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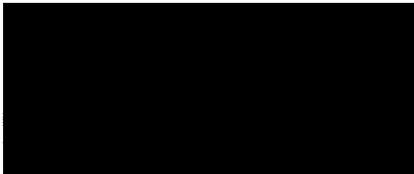
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FILE: WAC 04 052 50624 Office: CALIFORNIA SERVICE CENTER Date: OCT 03 2005

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:



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 operates assisted living facilities. It seeks to employ the beneficiary as a training and development 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 on the grounds that 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.

The AAO will first address the director's conclusion that the proposed 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 training and development manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail planning, coordinating, and directing training and staff development programs; conferring with managers and supervisors to determine training needs; compiling data and analyzing past and current training requirements in order to prepare budgets and justify requested funds; formulating training policies and schedules based on identified training needs, production processes, business systems, or changes in procedures, rules and/or regulations and state and federal guidelines; designating training procedures using individual training, group instruction lectures, on-the-job training, demonstrations, conferences, meetings, and workshops; organizing and developing training manuals, a reference library, testing and evaluation procedures, multi-media visual aids, and other educational materials. The petitioner finds the beneficiary suitable for the proposed position as she has the educational equivalent to a U.S. bachelor's degree in modern languages and a master's degree in education.

The director stated that the petitioner failed to respond to his request seeking information about the employees that will be trained and supervised; and the minimum education, training, and experience required for the proposed position. The director stated that although counsel asserted that previously the manager performed the proposed position, counsel did not describe the manager's educational credentials. The director stated that counsel's assertion that the petitioner qualifies for the benefit sought is unpersuasive, and that several Board of Immigration Appeals cases indicate that the assertions of counsel do not constitute evidence. The director found the Internet printouts unpersuasive as they did not represent employers in the same industry as the petitioner. According to the director, the proposed position resembles a medical and health services manager as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation requires a master's degree. According to the director, the petitioner failed to establish that the proposed position requires a master's degree since the petitioner stated that a master's degree or its equivalent is usually preferred for the position; but that a bachelor's degree in nursing or in a healthcare related field is the minimum requirement for the proposed position. The director concluded that the beneficiary does not hold proper licensure, an RN license, or hold a master's degree in a relevant field for a medical and health services manager position.

On appeal, counsel states that the proposed position, a training and development manager, differs from a medical and health services manager, and discusses the specific vocational preparation (SVP) rating and Job Zone of a training and development manager. According to counsel, a training and development manager requires a bachelor's degree. Counsel states that even though the director concluded that the proposed position is not a specialty occupation, the director contradicted this by stating that the proposed position requires a master's degree. Counsel claims that the beneficiary's degree relates to the proposed position, and that the position does not require licensure. Counsel asserts that the beneficiary previously had an H-1B

petition approved on her behalf by an employer for a position as a teacher/educator. According to counsel, the Internet printouts show that employers in the same county as the petitioner, some of which are also in the health care industry, require a bachelor's degree for similar positions. Counsel states the person that performed the proposed position is the manager of the facility, and that she is a registered nurse with a bachelor's degree in nursing.

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.

Counsel's reference to and assertions about the relevance of a SVP rating and a Job Zone category are not persuasive. Neither the SVP rating nor a Job Zone category indicate that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. The SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO next 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*, 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The AAO does not agree with the director's contradictory conclusion that the proposed position is analogous to a medical and health services manager, requiring a master's degree, but at the same time is not a specialty occupation. The AAO finds that the proposed position parallels those of training and development managers and specialists as those occupations are depicted in the *Handbook*. The *Handbook* describes these occupations as conducting and supervising training and development programs for employees, which encompasses the duties of the proposed position. The *Handbook* depicts the educational requirements of training and development managers and specialists as follows:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

The *Handbook's* passage relays that employers do not require a bachelor's degree in a specific specialty for training and development managers and specialists, which are the occupations that resemble the proposed position. For this reason, the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The submitted Internet postings are not persuasive in establishing the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The employers in the postings are either dissimilar from the petitioner, the operator of an assisted living facility; or their nature is not disclosed; or some employers do not require a bachelor's degree in education, which is the petitioner's educational requirement; or some of the positions differ from the proposed position. Compliance Solutions Occupational Trainers, Inc., for example, is a hazardous materials training firm; Pearson Government Solutions provides solutions for benefits processing, customer interaction management, document and content management, and e-learning and training; one of the Catholic Social Services positions is for a licensing specialist that will monitor foster/adoptive homes (thus, the duties differ from the proposed position); Verizon Wireless provides cellular phone services; Kreative Kampus Lear is in the child care industry; and Phoenix Job Corps and Prehab of America are not described in the postings. For these reasons, the Internet postings do not demonstrate that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed earlier in this decision, the proposed duties parallel those of training and development managers and specialists, which the *Handbook* reveals are occupations that do not require a baccalaureate degree in a specific specialty. No evidence reflects that the training involves subject matter that is so complex or unique as to require a person with a baccalaureate degree in a specific specialty.

No evidence in the record establishes the regulation 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 does not have a past practice of requiring a bachelor's degree in education for the proposed position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that the proposed duties resemble those of training and development managers and specialists,

which are occupations that do not require a baccalaureate degree in a specific specialty. In addition, no evidence demonstrates that the subject matter of the training is so specialized and complex that the knowledge required to perform the position is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner therefore fails to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 this ground.

The director concluded that the beneficiary is not qualified for the proposed position. Whether or not the beneficiary qualifies for the proposed position is inconsequential as the AAO found that the proposed position is not a specialty occupation.

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.