U.S. Department of Homeland Security

Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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

D2

JAN 13 2004

FILE: EAC 03 011 53287 OFFICE: VERMONT SERVICE CENTER DATE:

IN RE: Petitioner:
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:

[redacted]

PUBLIC COPY

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 nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an organization management and consulting firm that currently employs 28 persons and has a gross annual income of $2,010,000. It seeks to employ the beneficiary as a human resources advisor for a period of three years. The director denied the petition for failing to establish that the proffered position was a specialty occupation.

On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality 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.

On the Form I-129, the petitioner listed the proffered position as "Human Resources Advisor," and gave the following as a nontechnical description of the job:

> Design, analysis, coordination, preparation, and production of collateral materials to facilitate communication and improve human relations skills, careers, and work performance. Develops [sic] programs that aid in the enhancement of human relation skills, such as supervisory skills, such as supervisory skills, conflict resolution skills, interpersonal communication skills, and effective group interaction skills. Produces newsletters. Operate audio-visual equipment to

review or to present audio-visual tapes for training program.

The director issued a request for specified types of additional evidence that would be relevant to the H-1B specialty-occupation qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel responded with his own letter which enclosed these documents: (1) the petitioner's in-house job announcement on the proffered position; (2) these three documents also produced by the petitioner: "Detailed Statement of the Beneficiary's Duties and Day-to-Day Responsibilities," "Requirements for the Human Resources Advisor Position at [the petitioner]," and "The Qualification of the Beneficiary"; (3) nine job postings for human resources positions at firms other than the petitioner; (4) documents regarding the education, occupational skills and responsibilities of the petitioner's staff; (5) a paragraph regarding "166.267-046 Human Resource Advisor (profess. & kin.)," from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT);* and (6) a printout of the "Human Resources, Training, and Labor Relations Managers and Specialists" section of DOL's *Occupational Outlook Handbook (Handbook)*.

The in-house announcement stated these "key activities and day-to-day responsibilities":

1. Consulting with clients on a regular basis to identify and anticipate evolving human resource system and service requirements; analyzing requirements and developing strategies and options to meet objectives and providing advice on the selection, implementation and management of human resources strategies;

2. Providing guidance and counseling to clients on human resources issues, options, and requirements; providing training to clients; researching best practices in area of expertise, analyzing, developing recommendation for application in [the] Department.

3. Participating on, and providing subject matter expertise to project teams, working groups and colleagues involved in analyzing, developing, and coordinating HR strategies and initiatives; preparing analyses, briefings and reports; delivering presentations.

4. Researching and contributing to the development and implementation of HR policies, programs, communications plans and information management systems; monitoring and analyzing the

effectiveness of HR programs, services, and initiative.

5. Supervising the use of various media such as newsletters, the Internet, and other interdepartmental systems of communications to keep employees informed of new company and client development and events.

With regard to educational qualifications, this document specified, "Bachelor's Degree in Human Resources, Personal [sic] Administration, Business Administration, Public Administration, Psychology, Sociology, Industrial and Labor Relations, or related field."

The document with a detailed statement of the beneficiary's duties and responsibilities added no substantial information, but did divide the duties and responsibilities into percentages of the workday.

The petitioner's "Requirements for the Human Resources Position" document, in part, alludes to the *DOT* and *Handbook*:

> [I]t is understood that this position is one of the Human Resources, Training, and Labor Relations Managers and Specialists in the Occupational Outlook Handbook and similar to the "Human Resources Advisor" (DOT Code: 166-267-046) in the Dictionary of Occupational Titles, which identifies this position as a professional occupation.

The director denied the petition on the basis that "the evidence of record does not establish that the job offered qualifies as a 'specialty occupation' pursuant to section 101(a)(15)(H)(i)(b) of the Act." The director noted, in part, the range of different academic majors specified in both the in-house job announcement and in the Internet advertisements from other firms. The director also concluded that the *DOT* reference did not appear to indicate that the human resources occupation requires a baccalaureate in a specific field of study. Another comment was that the *Handbook* appeared to indicate that "any higher education degree, combined with related work experience[,] is sufficient to perform the job duties of this position."

