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U.S. Citizenship and Immigration Services

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[redacted]

FILE: WAC 02 057 53707 Office: CALIFORNIA SERVICE CENTER Date: FEB 3 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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, Director
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 health care facility for developmentally and physically disable people that seeks to employ the beneficiary as a rehabilitation services coordinator. 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 is not a specialty occupation. On appeal, counsel submits a brief and other documentation.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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) 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a rehabilitation services coordinator. Evidence of the beneficiary's duties includes the I-129 petition and an attached statement of duties, as well as the petitioner's

response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: planning, administering, and directing the implementation of health rehabilitation programs including physical, occupational, recreational, and speech therapies; conducting training programs to maintain staff proficiency in therapies; and planning treatment programs. The record also indicates that the duties are purely administrative and coordinative in nature. The petitioner stated that a qualified candidate for the job would possesses a bachelor's degree in any health care field, including nursing, physical therapy, psychology, occupational therapy, and respiratory therapy.

The director found that the proffered position was not a specialty occupation because the job is purely managerial in nature, according to the petitioner. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2000-2001 edition, the director noted that while many persons in managerial positions hold baccalaureate or higher degrees, there is no requirement of a degree in a specific area of study. The director found that, according to the *Handbook*, it appears that degrees in business and in liberal arts are equally welcome for managerial positions. 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 that the proffered position is so specialized that it requires a bachelor's degree in a health-related field. According to counsel, the *Dictionary of Occupational Titles* (*DOT*) assigns the proffered position an SVP rating of 8, which according to counsel, requires a degree to enter into the position. Counsel also cites the *The Enhanced Guide for Occupational Exploration*, revised second edition, compiled by Marilyn Maze and Donald Mayall, in support of his contention that the proffered position requires a bachelor's degree.

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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

Regarding the duties of the proffered position, the record presents several contradictions. In response to the director's request for evidence, the petitioner stated that the incumbent would be directly responsible for the treatment and rehabilitation of persons with physical and/or mental disabilities or disorders. The petitioner further stated that the beneficiary would provide counseling, therapy, education and access to equipment. The duties would require the incumbent to design individualized treatment programs, evaluate and monitor patients' progress, and if necessary, modify the treatment program. These duties appear to be those of a physical therapist, as they are "hands-on" duties, and not merely administrative or coordinative, as claimed by the petitioner elsewhere in its response to the request for evidence.

The response to the request for evidence also stated that the beneficiary would be responsible for supervising, planning, developing, organizing, and delivering rehabilitation services, and would also be required to train staff members on therapy techniques. Yet this same statement of duties also indicates that the beneficiary would not supervise any employees. The only truly administrative duties listed, such as requisitioning supplies and equipment, maintaining records, preparing reports, and representing the organization on committees, are allocated only 10 percent of the time spent on the job.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Since the petitioner repeatedly asserts that the duties of the proffered position are managerial, administrative, and coordinative only, because if they required hands-on treatment, the beneficiary would have to be a licensed therapist, the focus of this analysis will be on the administrative duties listed in the record. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the *Handbook's* description of the educational and training requirements for administrative services managers does not reveal any requirement for a bachelor's degree in a specific specialty.

Counsel's reference to and assertions about the relevance of information from the *DOT* and *The Enhanced Guide for Occupational Exploration* are not persuasive. Neither the *DOT's* SVP rating nor the educational level listed in the latter guide indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and an occupational level listing are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Regarding parallel positions in the petitioner's industry, the petitioner submitted one Internet job posting for a rehab clinical assessment coordinator. There is no evidence, however, to show that the employer issuing this posting is similar to the petitioner, or that the advertised position is parallel to the instant position. Thus, the advertisement has little relevance. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*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. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not established this element

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Counsel states that the duties are specialized, but simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). 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.