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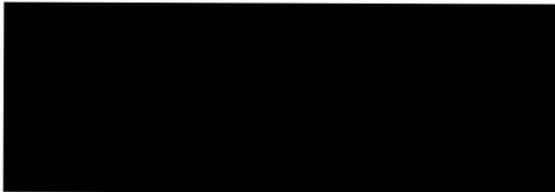
U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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FILE: EAC 03 208 52282 Office: VERMONT SERVICE CENTER Date: JUL 03 2006

IN RE: Petitioner: [Redacted]
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:



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.

for 
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 engaged in the business of providing personal home care services and has four employees. It seeks to hire the beneficiary as director for finance and administration 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 based on her determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief and previously submitted documentation. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a director of finance and administration. Evidence of the beneficiary’s duties includes: the Form I-129; the June 30, 2003 support letter; and counsel’s March 9, 2004 response to the director’s request for evidence.

The petitioner stated that the duties of the proffered position would entail, in part: supervising the maintenance of financial and other related records of the petitioner; managing and controlling the organization’s finances, including cash flow, accounts payable, accounts receivable, financial analysis, internal controls and reporting; developing, monitoring and coordinating overall budget and budgeting process; providing expert and timely advice on financial implication of evolving business strategies; managing contract administration and reporting; coordinating annual audit process of the financial and other related records and ensuring audit requirements are met; overseeing human resources activities such as employee payroll administration and employee files; conducting employee new hire orientation; administering employee benefits; maintaining employee handbook; managing office space and facilities, leases, office equipment and maintenance; ensuring terms of contracts are adhered to and costs are managed; ensuring safety and security of space and inventory; performing maintenance of client records and information and adhering to confidentiality of information; providing personal care services; supervising directing the work of others to provide personal care services to clients of the facility; developing and implementing the corporate financial plan and budget, alongside with cost management program for the company; coordinating with the petitioner’s accountant for tax filing and payment; facilitating the solicitation of grants; developing and implementing a corporate expansion program to make operational three personal care facilities; coordinating with Pennsylvania Department of Aging and Pennsylvania Department of Public Welfare on the Statutory Requirement for certification and re-certification of the personal care facility; coordinating and facilitating the mandatory training of direct care staff of the facility; developing and implementing corporate policies, systems and procedures consistent with the laws governing the operation of a personal care home in the state of Pennsylvania; coordinating with concerned agencies for the identification and assessment of appropriate clients for the facility; performing other functions as assigned by the administrator. The petitioner stated that

it is “anxious for [the beneficiary] to begin assuming a caseload.” The petitioner stated that the minimum educational requirement for this position of a bachelor’s degree or equivalent in commerce, accounting, finance, economics, or business administration.

The director issued an extensive request for evidence specifically requesting a more detailed job description and information pertaining to the petitioner. In response, counsel noted that the petitioner provided two letters in support of its assertion that the proffered position is a specialty occupation. Counsel noted that the beneficiary’s field of specialization is accounting and is a requirement for the duties of the proffered position. The petitioner submitted an organization chart for one residential facility indicating the following staff positions: president, administrator and director for finance and administration and three listings for the position labeled “staff.”

In her denial, the director found that some of the duties resemble those described in the Department of Labor’s *Occupational Outlook Handbook (Handbook)* under the heading of financial managers and administrative service managers. The director found that the training for the offered position is normally acquired through work experience. The director determined that the educational background for the proffered position varies widely. The director noted that the duties of the position did not appear to be so specialized or complex as to require the attainment of a bachelor’s degree in a specific field of study that consisted of the theoretical and practical application of a body of highly specialized knowledge.

On appeal, counsel confirms that the petitioner operates a residential care facility and augments the previously described position duties. Counsel asserts that because the director stated that some of the duties described under the proffered position closely resemble those of finance managers in the *Handbook* that the director found that the proffered position is a specialty occupation. The AAO does not agree with counsel’s assessment that the director found that the proffered position is a specialty occupation. The AAO finds that the director clearly determined that the proffered position is not that of a specialty occupation. On appeal, counsel contends that there is a reasonable need for the position and that the proffered position of director of finance and administration is a specialty occupation within the meaning of the regulations.

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 considers 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 812 F. Supp. 872, 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.

Although the petitioner asserts that many of the duties are similar to those of a financial manager, the record does not support the petitioner's assertions. The *Handbook* reveals that financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. The petitioner has not provided sufficient evidence relating the duties of a financial manager to its business operations. The petitioner has not described its direct investment activities or cash management strategies. The petitioner has provided a projected income statement for the first three years of operation which will be generated from admission rates of patients. The petitioner indicated that three patients will be admitted in the first three years of operation, generating \$9,000 total. Solicitations of \$15,000 per year are expected to keep the organization operating. The petitioner has not established that the duties of the proffered position are those of a financial manager. The petitioner stated that the duties of the proffered position will include: performing maintenance of client records and information and adhering to confidentiality of information; providing personal care services; supervising and directing the work of others to provide personal care services to clients of the facility; overseeing human resources activities such as employee payroll administration and employee files; conducting employee new hire orientation; administering employee benefits; maintaining employee handbook; managing office space and facilities, leases, office equipment and maintenance; ensuring terms of contracts are adhered to and costs are managed; and ensuring safety and security of space and inventory.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example, mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services. The *Handbook* reveals the nature of managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

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. In large organizations, however,

administrative service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion, as the *Handbook* indicates that educational requirements vary widely. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to two letters. The first letter is addressed to counsel from a company named RONIN SPS, Incorporated. The author states that his company requires a bachelor's degree in a related field such as accounting, administration, management or business for the position of director, finance & administration. The author refers to two internet job postings in support of his hiring practices. **This letter provides insufficient probative evidence. The record does not support that the organization is similar to that of the petitioner and the author does not state that he reviewed the duties of the proffered position to establish that the positions are parallel.** Furthermore, the internet job postings are for dissimilar organizations and positions that are not parallel. The first job posting indicates that the duties include maintaining its IT database and that an MBA or CPA is required. The second job posting indicates that a bachelor's degree is required without specifying a specific specialty. Counsel also refers to a second letter from Sweethaven Assisted Living, Inc. The author certifies that her company has a position of finance and administrative manager which requires a "bachelor's of science degree in commerce [with a] major in accounting and/or at least three years of related experience prior to [its] employment." This letter does not indicate that a bachelor's degree in a specific specialty is required, as the author stated that she would accept three years of related experience. Consequently, the letters and internet postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a related specialty in order to satisfy the second alternative prong of the second criterion. Again, the *Handbook* reveals that the proffered position is performed by an administrative services manager, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position. The petitioner states that this is a newly created position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish 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. The majority of the listed duties are routinely performed by administrative services managers. The AAO notes that the petitioner indicates that it has four employees and submitted a business plan to operate a home care facility for three residents. Although counsel stated that the beneficiary would manage and control the organization's finances, the record does not contain evidence of how this duty requires a degree in a specific specialty as required by the statute. It cannot be concluded 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.

Once again, the *Handbook* reveals that the duties of the proffered position are performed by administrative services managers, an occupation not requiring a bachelor's degree in a specific specialty.

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.