

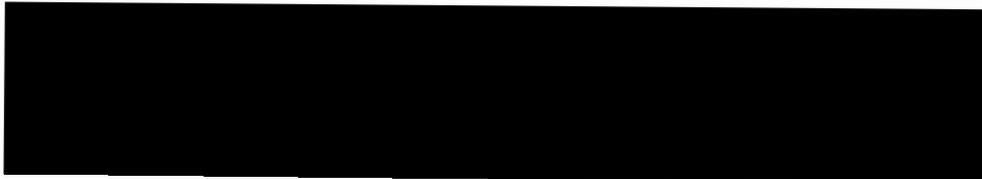
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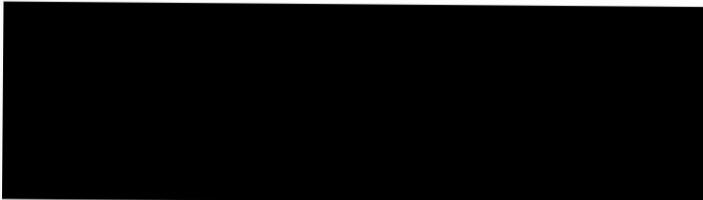


FILE: WAC 04 093 51546 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

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.

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 nonprofit education center that seeks to employ the beneficiary as a part-time organizational operations specialist. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief and additional evidence, including Internet job postings and a copy of the California Occupational Guide (COG).

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), 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 part-time organizational operations specialist. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's February 2, 2004 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: developing, implementing, and evaluating internal and external operational development strategies to advance the petitioner's mission, goal, services, activities, and initiatives; providing leadership, direction, and coordination to facilitate the petitioner's success in achieving its mission; collaborating with staff and students to assure an interdisciplinary approach to student care and to achieve effective utilization and case management programs; preparing press releases, advisories, articles, brochures, leaflets, flyers, and posters; planning activities and initiating contacts in the community; integrating human resources systems such as performance management and succession planning into the "Organizational Development" plan; coordinating with the human resources manager to oversee all human resources operations; providing administrative, supervisory, and technical support; recruiting, interviewing, and selecting employees; developing, implementing, and documenting staff performance review processes and salary administration, compensation structures and processes, employee policies and procedures, and various employee programs; designing and conducting staff meetings and training; conducting wage surveys; and resolving employee grievances. The petitioner indicated that the beneficiary is a qualified candidate for the job because he possesses a bachelor's degree in behavioral sciences with a major in organization and systems development.

The director found that the proffered position, which is similar to a public relations manager, a human resources specialist, and an operations research analyst, was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, 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, in part, that the proposed duties most closely resemble the duties of a public relations manager and a human resources specialist, occupations that require a baccalaureate or higher degree, according to the *Handbook* and the COG. Counsel submits Internet job postings and a copy of the COG as supporting 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." 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)).

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 the proffered position, which resembles a public relations manager and a human resources specialist, qualifies as a specialty occupation. A review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers job descriptions in the *Handbook*, 2006-2007 edition, finds no evidence indicating that a baccalaureate or higher degree in a specific specialty is required for a public relations manager job. A review of the Human Resources, Training, and Labor Relations Managers and Specialists job descriptions in the *Handbook* also finds no evidence indicating that a baccalaureate or higher degree in a specific specialty is required for a human resources specialist job. A wide variety of educational backgrounds are acceptable for entry into these positions including a well-rounded liberal arts education. Further, a review of the COG information pertaining to human resources specialists and managers, and to public relations representatives confirms the position of the DOL in its *Handbook*, namely that a wide variety of educational backgrounds are acceptable for entry into these positions, including sociology, English, journalism, and liberal arts.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for human resources specialists and public relations managers. There is no evidence, however, to show that the employers issuing these postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for human resources specialists and public relations managers for a variety of industries including: engineering, procurement, construction, and maintenance services; lighting and electrical; healthcare; manufacturing; real estate; and information technology. The petitioner's industry, however, is not represented. Further, the majority of the advertisements do not specify a bachelor's degree in a specialty. Thus, the advertisements have no relevance.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has 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. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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 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.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation, because his baccalaureate degree in behavioral sciences is unrelated to the proffered position. On appeal, counsel states, in part, that the beneficiary's

interdisciplinary background qualifies him for the proffered position. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty is required for public relations manager and human resources specialist jobs. A wide range of educational backgrounds including a broad liberal arts background is suitable. In this case, the record indicates that the beneficiary holds a foreign bachelor's degree in behavioral arts with a major in organization and systems management, which has been found to be the U.S. equivalent of bachelor's degree in behavioral sciences with a specialization in organizational and system development. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.