 43 employees and 230 children, where computers play a major role in curriculum, and administration.

The letter, which concludes that a baccalaureate degree in a computer related field is recommended for employment as a child care center program director will be discounted. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *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)). The opinion is unsupported by independent evidence to establish the author's authority to judge the educational requirements imposed by the Arlington County Municipal Code or by the petitioner's industry.<sup>2</sup> Furthermore, it is noted that the record does not establish the proffered position as a child care center director position. The author's conclusion regarding the degree requirements recommended for this occupation thus lacks relevance for these proceedings. The record contains no other evidence to demonstrate that the petitioner's computer-related degree requirement is common in parallel positions among similar organizations. The petitioner additionally failed to establish that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. As previously discussed, the record demonstrates that the proffered position's duties involve monitoring and management of the petitioner's general business operations, and designing and

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administrative duties in the director's absence; maintenance of up-to-date records, including personnel records; securing proper maintenance of center to ensure fulfilling all state and county codes and regulations; involve parents in program; represent the center to the community; and provide orientations for volunteers.

<sup>2</sup> It is noted that the letter states different "Code" requirements for the position than those contained in the Arlington Municipal Code.

revising existing software for specific childcare center related purposes – duties analogous to those of a general or operational manager and an applications programmer, and for which the *Handbook* reflects educational requirements that vary widely, from a broad range of bachelor's degrees to, in some cases, no degree requirement at all.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and 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. To determine a petitioner's ability to meet the third criterion, CIS often reviews the petitioner's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. In the present matter, the proffered position appears to be a newly created position, and the record contains no evidence to indicate that the petitioner has previously hired an employee for the proffered position. The petitioner has thus failed to establish that its normal hiring practice is to require the minimum of a baccalaureate degree in a specific field for the proffered position as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that the nature of its position's 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. As previously discussed, the AAO does not find that the duties described by the petitioner reflect the need for a higher degree of knowledge or skill than would normally be required of a general or operational manager or a computer applications programmer. The petitioner has therefore failed to establish that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained its burden in the present matter. The appeal will therefore be dismissed and the petition will be denied.

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