PUBLIC COPY

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

JUN 9 2004

FILE: WAC 02 124 52029 Office: CALIFORNIA SERVICE CENTER Date:

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 company that provides paramedical services for life insurance companies for underwriting purposes. It seeks to employ the beneficiary as an office manager. The petitioner, therefore, 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 he determined that the proffered position is not a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation and that the petitioner's need for such a position is determinative of whether the position is 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.

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 petitioner's letter of support; (3) the director's two requests for additional evidence [redacted] respectively; (4) the petitioner's letters that respond to the director's requests; (5) the

director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an office manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; the director's requests for further evidence; and counsel's letters in response to the director's requests for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve the direct supervision of all office support personnel, administrative staff and accountants; the creation of a customer-focused service environment; the training of support staff to ensure accuracy and confidentiality of records, appointments and payments; and the participation in the hiring, orientation and performance appraisal of other support personnel.

In its response to the director's initial request for further evidence, the petitioner provided the following breakdown of the time to be spent in the beneficiary's primary duties: 20 per cent of the beneficiary's time would be spent assisting the president in the direction and evaluation of the petitioner's business programs; 20 per cent of her time would be spent in maintaining control files for matters in progress and following up to ensure that appropriate actions were undertaken; and 30 per cent of her time would be spent supervising, and giving specific job assignments and targets to accounting, human resources, purchasing, and other office personnel. The petitioner indicated it required a bachelor of science in commerce, proficiency in Microsoft Office software packages, and a minimum of three years of related work experience, for entry into the position.

The director found that the proffered position was not a specialty occupation and referred to the classification of office manager in the Department of Labor's (DOL) [redacted] Based on the *Handbook* information, the director determined that a baccalaureate degree in a specific specialty was not required for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states that the position of office manager is a specialty occupation based on the job duties. Counsel submits no further documentation.

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." [redacted]

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, both the petitioner and the director correctly identified it as an office manager position. Based on the breakdown of duties provided by the petitioner, the majority of the beneficiary's time will be spent in supervising and monitoring the functioning of the petitioner's office. Only five per cent of the beneficiary's time will be spent in activities, such as marketing strategies or plans. With regard to training for such a position, in the administrative services manager classification, the [redacted] states the following:

> Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Thus, the *Handbook* indicates that a baccalaureate degree in a specific specialty is not the minimum requirement for entry into an office manager position.

With regard to parallel positions in similar offices, the petitioner provided six vacancy announcements for positions entitled office manager. This documentation is not found persuasive that parallel positions in similar firms require baccalaureate degrees in a specific specialty. First, some of the announcements do not specify any particular baccalaureate degree. Second, the majority of firms appear to be either physicians' offices or managed care facilities. These businesses do not appear to be similar in business focus to the petitioner's business. 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 petitioner stated that the owner presently does the office management duties. Thus, the position appears to be a new one. Therefore the petitioner cannot meet this criterion.

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 of the position appear routine to any office manager position. The petitioner explained that new personnel will be hired and that the beneficiary would then have duties such as formulating and implementing corporate programs such as employee recruitment. However, these future duties are speculative in nature. As such they are not persuasive as to the complexity and specialized nature of the beneficiary's duties. It also appears from the petitioner's documentation that the majority of staff members at present are contract workers providing medical testing services for the petitioner's clients. The record is not clear as to how this present staff structure would contribute to establishing the specialized or complex nature of the beneficiary's duties. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.