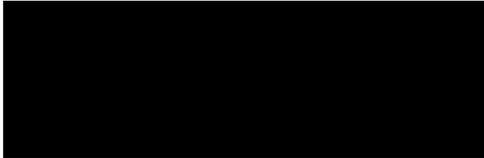


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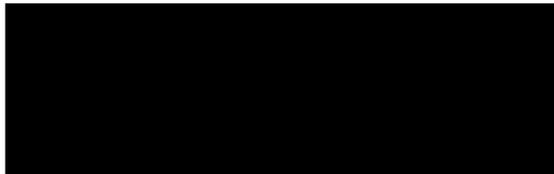
FILE: SRC 04 062 52830 Office: TEXAS SERVICE CENTER Date: **OCT 11 2007**

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.

*Robert P. Wiemann*

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition by decision dated April 21, 2004. The matter was then appealed to the Administrative Appeals Office (AAO). By decision dated October 14, 2005, the AAO withdrew the director's decision and remanded the matter to the director for entry of a new decision. Pursuant to the AAO's determination, the director requested additional evidence from the petitioner. The petitioner responded to that request by correspondence dated June 27, 2006. The director then denied the Form I-129 petition and certified the matter to the AAO for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is an assisted living facility and seeks to employ the beneficiary as a custodial services manager. 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 after remand of a previous decision from the AAO because the proffered position does not qualify as a specialty occupation, and because the beneficiary does not have a degree related to the 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; (5) the Form I-290B with supporting documentation; (6) the AAO's decision on appeal; (7) the director's request for evidence issued after remand of proceedings from the AAO; (8) the petitioner's response to the director's request for evidence issued after remand of proceedings from the AAO; and (9) the director's decision denying the petition and certification to the AAO. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a custodial services manager. Evidence of the beneficiary's duties was set forth in the Form I-129 petition and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Direct the housekeeping program to ensure the clean, orderly, and attractive conditions of the petitioner's facility;
- Establish standards and procedures for the work of housekeeping staff, and plan work schedules to ensure adequate service;
- Inspect and evaluate the physical condition of the facility, and submit to management recommendations for painting, repairs, furnishings, relocation of equipment and reallocation of space;
- Inventory supplies and equipment;
- Organize and direct departmental training programs, resolve personnel problems, hire new housekeeping employees, and evaluate employee performance and working relationships;
- Maintain records and prepare periodic activity and personnel reports for review by management; and
- Coordinate housekeeping activities with those of the nursing department.

The petitioner requires a minimum of a bachelor's degree in communication arts, sociology, or any related course with a broad liberal arts background.

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 building cleaning workers as set forth in the *Handbook*. Specifically, the duties are closely related to those of maids and housekeeping cleaners with supervisory responsibilities. The *Handbook* states that these workers require no special education and generally learn their skills on the job. Good performance may lead to supervisory positions, but again, no special education is required and advancement is earned by moving up through the ranks. It is, therefore, apparent that a bachelor's degree in a specific specialty is not required for entry into the position. 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted several copies of job advertisements. None of the advertisements, however, are from organizations similar in nature and scope to that of the petitioner. The advertisements are, therefore, of little evidentiary value. The record of proceeding contains no additional evidence in support of this assertion and 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 referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 record does not establish that the duties to be performed by the beneficiary are any more complex, specialized, or unique than those routinely performed in the industry by those lacking a baccalaureate level education. The fact that the beneficiary will work in a supervisory capacity does not raise the level of complexity, specialization, or uniqueness of the position to that which would require the theoretical and practical application of a body of highly specialized knowledge in order to perform the duties of the position. As stated above and in the *Handbook*, supervisors in the proffered position are normally promoted through the ranks and do not require a baccalaureate level education in a specific specialty. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of a specialty occupation.<sup>1</sup> It has been determined that the offered position does not qualify as a specialty occupation, thus, there would be no regulatory requirement that the petitioner possess any specific level of education in order to qualify to perform the duties of that position. Suffice it to say that the petitioner deems the beneficiary

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<sup>1</sup> As noted in the previous decision, the record reflects that the beneficiary has the equivalent of a bachelor's degree in English and is qualified to perform the duties of an occupation that does not require a degree in a specific field.

qualified to perform the duties of the position based upon her past education, training, and experience. That determination is one over which the petitioner has sole authority and discretion as the position does not qualify for H-1B status and is not subject to regulation by CIS.

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 director's decision is affirmed. The petition is denied.