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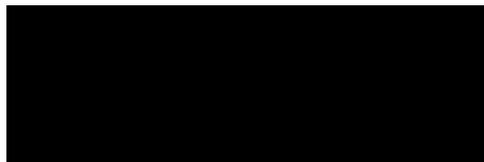
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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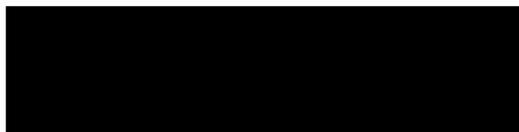


FILE: EAC 06 139 51780 Office: VERMONT SERVICE CENTER Date: NOV 30 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 private detective agency that seeks to employ the beneficiary as a human resources assistant. The petitioner 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 does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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 are 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 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.

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

The petitioner is seeking the beneficiary's services as a human resources assistant. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Provide personnel assistance in evaluating and resolving human relations;
- Facilitate communication and improve employee human relations skills and work performance;
- Talk formally and informally with personnel and attend meetings of managers and team leaders;
- Work to facilitate effective interpersonal communication among employees and ascertain that work related problems that may adversely affect employee morale be addressed;
- Evaluate work related problems and meet with supervisors and managers to determine effective remediation techniques;
- Provide job skill training or personal intervention to resolve issues among employees;
- Coordinate and conduct training to instruct managers, team leaders and employees in human relations skills such as, but not limited to, supervisory skills, conflict resolution skills, interpersonal communication skills and effective group interaction skills;
- Assist in screening applicants for training programs and hiring; and
- Insure compliance with, learning and knowing all of the different state laws regarding hiring, firing, insurance and unemployment.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of her foreign education which was determined by a credentials evaluation service to be equivalent to a bachelor's degree in economics, with a minor in English, from an accredited college or university in the United States.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position fall within those noted for human resource managers. The *Handbook* notes that because of the diversity of duties and level of responsibility associated with these positions, the educational backgrounds of individuals filling them varies considerably. When filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education. It is, therefore, apparent that a bachelor's degree in a specific specialty is not normally required for entry into the position. A degree in any number of disciplines will suffice. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations. In support of this assertion, the petitioner submitted copies of seven job advertisements for human-resource related positions. The job advertisements presented fail to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. None of the advertisements appear to be from organizations similar in scope and nature to that of the petitioner. Further, four of the advertisements require a bachelor's degree but do not state that the degree need be in any specific discipline. Other advertisements specified degrees in human resources, business administration, labor relations, business, business management, or management information systems. The advertisements further confirm the findings in the *Handbook* about the educational requirements for the position, that degrees in a wide range of disciplines will suffice. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position, and offers no evidence in this regard. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

As described by the petitioner, the duties to be performed by the beneficiary are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties to be performed are described in general and non-specific terms. There is nothing in the record to establish that performance of the duties of the position requires the theoretical and practical application of a body of highly specialized knowledge. Nor does the record establish that the duties to be performed by the beneficiary are any more unique, or specialized and complex, than the duties referred to in the *Handbook* that are routinely performed by human resource managers who are not required to have a bachelor's degree in a specific discipline. As such, the petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The director also determined that the beneficiary was not qualified to perform the duties of a specialty occupation. As noted above, the offered position is not a specialty occupation. Thus, there is no regulatory requirement that the beneficiary have a degree in any specific area of study in order to perform the duties of

the position. The beneficiary's foreign education has been determined to be equivalent to a bachelor's degree in economics (major field in Human Resource Economics) with a minor in English from an accredited college or university in the United States. The beneficiary would qualify to perform the duties of a position requiring a baccalaureate level education in economics or a closely related field, but such a position is not the subject of this petition.

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

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