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**U.S. Citizenship  
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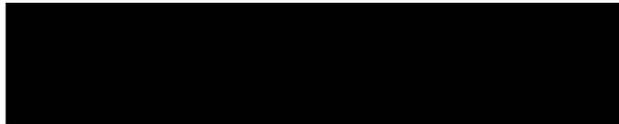


02

FILE: EAC 06 021 52698 Office: VERMONT SERVICE CENTER

Date: MAY 17 2007

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.

*for 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 organization that seeks to employ the beneficiary a career advisor. 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 proffered position is not a specialty occupation and the beneficiary is not qualified to perform 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) 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 career advisor. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s addendum in support of the petition; and counsel’s December 21, 2005 response to the director’s request for evidence. As stated by the petitioner, the proposed duties include, in part, as follows:

- Present Division programs/services in recruitments and orientations;
- Conduct individual and/or group assessments to match customer with best training, education, employment or extended case management options;
- Identify customer’s employment strengths and risk factors (“barriers”) and degree of self-sufficiency;
- Using agency, community, and customer’s own personal resources, develop service plan to minimize/eliminate customer’s most serious barriers and access training, education, employment or extended case management;
- Regularly share information with supervisor and colleagues to support a team approach to maximize customer’s options and resources;
- Conduct ongoing assessment and revise service plan to reflect progress towards greater job readiness and/or emerging employment risk factors;

- Coordinate elements of service plan to make sure services are consistent and contribute to customer's employment goals;
- Track important job readiness indicators such as attendance/hours, training benchmarks, professional behavior/work habits, and drug testing. In consultation with supervisor and training staff, intervene early and often when indicators do not meet expectations;
- Develop professional working relationship with participant that emphasizes retention from initial contact through job placements;
- Intervene regularly with absent participants to identify barriers and maintain attendance in anticipation of full-time work schedule;
- Provide group presentations aimed at helping customers develop "soft skills" and resources necessary to succeed at work and establish a working lifestyle. These may include interactive presentations on sexual harassment, conflict resolution, body language, and taking/giving directions;
- Develop speakers' bureau of professionals with expertise in work-related issues such as hiring practices, substance abuse, behavioral health, and workplace behavior;
- Complete and maintain customer files/database per contract requirements;
- Make regular reviews of customer data, including attendance, training program performance and placement and retention;
- Maintain confidential electronic and written customer files with regular entries on customer interaction related to assessment, intervention, and progress;
- Contribute regularly to program and functional staff meetings to develop "best practices" and build career advisor/case management capacity within Division and agency; and
- Actively participate in individual and group "supervisions."

In her denial, the director found that the record contains a copy of a job announcement reflecting that a candidate with an associate's degree would be qualified for the proffered position.

On appeal, counsel submits a job description from the petitioner. Counsel asserts that this description demonstrates that the proffered position requires "a member of the professions." Counsel also submits an academic opinion and a statement from the beneficiary as supporting documentation.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 DOL's *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*, 2006-2007 edition, under Human Resources, Training, and Labor Relations Managers and Specialists, indicates that a baccalaureate or higher degree in a specific specialty is required for a career advisor job. A wide range of educational backgrounds is suitable, including a well-rounded liberal arts education. Further, as noted in the director's decision, the job advertisement for the proffered position, which the petitioner's president included in his December 15, 2005 letter, specifies that an "Associate or Bachelors degree is preferred."<sup>1</sup> It is also noted that the job description that was submitted on appeal does not specify the requirement of a bachelor's degree. The qualifications are listed as follows: "Possess or willing to obtain Customer Service Certification; Familiar with basic computer functions (email, word processing, internet); Able to type at least 15-20 words per minute; Good writing and spoken English skills; Understanding of TANF, common barriers to employment, job search, and work habits; and Bilingual Spanish/English preferred."

The record contains an academic opinion from an associate professor of social work who asserts that the proffered position requires "both a college degree and experience in the helping profession." The opinion rendered by the professor is not probative. Despite her self-endorsement, neither the professor's letter nor any other evidence of record substantiates that she is qualified as an expert on recruiting and hiring practices of career advisors. Second, the record does not indicate that the professor has adequate knowledge of the particular issue here. The professor does not demonstrate knowledge of the petitioner's particular business operations. It is noted that her statements pertaining to the educational requirements of the proffered position conflict with the information reflected on the petitioner's own job announcements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). 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).

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<sup>1</sup> A March 26, 2007 search of the petitioner's website at [REDACTED] finds the following job requirements for a "career advisor" position: High School diploma or GED required; associate degree preferred; excellent oral and written communication skills; bilingual (Eng/Span) preferred; familiar with basic computer functions (email, "work" processing, and internet). Must possess or willing to obtain Customer Service Certification.

The record does not include any evidence regarding parallel positions in the petitioner's industry. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

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. As counsel does not address this issue on appeal, it will not be discussed further.

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.

On appeal, counsel does not discuss the specific duties of the proffered position. He asserts only that the petitioner's job description and the academic evaluation demonstrate that the proffered position requires a member of the professions. These documents have already been discussed herein. 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.

The director also found that the beneficiary was not qualified to perform a specialty occupation. On appeal, counsel states, in part, that the record contains evidence that the beneficiary has both the education and experience necessary to qualify for the proffered position. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for a career advisor. Further, the petitioner's own job announcements for the proffered position do not specify the requirement of a bachelor's degree. In this case, the beneficiary holds a U.S. Bachelor of Arts degree in Interdisciplinary Studies. The record contains copies of the beneficiary's U.S. bachelor's degree and corresponding transcripts. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.