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20 Mass Ave., N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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JUN 01 2007

FILE: WAC 06 041 53870 Office: CALIFORNIA 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.

*Michael T. Kelly*  
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 food bank that seeks to employ the beneficiary as a volunteer services manager. 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 based on his determination that the record failed to establish the proffered position as a specialty occupation.

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

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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.

Citizenship and Immigration Services (CIS) consistently 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.

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 petitioner seeks the beneficiary’s services as a volunteer services manager. Evidence of the beneficiary’s duties includes: the Form I-129; counsel’s November 21, 2005 cover letter in support of the petition; and counsel’s December 5, 2005 response to the director’s request for evidence. As stated by counsel, the proposed duties are as follows:

- Develop and/or maintain policies, procedures and forms for the successful involvement of volunteers (individuals and groups) at all levels of the organization using “best practices” in volunteer management;
- Provide support and training for staff on the effective supervision of volunteers and act as a liaison and resource to volunteers and staff regarding volunteer issues;
- Advocate for volunteers in department planning and work with staff to develop innovative opportunities for volunteer involvement;
- Solicit volunteer feedback on an ongoing basis and facilitate process for providing timely follow-up and/or ensuring appropriate actions are taken;

- Develop and implement recruitment strategies to ensure a diversified and qualified pool of volunteers is available to meet the needs of the organization;
- Represent the volunteer program at public events including community service groups, educational institutions, employers, communities of faith, and with the media;
- Facilitate interviews with prospective volunteers and coordinate all follow-up communications;
- Maintain appropriate documentation on all active volunteers including application forms and up-to-date volunteer information;
- Work with the Hot Line to manage the volunteer data bases;
- Oversee volunteer recognition including internal events and participation in community-wide events and award opportunities. Ensure the effective administration of volunteer benefits;
- Facilitate ongoing communication with volunteers including, but not limited to, e-mail and/or written updates;
- Facilitate the recruitment of volunteers and the organization of twice-a-month Saturday Community Food Sorts;
- Oversee the Intercultural Competency Plan and produce required written reports;
- Creates team building activities for staff meetings, retreats and volunteer activities;
- Oversees the maintenance of a welcoming environment in the Hospitality Center of the Food Bank;
- Assist with SHFB public relations and educational activities and participate in special projects, work groups, and committees, as required;
- Participate in relevant meetings and conferences, as needed; and
- Related duties may be assigned by the Executive Director.

In his denial, the director found that the proposed duties reflect the position of an administrative services manager, an occupation that does not require a bachelor's degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position clearly qualifies as a specialty occupation and meets all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states further that the director erroneously classified the petitioner as a “small” organization, that the petitioner “has a 2005-2006 current operating budget of \$10 million and is [in] the midst of embarking on a \$4.3 million capital campaign to renovate and expand our current facilities,” and thus is not a small organization. Counsel also states that the following documentation demonstrates that a postsecondary degree is required for the proffered position: letters from the petitioner and from similar organizations; the petitioner’s financial information; a grant request document; a program assessment and recommendation document; and the petitioner’s Internet job advertisement.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria 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; 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 often considered by CIS when determining these criteria 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2006-07 edition, under the category of Administrative Services Managers, indicates that a baccalaureate or higher degree, or its equivalent, is required for an administrative services manager job. Although a review of the Administrative Services Managers training requirements in the *Handbook* finds that a manager of contract administration may qualify as a specialty occupation, the petitioner in this case did not describe the duties requiring at least a bachelor’s degree in business, human resources, or finance indicated in the *Handbook*. Further, information on the petition reflects that the petitioner is a nonprofit religious organization with 28 employees and a gross annual income of \$10 million. Although counsel asserts on appeal that the petitioner is “embarking on a \$4.3 million capital campaign to renovate and expand” its current facilities, there is no documentation of record to support her assertion. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding parallel positions in the petitioner’s industry, counsel submits, on appeal, letters from two businesses similar to the petitioner’s and an Internet job posting for a manager of volunteer services for the Food Bank For New York City. It is noted that the petitioner was put on notice of required evidence and

given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. In his request for evidence, the director specifically requested evidence regarding the degree requirements of the petitioner's competitors. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The letters from these two businesses and the Internet job advertisement will not be considered by the AAO. Further, the AAO notes that the petitioner's attempted submission still does not comply with the director's direction concerning the petitioner's competitors. Neither writer specifies the requirement of a bachelor's degree in a specific specialty. Nor do they provide any evidence in support of their assertion or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree. 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)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO 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, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). It is also noted that the Internet job posting for a manager of volunteer services for the Food Bank For New York City does not show that the position requires a bachelor's degree in a specific specialty. The letters and the job advertisement, therefore, would have no merit had they been timely submitted.

Counsel also submits letters from the petitioner's executive director and its director of finance and administration who assert, in part, that Santa Clara and San Mateo Counties require a bachelor's degree, or an equivalent thereof, for the proffered position. Again, 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)).

The document entitled "Second Harvest Food Bank of Santa Cruz and San Benito Counties Volunteer Program Assessment and Recommendations," the grant request, and the job announcement for the proffered position are also noted. Counsel asserts that this documentation "should serve as proof that this is a position that commands a person with a minimum of a Bachelor's degree." Counsel's assertions about the relevance of information from the "Second Harvest Food Bank of Santa Cruz and San Benito Counties Volunteer Program Assessment and Recommendations" and the grant request are not persuasive. No evidence in the assessment and recommendations or in the grant request indicates that a baccalaureate or higher degree, or its equivalent, is required for the proffered position. The petitioner's Internet job announcement also does not specify the requirement of a bachelor's degree in a specific specialty. Further, CIS must examine the ultimate employment of the alien and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). 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: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard. The record does not demonstrate that the proffered position is more complex than or unique from the range of administrative services manager positions for which the *Handbook* indicates no requirement for at least a bachelor's degree in a specific specialty. The duties that comprise the proffered position do not indicate the necessity for a body of highly specialized knowledge attained by at least a baccalaureate degree level of coursework in a specific specialty.

For the reasons discussed above, the petitioner has not satisfied any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that the proffered position is a new position. The evidence of record therefore does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

The information in the record about the proposed duties does not establish that they exceed in scope, specialization, or complexity those usually performed by administrative services managers, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty. As evident in this decision's earlier listing of duties as described in the record, the petitioner has not demonstrated that the specific duties are so specialized and complex that their performance is usually associated with at least a bachelor's degree in a specific specialty.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 not sustained that burden.

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