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SEP 04 2007

FILE: EAC 05 237 52327 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:  
Beneficiary:



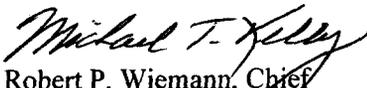
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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*   
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 non-profit organization that seeks to employ the beneficiary as its executive director. It endeavors to classify him 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. On appeal, the petitioner submits a brief asserting that the offered position qualifies as a specialty occupation.

The 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 general manager. Evidence of the beneficiary's duties was set forth in its letter of September 14, 2004. According to this evidence the beneficiary would:

- Work with the board to assure that the organization has a long-range strategy which achieves its mission of providing educational resources that increase the employability and self-reliance of low-income youth, and toward which it makes consistent and timely progress;
- Provide leadership in developing, managing and evaluating programs;
- Provide leadership in organizational and financial planning with the Board of Directors and staff, and carry out plans and policies authorized by the board;
- Maintain a working knowledge of significant developments and trends in fields related to the organization's mission;
- Establish sound working relationships and cooperative arrangements with community groups and organizations;
- See that the board is kept fully informed on the condition of the organization and all important factors influencing it;
- Jointly, with the president of the board of directors, conduct official correspondence of the organization, and jointly, with designated officers, execute legal documents;
- Maintain official records and documents, and ensure compliance with federal, state and local regulations;
- Be responsible for developing and maintaining sound financial practices with the board treasurer and director of operations;

- Work with the staff in preparing budgets to be approved by the board and see that the organization operates within budget guidelines;
- Ensure that the recruitment, employment, and release of all personnel, both staff and volunteers, is conducted in a timely and ethical manner;
- Ensure that job descriptions are developed, that regular performance evaluations are held, and that sound human resource practices are in place;
- Ensure, together with the director of operations, that adequate funds are available to permit the organization to carry out its work;
- Provide development support and training to divisional directors to foster the financial sustainability of local divisions;
- Represent the programs and point of view of the organization to agencies, organizations, and the general public; and
- Publicize the activities of the organization, its programs and goals.

The petitioner finds the beneficiary qualified to perform the duties of the offered position by virtue of her master's degree in public administration with a major in public and non-profit management and policy from New York University.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general/operations managers in a non-profit setting. The *Handbook* notes that the formal education and experience of these managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not normally required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of several job advertisements for director and similar positions in a non-profit environment. All of the advertisements require a baccalaureate level education, and some state a preference for a master's degree, but none state that the degree need be in any particular educational discipline. The advertisements submitted are consistent with the educational requirements noted in the *Handbook* for top executives, general or operational managers, that degrees in a wide range of educational disciplines are suitable for the position. The petitioner also makes reference to the American Society of Association Executives (CAE) (an organization of nonprofit leaders) stating that

membership in that organization requires a baccalaureate level education. The organization does not, however, require that the degree be in any particular educational discipline. The documentation submitted by the petitioner does not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations and the petitioner has failed to establish the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that the proffered position is a new position with the organization, but asserts that it normally requires a degree for the position. As the proffered position is newly created, the petitioner lacks an established history of recruiting and hiring for the position. Further, 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 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 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 petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner generally describes the duties to be performed by the beneficiary. The Form I-129 indicates that the petitioner has six employees but offers little information about the finances of the organization, its budget requirements, organizational structure, or any meaningful detail about the programs and education that it offers in furtherance of its stated mission. Without this type of detail it is not possible to determine the complexity, specialization, or uniqueness of the actual tasks to be performed by the beneficiary on a day-to-day basis. As such, it cannot be determined that the petitioner has satisfied the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), or the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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