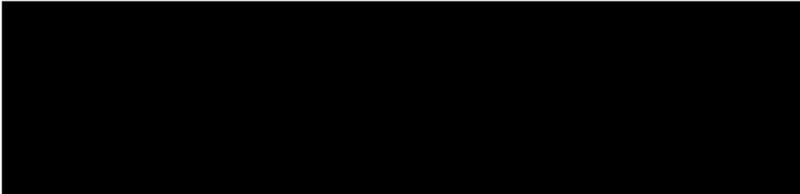




U.S. Citizenship
and Immigration
Services

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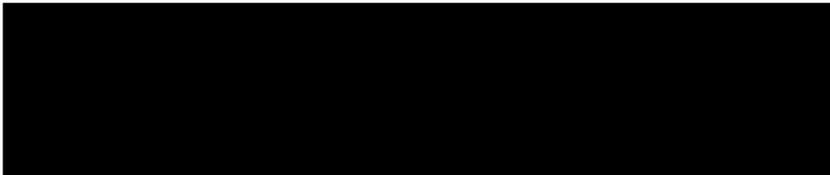
D2

FILE: EAC 06 170 52766 Office: VERMONT SERVICE CENTER Date: FEB 01 2008

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 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 an employment/staffing business that seeks to employ the beneficiary as a human resources 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 because the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the 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) consistently 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 human resources administrator. Evidence of the beneficiary’s duties includes: the petitioner’s April 26, 2006 letter in support of the petition and counsel’s December 13, 2006 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

- Directing the petitioner’s recruitment efforts;
- Interviewing prospective candidates;
- Testing and selecting suitable candidates;
- Hiring highly competent professionals; and
- Assigning client assignments and handling internal staffing.

The director found that the proposed duties do not require a bachelor’s degree. Citing the Department of Labor’s (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into a human resources specialist position was not a baccalaureate degree or its

equivalent in a specific specialty. The director concluded 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 in order to support the petitioner's expansion plans, it is required to hire new medical professionals every month, thus necessitating the hiring of a full-time human resources administrator. According to counsel, the petitioner has satisfied all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel also states that the record contains an expert opinion and job advertisements 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 *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. The AAO does not find that the proffered position, which is primarily that of a human resources specialist, is a specialty occupation. A review of the Human Resources, Training, and Labor Relations Managers and Specialists training requirements in the *Handbook*, 2006-07 edition, finds no evidence indicating that a baccalaureate or higher degree in a specific specialty is required for a human resources specialist job. A wide variety of educational backgrounds are acceptable for entry into these positions including a well-rounded liberal arts education. Moreover, although information on the petition reflects that the petitioner was established in 2003, has 23 employees and a gross annual income of \$2.1 million, the record contains no evidence in support of these claims, such as federal income tax returns and quarterly wage reports. Going on record without supporting documentary evidence is not sufficient for purposes 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)). Of further note, although counsel asserts, on appeal, that the petitioner needs a full-time human resources administrator in order to support the petitioner's expansion plans, there is no documentation of record that current expansion plans are underway or about the specific requirements of those plans. 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 Obaighena*, 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). Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for human resources administrators. The listings provided either fail to offer meaningful descriptions of the positions advertised or rely on duties unlike the duties listed by the petitioner. The advertisers, which include manufacturing, dental, and scientific research businesses, are not similar to the petitioner's employment/staffing agency. Nor do these listings indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Moreover, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions, such as supporting the business's human resources managers and ensuring the consistent and timely administration of human resources procedures and programs in alignment with divisional, regional, and corporate offices. Thus, the advertisements are not probative.

The record also contains an expert opinion from a university professor of marketing who concludes that the proffered position requires a bachelor's degree in human resources administration, or a related field, or an equivalent thereof. The record, however, does not indicate that the writer has adequate knowledge of the facts presented. The opinion does not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The writer does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusion about the educational requirements for the particular position at issue. 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). As the opinion of the writer is not based on an adequate factual foundation, the AAO does not find it probative in this matter.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 asserts that the petitioner has consistently hired human resources administrators with “bachelor's-level qualifications in industrial psychology, human resources administration, or a related discipline.” He also asserts that the beneficiary would be replacing the petitioner's current human resources administrator, who holds the U.S. equivalent of a Bachelor of Science degree with a dual major in human resources administration and computer engineering. Again, counsel does not provide any evidence in support of his assertions, such as evidence of the petitioner's past hiring practices and the educational backgrounds of its human resources administrators. As discussed above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). In view of the foregoing, the evidence of record does not establish this criterion.

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 states that the proposed duties clearly indicate that the proffered position requires a minimum of a bachelor's degree in human resources administration, management, or a closely related discipline. The petitioner, however, has not established that they exceed in scope, specialization, or complexity those usually performed by human resources specialists, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. Further, as indicated earlier in this decision, the petitioner's unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion. 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. 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.