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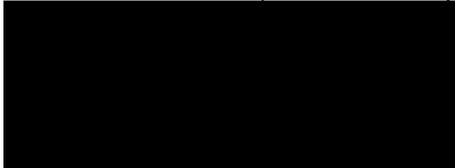


U.S. Citizenship
and Immigration
Services

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MAY 31 2007



FILE: WAC 05 080 51329 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.

Robert P. Wiemann
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 dental clinic that seeks to employ the beneficiary as a part-time business/clinic 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 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) 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 (5th 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 part-time business/clinic administrator. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's January 11, 2005 cover letter in support of the petition; and counsel's May 24, 2005 response to the director's request for evidence. As stated on the petition for the "nontechnical description of job," the proposed duties are: "Coordinate & oversee file management; hire & review performance." As stated by the petitioner in the January 11, 2005 cover letter, the proposed duties are as follows:

The work to be performed by the Clinic Administrator will be heavily administrative and analytical in nature and will require the candidate to draw upon information and knowledge learned in college science courses and work experience in Lab Administration. The candidate will work closely with the Director in coordinating our expansion strategy. This includes reviewing and handling recruitment for new staff, conducting interviews, and performing work performance reports for our staff.

The Clinic Administrator will also review our existing file management and patient intake procedures. The candidate will also be responsible for requesting dental exam reports and medical documents from patients and referring dentists, and corresponding with patients and families who are new to the clinic.

As stated by counsel in his response to the director's request for additional evidence, the beneficiary will spend approximately 30% of her time performing recruitment of clerical staff, 40% performing file management/patient intake duties, 20% supervising independent contractors, and 10% performing correspondence-related duties.

To make its determination whether the employment just described qualifies as a specialty occupation, the AAO turns 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; 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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)).

In his denial, the director found that the proffered position is primarily that of an administrative services manager, a position that does not require a bachelor's degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-05 edition, 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 is actually that of a health services manager or a clinical manager, as described in the *Handbook*, positions that require at least the equivalent of a baccalaureate or higher degree. Counsel states further that the petitioner's previous clinical administrator possessed a U.S. master's degree in health administration. Although not explicitly stated, counsel also implies that, according to the *Handbook*, administrative services managers are not found in the healthcare industry.

At the outset, the AAO disagrees with counsel that a review of the *Handbook* finds that administrative services managers are not found in the healthcare industry. In its *Handbook*, 2006-07 edition, the DOL states the following about the employment of administrative services managers:

Administrative services managers held about 268,000 jobs in 2004. About 80 percent worked in service-providing industries, including Federal, State, and local government; **health care**; financial services; professional; scientific, and technical services; administrative and support services; and education. . . . (Emphasis added.)

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 Obaigbena*,

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). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

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. Preliminarily, the AAO notes that the *Handbook* indicates that physician's offices and some other facilities may substitute on-the-job experience for formal education for HSM jobs, and that not all health services manager positions require a baccalaureate degree in a specific field or a master's degree. The AAO does not concur with counsel that the proffered position is similar to that of a medical and health services manager or a clinical manager, as described in the *Handbook*. A review of the *Handbook*, 2006-2007 edition, finds that medical and health services managers/clinical managers work primarily in private hospitals, offices of physicians, nursing care facilities, home health care services, federal government health care facilities, ambulatory facilities run by state and local governments, outpatient care centers, insurance carriers, and community care facilities for the elderly. In this case, information on the petition indicates that the petitioner is a dental clinic with five employees and a gross annual income of \$800,000. The record contains no documentation to demonstrate that the proposed duties of the proffered position entail the level of responsibility of a medical and health services manager/clinical manager, as described in the *Handbook*. For example, as described for nursing home administrators, the duties of medical and health services managers entail managing personnel, finances, facility operations, and admissions, as well as having a larger role in resident care. See the *Handbook*, 2006-2007 ed. at 59. Further, as the independent contractors are not employees of the petitioner, it is not clear that the beneficiary would "supervise the independent contractors who work for the clinic and provide accounting and bookkeeping services and provide the clinic with laboratory supplies and materials on a regular basis," as asserted by counsel in his May 24, 2005 letter. 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). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the record contains no evidence in support of the petitioner's claim that it

has five employees and a gross annual income of \$800,000, such as federal income tax returns and quarterly wage reports. 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)). A review of the Administrative Services Managers job description in the *Handbook* confirms the accuracy of the director's assessment to the effect that, the job duties parallel the responsibilities of an administrative services manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an administrative services manager job.

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. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (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 petitioner's wife, who holds a Master of Science degree in Health Administration, previously held the proffered position. The record contains a copy of the Master of Science in Health Care Management for [REDACTED] Amiri. The record, however, contains no college transcripts for Ms. Amiri or evidence, such as W-2 forms, that she was employed by the petitioner. Furthermore, 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 (5th 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. In this regard, the petitioner fails to establish that the part-time business/clinic manager position it is offering to the beneficiary entails the theoretical and practical application of a body of highly specialized knowledge.

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.

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, or its equivalent, 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). 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 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.