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U.S. Citizenship and Immigration Services

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[redacted]

MAY 19 2004

FILE: EAC 03 075 53358 Office: VERMONT 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.

Marc Johnson

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 funeral home that seeks to employ the beneficiary as a mortician/funeral director. 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.

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; and (5) 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 a mortician/funeral director. Evidence of the beneficiary's duties includes the petitioner's December 2, 2002 letter in support of the petition and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: arranging the details and logistics of funeral services; interviewing the family to establish their wishes regarding details of the funeral; procuring the required clergy members; assisting in the selection of the urn or casket; coordinating the activities of workers to remove the body to the mortuary for embalming; scheduling the opening and closing of the grave; ensuring compliance with state laws; preparing the bodies for interment; washing and drying the body; draining blood from the circulatory system and replacing it with embalming fluid; reshaping disfigured or maimed bodies; applying cosmetics and dressing the body; and maintaining records. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, counsel states that all of the professions related to the proffered position require at least a bachelor's degree, according to the *Handbook*. Counsel also states that there is an industry trend towards requiring higher levels of skills for funeral directors, and that the petitioner only hires individuals with bachelor's degrees, when possible.

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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that because the jobs listed in the *Handbook* as being related occupations require a bachelor's degree, the proffered position also requires a bachelor's degree. A related occupation is just that: one that uses some similar skills and might attract people with similar interests. One cannot make the leap of logic that because a physician (an occupation related to a funeral director, according to the *Handbook*) requires both a bachelor's degree and a medical degree, that "a specialized baccalaureate degrees, [sic] or its equivalent, must also be common and the norm for Funeral Directors/Morticians." The

Handbook clearly states that a funeral director must be licensed in every state except Colorado, and that most states require licensing applicants to have two years of formal education. There is no evidence in the *Handbook* that indicates that a baccalaureate or higher degree, or its equivalent, is required for entry into the field.

The petitioner did not submit any information regarding parallel positions in the petitioner's industry. Regarding an industry standard, counsel submitted a letter from the Vice President of the American Board of Funeral Service Education, which states, "there are only two states that explicitly state that they require the baccalaureate degree for licensure, there are seventeen (17) more that require the equivalent of a baccalaureate degree." She also asserts that the National Funeral Directors Association has endorsed the baccalaureate degree as the minimum for licensure. This raises two issues. The first is that the industry standard, at this time, does not reflect that a bachelor's degree is required for entry into the field. The second issue is that there is no indication that, even if it were somewhat closer to a standard, a degree would have to be in a specific specialty related to the profession, as required by the regulations.

The record does not include any evidence 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. On appeal, counsel states, "[T]he Petitioner only hires funeral directors with baccalaureates or with significant years of experience." In the petitioner's January 17, 2003 response to the director's request for evidence, it lists 14 employees who work as funeral directors, seven of whom have bachelor's degrees. Of the seven who have bachelor's degrees, none is in mortuary science. Their specialties range from biology to economics to journalism, among others. In a separate letter dated January 18, 2003, the petitioner states, "Not all of our funeral directors have a post-secondary Bachelors [sic] degree, however, we consider it to be a very valuable preparation for the work and have a policy of recruiting staff with this background, *when they are available.*" (Emphasis added). The petitioner has stated in two different ways that it does not *require* a bachelor's degree, although it may prefer one.

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.

While it is clear that this position is highly skilled and requires significant training, it is not clear that the training would need to be in the form of a bachelor's degree or its equivalent. 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. 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.