On appeal, counsel maintains that the director erred in several respects.

Counsel asserts that the director failed to accord proper evidentiary weight to documents submitted about the proffered position's duties and responsibilities, which, counsel asserts, establish that the position qualifies as a specialty occupation because (a) the specialization and complexity of its specific

duties are usually associated with the attainment of a baccalaureate or higher (8 C.F.R. § 214.2(h)(4)(iii)(A)(4)), and (b) the position's complexity and uniqueness requires a person with a degree (8 C.F.R.§ 214.2(h)(4)(iii)(A)(2)).

Counsel further asserts that the director "erred in quoting and interpreting" the *Handbook*, in particular, by not according proper evidentiary weight to the *Handbook's* statement that, for entry-level positions, human resources employers usually seek college graduates, although the preferred majors may vary. Counsel continues to state:

> In addition, [t]he Center erred in not applying regulations under 8 C.F.R. § 214.2(h)(4)(iii)(A) appropriately. The regulations require the position to meet one of the criteria. All of the four criteria require a baccalaureate or higher degree or its equivalent, the degree requirement, an individual with a degree, and a degree or its equivalent. However[,] none of them requires an employer [to] prove that the minimum requirement for the position is a baccalaureate degree in a specific specialty.

It appears that counsel also asserts that the director failed to recognize that the proffered position requires a body of highly specialized knowledge that "can be attained from studies with traditional majoring in Human Resources, Personal {sic] Administration, Business Administration, Public Administration, Psychology, Sociology, Industrial and Labor Relations, or other field."

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.

The AAO applied these evidentiary principles in its consideration of the record, and they should be regarded as incorporated into the decision's discussion of each regulatory criterion:

1. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. As this burden never shifts, the petitioner is solely responsible for compiling a persuasive record.

2. 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).

3. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Before proceeding to evidentiary discussions, this decision should address counsel's statement to the effect that, according to Citizenship and Immigration Services (CIS) regulations, a position may qualify as an H-1B specialty occupation simply by requiring a bachelor's degree or higher, or the equivalent, in any academic major, regardless of whether it is in a specific specialty. It is important to dispose of this issue at the outset, because it involves a critical aspect of all of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel's assertion is without merit.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), specifies that a "specialty occupation" is one that requires not only the theoretical and practical application of a body of highly specialized knowledge, but also attainment of a bachelor's degree or higher, or the equivalent, in "the specific specialty." Thus, the required degree must be in a specific specialty, that is, in a discipline that contains a body of highly specialized knowledge that is necessary for performance of the proffered position. The definition of specialty occupation in 8 C.F.R. § 214.2(h)(4)(ii) mirrors the Act by stating that the required degree must be in "a specific specialty." In this context, CIS is correct in interpreting "degree" in all of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A) as one in a specific specialty. This is a reasonable interpretation that is consistent with section 214(i)(1) of the Act. *See Tapis International v. INS,* 94 F. Supp. 2d 172, 175 (D. Mass. 2000).

As the following discussion will show, the evidence does not satisfy any of the H-1B specialty-occupation criteria of 8 C.F.R. § 241.2(h)(4)(iii)(A).

I. Baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position. -8 C.F.R. § 214.2 (h)(4)(iii)(A)(1).

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about particular occupations' duties and educational requirements. Here the AAO consulted the 2002-2003 printed edition. The AAO agrees with counsel that the duties of the proffered position comport with those related in the *Handbook's* treatment of the human resources occupation, at pages 60-64. However, the *Handbook* indicates that the proffered position is not one that normally requires a baccalaureate or higher degree, or the equivalent, in a specific specialty. This section, at page 62, is dispositive:

> Because of the diversity of duties and level of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, employers usually seek college graduates. Many prefer applicants who have majored in human resources, personnel administration, or industrial and labor relations. Others look for college graduates with a technical or business background or a well-rounded liberal arts education.

