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



**U.S. Citizenship
and Immigration
Services**

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FILE: WAC 02 187 53505 Office: CALIFORNIA SERVICE CENTER Date: JAN 06 2005

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:

[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 Wiemann

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 movie theatre that seeks to employ the beneficiary as an administrative assistant/analyst. 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 the proffered position is not a specialty occupation. On appeal, the petitioner submits a brief and additional 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 an administrative assistant/analyst. 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 the petitioner's May 10, 2002 letter, the beneficiary would perform duties that entail managing the office facilities, work flow, plans for business development, and management reports; handling human resources such as recruiting, training, supervising employees, improving performance of employees; coordinating personnel; maintaining records and preparing the budget; providing support to the company president; improving customer service; handling correspondence; and analyzing operating practices. The petitioner stated that it requires a candidate with a bachelor's degree for the proffered position.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that the proffered position would be performed by secretaries and administrative assistants, positions which do not require a bachelor's degree.

On appeal, counsel narrates the proffered position's duties and states that they are analogous to those of an operations research analyst, a specialty occupation. Counsel contends that the beneficiary's duties are not clerical like those of secretaries and administrative assistants. Counsel states that the petitioner's offer of employment to the beneficiary is reasonable and credible; it is consistent with the company's needs and expansion. According to counsel, the *Dictionary of Occupational Titles (DOT)*, previously submitted job advertisements, and case precedent substantiate that the proffered position requires a bachelor's degree.

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 first 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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.

As previously mentioned, 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. None of the evidence in the record established that the petitioner requires a bachelor's degree in a *specific specialty* for the proffered position. An example of this is the petitioner's May 10, 2002 letter; it averred that:

The attainment of a [b]achelor's [d]egree is normally the minimum requirement for entry into this profession and would be required by our firm in analogous positions.

Thus, the petitioner cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that it requires a specific baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the particular position, administrative assistant/analyst.

Given that the petitioner does not require a bachelor's degree in a specific specialty, it cannot establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it show that its degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Because the position is newly created, the petitioner cannot establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that it establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position.

Finally, the petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to 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. Again, the petitioner did not require that a candidate possess 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.