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U.S. Citizenship
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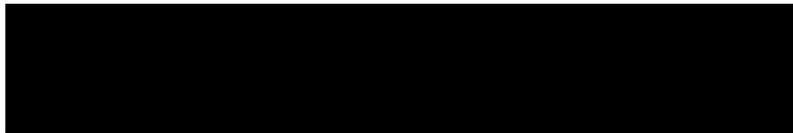


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DEC 13 2007

FILE: EAC 06 141 52387 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, Texas 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 an adult residential facility for the developmentally disabled established in 2000, with three employees, and no stated gross income.¹ It seeks to employ the beneficiary as a facility administrator. 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 petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The first issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

¹ The petitioner did not provide gross annual income or net annual income on the Form I-129 and the record of proceeding does not contain tax returns for the petitioner.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner states that it is seeking the beneficiary’s services as a facility administrator. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s response to the RFE; and the petitioner’s appeal letter. In the Form I-129, the petitioner described the beneficiary’s proposed duties as “managing the operations of the facility. Ensuring that statutory requirements are met, and that residents follow state[-]approved activities and regimen.” In the response to the RFE, the petitioner stated that the beneficiary would be required to:

- Direct, supervise and evaluate work activities of residential care home staff and other personnel.
- Establish objectives and evaluative operational criteria.
- Direct or conduct recruitment, hiring and training of personnel.
- Develop and maintain computerized record management systems to store and process data, such as personnel activities and information, and to produce reports.
- Develop and implement organizational policies and procedures for the facility.
- Conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, and coordinating financial reporting.
- Establish work schedules and assignments for staff, according to workload, space and equipment availability.

The petitioner did not allocate a percentage of time for the proposed duties as was requested in the director’s RFE. On appeal, the petitioner did not provide any additional information regarding the proposed duties.

In determining whether a proposed 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 consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook's* discussion of the duties of medical and health services managers states the following:

Health care is a business and, like every other business, it needs good management to keep it running smoothly. Medical and health services managers, also referred to as *health care executives* or *health care administrators*, plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help manage an entire facility or system.

* * *

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finances, facility operations, and admissions and also have a larger role in resident care.

The *Handbook* reports that for the position of medical and health services managers, although a "bachelor's degree is adequate for some entry-level positions in smaller facilities, at the departmental level within health care organizations, and in health information management. Physicians' offices and some other facilities may substitute on-the-job experience for formal education." The *Handbook* reports that for medical and health services managers, educational requirements vary widely, depending on the size and complexity of the organization. In small organizations experience may be the only requirement. In large organizations, a master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field." Specific educational requirements vary by job responsibility and the complexity of the organization. Accordingly, the listed duties do not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

In its response to the director's RFE, the petitioner referenced the California Code of Regulations, Title 22, Division 6, Chapter 8 Residential Care for the Elderly. Pursuant to California Code of Regulations, Title 22, Division 6, Chapter 8, Article 6, Section 87564(d)(6), the educational requirement for a facility

administrator is a high school diploma or its equivalent. California Code of Regulations, Title 22, Division 6, Chapter 8, Article 6, Section 87564(f) provides a requirement for up to two years of college for facilities licensed for 50 or more residents. The petitioner's license from the State of California Department of Social Services, allows for a total of six residents and therefore, the position only requires a high school diploma or its equivalent for state certification.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove that a specific degree requirement is common to its 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. On appeal, the petitioner states that "most administrators have nursing degrees or other medical related degrees," but there is no evidence in the record that establishes such an industry standard. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Pursuant to the California Code of Regulations, the proffered position for an organization like the petitioner requires a high school diploma or its equivalent. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, CIS often reviews the position'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 response to the director's RFE, the petitioner stated that "this is the first time that we are attempting to hire a professional." California Code of Regulations, Title 22, Division 6, Chapter 8, Article 6, Section 87564(a), states that "all facilities shall have a certified administrator." Although the petitioner has been licensed by the State of California Department of Social Services since 2000 and it must have employed someone in the capacity of administrator in order to comply with the state licensing requirements, the petitioner did not provide a clear statement and the AAO will not assume that the petitioner has complied with the requirements of Section 87564(a). Therefore, eligibility under this criterion cannot be established. Further, as noted above, California law does not require certified facility administrators to have a baccalaureate degree in a specialty.

The AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Moreover, the critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Again, there is no information in the record to support a finding that the proposed position is more specialized or complex than the general range of facility administrator positions for which the California Code of Regulations, Title 22, Division 6, Chapter 8, Article 6, Section 87564(d)(6), indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, the petitioner failed to establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the evidence submitted in support of the petition, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO will 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.