Reliance on the fact that the *Handbook* states that employers usually require a bachelor's degree is not warranted, because the degree does not have to be in a specific specialty.

In support of the assertion that the proffered position is a specialty occupation, counsel relies, in part, on the *DOT's* paragraph on human resources advisors. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the type of degree, if any, that a position would require. Furthermore, the fact that the *DOT* may group a particular occupation as professional or kindred is not probative on the specialty-occupation issue, as the *DOT* does not apply *CIS* terminology or standards.

The petitioner's own in-house job announcement weighs against the

petitioner on this criterion, as that document did not require a degree in a specific specialty.

CIS recognizes that, where no job-related degree is offered, a position may still qualify as an H-1B specialty occupation under certain circumstances. Performance of the proffered position would have to require the attainment of education, experience, or a combination thereof, that would invest the beneficiary with a job-required body of highly specialized knowledge that is equivalent to what a bachelor's degree or higher would have represented if it were available. The record does not present this situation. Rather, it indicates that performance of the human resources position here requires neither the theoretical and practical application of a body of highly specialized knowledge, nor the equivalent of a bachelor's degree associated with the attainment of such knowledge.

As the evidence does not establish the proffered position as one that normally requires a bachelor's degree or higher, or the equivalent, in a specific specialty, the petitioner has not met the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

II. Degree requirement that is common to the industry in parallel positions among similar organizations, or, alternatively, a particular position so complex or unique that it can be performed only by an individual with a degree.
-8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

A. Degree requirement common to the industry.

It bears repeating that, as discussed above, "degree" in this and all of the 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria means one that is in a specific specialty whose highly specialized knowledge is required for performance of the proffered position.

Factors often considered by CIS when determining the industry standard 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." *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)).

As discussed above, the *Handbook* does not indicate that the proffered position is one with an industry-wide requirement for a degree in a specific specialty.

The nine job postings weigh against counsel's assertions that they support the proffered proffered position as a specialty occupation. They display too wide a range of desirable majors to

be identified with a specific specialty. In the order in which the advertisements appear in the record, the desired spectrum of desired educational credentials included bachelor's degrees in: (1) human resources or a related field; (2) preferably psychology, human resources, employee relations, or management; (3) human resources or a related field; (4) human resources or a related field; (5) business or a related field; (6) business management or personnel management; (7) no major specified; (8) no major specified; (9) any bachelor of Arts or Science major.

B. Degree necessitated by the complexity or uniqueness of the position.

Despite counsel's assertions, the record fails to establish that the particular duties of the proffered position are either so complex or so unique that only an individual with a bachelor's degree in a specific specialty could perform them.

The duties themselves, as enumerated and described in the record, appear neither especially complex nor unique. While the duties are multiple and diverse, the record does not demonstrate that they could only be performed by a person with a degree in a specific specialty. The director was correct in not granting the petition under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

III. Degree or its equivalent as the employer's normal requirement for the position.
-8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

The petitioner presented no relevant evidence on this issue. The documents regarding other employees' duties and educational credentials have no bearing on these proceedings. The absence of evidence will not allow a finding for the petitioner on this criterion.

IV. Specific duties of a nature so specialized and complex as to require knowledge usually associated with a baccalaureate or higher degree.-8 C.F.R. § 214.2 (h)(4)(iii)(A)(4).

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 bachelor's degree or higher. In fact, the duties do not appear to exceed what should be expected from a routine, entry-level human resources position, which, as indicated above, does not require a baccalaureate or higher degree in a specific specialty. Despite counsel's assertions, 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 discussions above, the petitioner has failed to establish any one of the four specialty occupation criteria of 8 C.F.R. § 214.2 (h)(4)(iii)(A), and counsel's assertions are without merit. Accordingly, the AAO shall not disturb the director's denial of the petition.

Again, 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.