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U.S. Citizenship and Immigration Services

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FILE: EAC 03 012 50494 Office: VERMONT SERVICE CENTER Date: JUN 02 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.

Mari Johnson

for 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 pre-school and elementary school, and seeks to employ the beneficiary as an administrative assistant. 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 on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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

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.

The term "specialty occupation" is further defined at 8 C.F.R.§ 214.2(h)(4)(ii) as:

> [A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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) 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 proceedings 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; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative assistant. Evidence of the beneficiary's duties includes the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: assist the headmistress by coordinating office services, including personnel, budget preparation and control, housekeeping, records control, and teacher continuing education; deal directly with employees, parents, and visitors to solve problems and advise the headmistress as to pressing issues and suggest solutions; act as liaison between the teachers and the headmistress; analyze activities of teachers and delimit position responsibilities for use in wage and salary adjustments; evaluate workflow; coordinate collection and preparation of accounts receivable and payable reports, time-and-attendance records, terminations, new hires, transfers, budget expenditures, and statistical records of performance data; and in the absence of the headmistress, interview job applicants, conduct orientation of new employees, plan training programs, and direct services such as maintenance, repair, supplies, mail, and filing. The petitioner requires a minimum of a bachelor's degree for entry into the offered position, but does not indicate that the degree must be in any particular discipline.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for executive secretaries and administrative assistants. The *Handbook* further notes that training for these positions ranges from high school vocational educational programs to a baccalaureate level education. It is clear, however, that while bachelor's degrees and professional certifications are becoming increasingly important, a bachelor's degree or higher in a specific specialty is not the minimum requirement for entry into the offered position. Accordingly, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). In support of this assertion the petitioner refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)*. Counsel's assertions regarding the DOT's SVP rating for the offered position are unpersuasive. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP

classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. In further support of this criterion, the petitioner submitted numerous job advertisements. Approximately 14 advertisements were for administrative assistant positions. All required a college degree, but only two or three specified that a degree in any specific discipline was required. They do not, therefore, establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. A degree in any discipline will suffice. The petitioner also submitted advertisements for assistant principals and kindred positions. Those positions, however, are not parallel to the offered position and are of little evidentiary value.

The petitioner asserts that it normally requires a degree or its equivalent for the offered position, and submitted the diploma of its past administrative assistant who held a bachelor of arts degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Assuming arguendo that this is the case, the proffered position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner,* 201 F.3d 388 (5th Cir. 2000). This position does not. The duties of the offered position are routinely performed in the industry by individuals with a wide range of educational backgrounds. The petitioner's prior administrative assistant held a bachelor of arts degree, while the beneficiary holds the equivalent of a degree in economics. Performance of the duties associated with the position does not require a degree or specialized knowledge in any specific specialty.

Finally, the duties of the position offered are routine for administrative assistants. They are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. Nor are they so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not established the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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