PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass,3/F
425 I Street, N.W.
Washington, DC 20536

[redacted]

FILE: WAC 02 034 58045 OFFICE: CALIFORNIA SERVICE CENTER DATE: JAN 06 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)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California 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 a provider of rehabilitation services that employs five persons and has a gross annual income of $375,000. It seeks to employ the beneficiary as an administrative analyst. The director denied the petition because the offered position did not qualify as a specialty occupation.

On appeal, the petitioner submits a brief and additional evidence. The petitioner states, in part, that the position of administrative analyst is a specialty occupation, because it entails analytical skills, and also because Citizenship and Immigration Services (CIS) previously approved an H1B visa for a beneficiary performing the same duties.

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), provides for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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:

> 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.

In the original petition, the petitioner described the proposed job duties as follows:

- To improve workflow to increase employee productivity, simplify reporting procedures or implement cost reductions by analyzing and improving current operating procedures[;]
- Creates new systems or improve[s] the existing procedures relative to record keeping, forms control, purchase of office supplies, equipment and personnel budgetary requirements[;]
- Conduct[s] studies on how to improve work measurements or employee performance standards[;]
- Organizes and documents findings of studies and prepares recommendations for implementation of new systems and train personnel application [sic] [; and]
- Documents and prepares reports on matters pertaining to personnel movements (new hires, termination,

transfers and statistical records of performance data).

The petitioner added that the candidate for the proffered position must hold a bachelor's degree in business or social science and have two years of experience in the field of administrative management.

The director requested additional evidence to establish that the offered position was a specialty occupation. The petitioner, through counsel, submitted the Internet advertisement for the instant job opening, which specifies the requirement for a bachelor's degree in social sciences or business administration. The petitioner's response also included a copy of a prior approval of an H1B petition. The director found the evidence insufficient to classify the offered position as a specialty occupation, and the director denied the petition on July 12, 2002.

On appeal, counsel states that the offered position is akin to a human resources, training, or labor relations specialist, or a logistician. Counsel also asserts that the offered job entails many complex analytical duties, requiring an incumbent with a bachelor's degree.

Counsel further claims that Citizenship and Immigration Services (CIS) has already determined that the proffered position is a specialty occupation since CIS previously approved the petitioner's other, similar petition. This record of proceeding does not, however, contain all of the supporting evidence submitted in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the original H1B petition was approved in error.

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 record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been

erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied,* 485 U.S. 1008 (1988).

Upon review, the job description on record appears to be most correctly classified as an administrative support manager. The Department of Labor's *Occupational Outlook Handbook (Handbook)* 2002-2003 edition at page 417 describes the duties of an administrative support manager as ensuring that personnel, equipment, finances, and record-keeping, among other tasks, are all in order. Administrative support managers coordinate work assignments, resolve staff and equipment problems, and handle a variety of responsibilities to assist in the effective operation of the business. According to the *Handbook*, most managerial positions are filled by promoting workers from within. The *Handbook* does not indicate that a bachelor's degree in any specific specialty is a requirement for entry into this field. There is no other documentation on the record, either, that would indicate that a bachelor's degree is a minimum entry requirement for the proffered position.

The petitioner's job posting for the proffered position states that a bachelor's degree in social sciences or business administration is required. This indicates that the position is not a specialty occupation, because, pursuant to section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), the required degree must be in a specific specialty related to the employment. A requirement for a bachelor's degree in diverse fields of study does not meet the statutory guidelines.

Moreover, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 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.[1] 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 a 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 evidence on the record does not establish, as asserted, that the position entails duties so complex that only an individual with a bachelor's degree can perform them. The evidence does not meet any of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A); thus, the proffered position cannot be considered a specialty occupation.

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.

---

[1] The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.