

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

D1



FILE: SRC 02 267 51554 Office: TEXAS SERVICE CENTER Date: AUG 18 2005

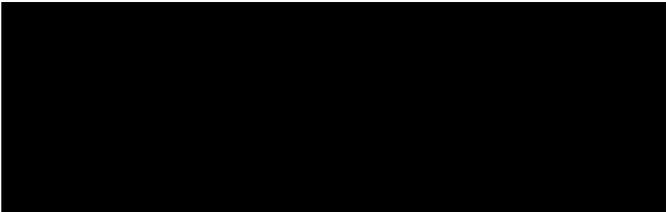
IN RE: Petitioner:

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner describes itself as a multi-site physician group specializing in the practice of pain medicine. It seeks to employ the beneficiary as an administrative assistant and to extend her classification 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 on the ground that the proffered position is not 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.

As provided in 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 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) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) the appeal on Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

In a letter accompanying Form I-129 the petitioner described itself as a multi-physician comprehensive pain management and rehabilitation medical practice which was established in 1995, had 29 employees at the end of 2001, and had revenues of \$5.153 million in 2001. The petitioner indicated that it wished to extend the beneficiary's H-1B classification for an additional three years to serve as the office's administrative assistant. The duties of the position were described as follows:

[The beneficiary] is responsible for aiding the Vice President in coordinating office functions, such as records control, appointments, filing, billing and payments; managing correspondence and office work flow to reduce costs; analyzing record keeping systems, forms, control, and processing procedures; coordinating insurance forms and payments; attending staff meetings and implementing treatment procedures and methods for processing patients through the clinic as desired by medical staff; assisting with preparing brochures and bulletins to market clinic services; maintaining and providing financial information to the CPA and working closely with CPA during audits; assisting physicians by acting as contract person with legal counsel on potential lawsuit cases; providing pertinent patient information from physicians and clinic files as required by the attorney; and keeping management updated on progress of active and potential lawsuits and other office matters.

The petitioner stated that the beneficiary had been working as the company's administrative assistant in H-1B status since October 1998 and was qualified for the position by virtue of her bachelor of administration degree in December 1988 from the Integrated Colleges of Eastern Santa Catarina, in Brazil, which the petitioner asserts is equivalent to a bachelor of business administration from a U.S. college or university.

The director denied the petition on the ground that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director cited information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* indicating that a baccalaureate degree in a specific specialty is not required to enter into an administrative assistant position. Rather, sub-baccalaureate education and training in a high school, a business or vocational school, or a community college are typical paths for entry into the occupation. Accordingly, the proffered position did not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Nor did the proffered position meet the second alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record included job listings of other companies for administrative assistants, the director noted, but their requirements varied and many indicated that alternatives to a bachelor's degree, such as equivalent work experience or an associate degree, could be sufficient preparation for the position. Thus, the job listings did not demonstrate that a bachelor's degree in a specific specialty is the industry standard among similar organizations for administrative assistants. The proffered position did not meet the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), because the record failed to show that the petitioner had required a baccalaureate degree for the administrative assistant position in the past. Lastly, the record did not show that the duties of the administrative assistant were so specialized and complex that baccalaureate level knowledge is required to perform them, as required to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

On the appeal form counsel asserted that the director erred (a) in determining that the proffered position is not an occupation that requires a bachelor's degree, (b) in not recognizing that the industry norm for hiring administrative assistants is a bachelor's degree in a specific academic discipline, (c) in not taking into account letters from similar companies stating that they hire administrative assistants with bachelor's degrees as well as the job announcements from other companies requiring bachelor's degrees for the position, and (d) in referring to the lack of evidence that the petitioner had previously hired administrative assistants with bachelor's degrees since that was only one criterion of a specialty occupation. Counsel also contended that the director failed to acknowledge that the petitioner had furnished copies of the beneficiary's academic degree and transcripts in response to the request for additional evidence. No appeal brief or additional evidence was submitted. Counsel's arguments are without merit.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The petitioner's description of the proffered position accords with the description of administrative assistants in the DOL *Handbook*, 2004-05 edition, at 469-70. The *Handbook* summarizes the "core responsibilities" of secretaries and administrative assistants as "performing and coordinating an office's administrative activities, and storing, retrieving, and integrating information for dissemination to staff and clients." The duties of secretaries and administrative assistants are described in the *Handbook* more specifically as follows:

Secretaries and administrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. They serve as an information manager for an office, plan and schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information by using the telephone, postal mail, and e-mail. They also may handle travel arrangements . . . .

