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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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APR 25 2006

FILE: WAC 04 041 52101 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 dental office that seeks to employ the beneficiary as a manager (medical and health services 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and previously submitted evidence.

Section 214(i)(l) of 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 manager (medical and health services manager). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will bring the newest technological innovations and keep up-to-date on them so that the petitioner can provide patients with the most advanced service. The beneficiary will also improve the efficiency of the practice; be involved in business strategies; coordinate day-to-day business; oversee personnel, billing and collection, budgeting, planning, equipment outlays, and the scheduling of patients. The petitioner stated that a candidate must possess a degree in healthcare management or its equivalent and have experience.

The director found the submitted evidence and counsel's assertions unpersuasive in establishing that the proposed position qualifies as a specialty occupation. The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reveals that the proposed position's duties are performed by medical and health service managers, and that a master's degree in the specialty occupation is the standard credential for most generalist positions. The director stated that the DE-6 reflects that the petitioner already employs an office manager who holds only an associate's degree. The director found the beneficiary unqualified to perform the duties of a medical and health services manager, an occupation that requires a specific master's degree. According to the director, the submitted evidence did not persuasively show that the proposed position requires a master's degree.

On appeal, counsel states that the requirement of a bachelor's degree for the proposed position is common to the industry in parallel positions. Counsel points out that the *Handbook* states that a bachelor's degree is adequate for health services managers employed in smaller facilities, which is what the petitioner operates. Counsel asserts that the beneficiary qualifies for the proposed position based on her education and experience. Counsel states that the notation on the DE-6 is incorrect because the petitioner does not employ someone as an office manager.

Upon review of the record, the petitioner has not established that the proffered position is a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; a specific 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 in a specific specialty. 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner describes the proposed duties in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. The petitioner stated that beneficiary will "bring the newest technological innovations" to the company and will "keep up-to-date on technological innovations to provide patients with the most advanced service." The petitioner does not elaborate on how the beneficiary will achieve this or explain the kinds of "technological innovations." The beneficiary will "improve the efficiency of the practice" and will be involved in planning. No details are given about the kinds of improvements that are required or how they will be implemented. The petitioner does not elaborate on the beneficiary's role in planning. The deficiency in the job description is not cured by any of the evidence submitted into the record. Accordingly, the petitioner has not substantiated that the beneficiary would actually perform the services of a position that requires baccalaureate-level knowledge.

Counsel states that there is "no way to calculate what percentage of time will be spent on each duty." However, without this information it is difficult to properly evaluate the proposed position and determine whether it requires baccalaureate-level study in a specific field.

In the appeal letter, counsel asserts that scribbled on the DE-6 is the erroneous notation that one of the petitioner's employees is an office manager. This is incorrect, counsel asserts, because the petitioner employs this same person as an administrator.

Counsel's assertion is not convincing. Not only does the DE-6 reflect that one of the petitioner's employees holds the title of "office manager," but the same person is shown on the submitted organizational chart with the title of "bookkeeper." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). No evidence in the record resolves this inconsistency.

Counsel asserts that the *Handbook* reports that a bachelor's degree is adequate for some entry-level medical and health services manager positions in smaller facilities. This reading of the *Handbook* is correct; however, counsel ignores the *Handbook's* statement that "Physicians' offices and some other facilities may substitute on-the-job experience for formal education." With the instant petition, the proposed duties are described in

generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. The *Handbook* describes a medical and health services manager in a some facilities and physicians' offices as requiring either on-the-job experience or baccalaureate-level knowledge in a specific specialty. In light of the petitioner's vague job description, we cannot determine the educational requirements of the proposed position.

Because the petitioner has not established that the proffered position is one for which the minimal entry-level requirement is normally a bachelor's degree or its equivalent in specific specialty, it fails to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

The second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner demonstrate that its specific degree requirement is common to the industry in parallel positions among similar organizations. There is no evidence in the record that shows that organizations similar to the petitioner require the services of a medical and health services manager. Nor is there evidence that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the proposed duties are described in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply.

There is no evidence in the record to satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner establish that it normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) requires that the petitioner show that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As discussed, the proposed duties are described in generalized, generic terms that do not establish the nature and level of knowledge that the beneficiary would have to apply. Thus, the petitioner fails to establish 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 on the ground that the proffered position is not a specialty occupation.

The director found that the beneficiary is not qualified to perform a specialty occupation. Given that the AAO determined that the beneficiary would not occupy a specialty occupation, whether the beneficiary is qualified to perform the duties of the proffered position is inconsequential.

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.