Specific job duties vary with experience and titles. *Executive secretaries and administrative assistants*, for example, perform fewer clerical tasks than do other secretaries. In addition to arranging conference calls and scheduling meetings, they may handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff.

Some secretaries and administrative assistants, such as legal and medical secretaries, perform highly specialized work requiring knowledge of technical terminology and procedures . . . . *Medical secretaries* transcribe dictation, prepare correspondence, and

assist physicians or medical scientists with reports, speeches, articles and conference proceedings. They also record simple medical histories, arrange for patients to be hospitalized, and order supplies. Most medical secretaries need to be familiar with insurance rules, billing practices, and hospital or laboratory procedures . . . .

As for the educational requirements of administrative assistants, the *Handbook* indicates that a high school degree may be sufficient for an entry-level position, but that additional training and education is becoming increasingly important to acquire the skills needed for the modern workplace. As explained in the *Handbook, id.*, at 470-71:

Secretaries and administrative assistants acquire skills in various ways. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges . . . . Specialized training programs are available for students planning to become medical or legal secretaries or administrative technology specialists. Bachelor's degrees and professional certifications are becoming increasingly important as business continues to become more global.

Thus, the *Handbook* clearly indicates that a bachelor's degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into an administrative assistant position. While bachelor's degrees are "becoming increasingly important," many other educational avenues are available to become an administrative assistant, even one with advanced responsibilities, including sub-baccalaureate training programs in business schools, vocational-technical institutes, and community colleges. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, the director cited in her decision the numerous job announcements in the record stating that work experience or an associate degree or a combination thereof were sufficient qualifications for the position of administrative assistant. Though the director neglected to mention the six letters from other medical organizations in the file, as noted by counsel, most of them state either that work experience can substitute for a degree or that no specific type of degree is required. Like the job announcements, therefore, the company letters do not establish that a bachelor's degree in a specific specialty is a common requirement for administrative assistants in the petitioner's industry. Nor do the letters contain any information about the scale of the various medical companies' operations. Thus, the record does not establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, as required for the administrative assistant position at issue in this petition to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the director noted the lack of evidence in the record that the petitioner hired any administrative assistants prior to the beneficiary with bachelor's degrees. The director merely determined that the petitioner failed to establish that the proffered position met this particular criterion of a specialty occupation, not that the position as a result of her determination failed to qualify as a specialty occupation under all other criteria

as well. The AAO agrees with the director that there is no evidence in the record that the petitioner has ever filled the proffered position with an individual possessing a baccalaureate degree in a specific specialty prior to the beneficiary. Furthermore, though the record does indicate that the beneficiary has a bachelor's degree from a Brazilian college,<sup>1</sup> which a credentials evaluation service has judged to be equivalent to a U.S. bachelor of business administration, the record does not establish that such a degree is required for the administrative assistant position. In determining the nature of a particular position, and whether it qualifies as a specialty occupation, the duties that will actually be performed are determinative. The petitioner must show that the performance demands of the position require a degree. The critical issue is not the employer's self-imposed standard, 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 a minimum for entry into the occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384, 387-88 (5th Cir. 2000). The record in this case does not establish that the performance demands of the proffered position require a baccalaureate degree in a specific specialty.

The AAO notes that the beneficiary was previously granted H-1B classification for an administrative assistant position with the same employer. CIS is not required to approve a petition when eligibility has not been demonstrated – as in the instant case – merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Moreover, the AAO is never bound by a decision issued by a service center or a district director. *See Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Only published precedent decisions are binding on all CIS employees in the administration of the Act. *See* 8 C.F.R. § 103.3(c).

Finally, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not show that the duties of the administrative assistant are so specialized and complex that they require baccalaureate level knowledge in a specific specialty.

For the reasons discussed above, the record fails to demonstrate that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

---

<sup>1</sup> Counsel's contention that the director failed to acknowledge that the petitioner had submitted copies of the beneficiary's academic degree and transcripts is incorrect. The decision specifically acknowledged the submission of those documents.

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