



U.S. Citizenship
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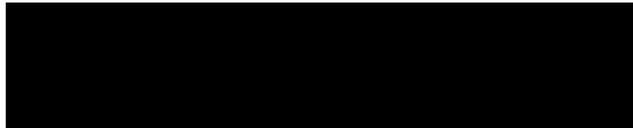
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FILE: WAC 06 109 52094 Office: CALIFORNIA SERVICE CENTER Date: **DEC 13 2007**

IN RE: Petitioner:
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:

SELF-REPRESENTED

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, Chief
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 petitioner¹ provides consulting assistance services to community-care centers and facilities in California. It seeks to employ the beneficiary as a program coordinator and researcher. 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 and the beneficiary is not qualified to perform the duties of a specialty occupation. The director also found that the petitioner had not established that it had a specialty occupation position available for the beneficiary.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's brief. The AAO reviewed the record in its entirety before reaching its decision.

The first issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the 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 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.

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

¹ A November 27, 2007 search of the California Business Portal website at <http://kepler.sos.ca.gov/corpdata> finds a "suspended" status, filing date of May 12, 2005, for "[REDACTED]" located at [REDACTED], Highland, California 92346, with [REDACTED] Parrenas listed as the agent. It is additionally noted that the telephone and fax numbers provided by the petitioner are non-working. In view of the foregoing, the petitioner's status as a U.S. employer is in question.

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) consistently 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 seeks the beneficiary's services as a program coordinator and researcher. Evidence of the beneficiary's duties includes: the petitioner's February 13, 2006 letter in support of the petition and the petitioner's June 29, 2006 response to the director's RFE. As stated by the petitioner, the proposed duties are as follows:

Perform project feasibility studies, area research, and program planning and implementation.

The director found that the proposed duties reflect the position of a social and human service assistant, an occupation that does not require a bachelor's degree. Citing the Department of Labor's (DOL) *Occupational*

Outlook Handbook (Handbook), 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 concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner states, in part, that the proffered position, which entails the analysis of federal and state regulations for compliance purposes, is specialized and complex in nature, and thus is not similar to a social and human service position.

Preliminarily, the AAO observes that the petitioner has not sufficiently detailed the proffered position's duties to enable the AAO to conclude that the proffered position comprises the duties of a specialty occupation. Although the petitioner claims that the beneficiary would perform project feasibility studies, area research, and program planning and implementation, this overview of an "occupation" is insufficient to establish the proffered position as a specialty occupation. The petitioner must detail its expectations of the proffered position and must provide evidence of the duties that comprise the proffered position as it relates specifically to the petitioner's business.

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.

As discussed above, the petitioner's executive director limits her description of the proposed duties to generic terms that do not convey either the content of the actual work that the beneficiary would perform or that the actual work performance would involve the critical and practical application of a bachelor's degree level of knowledge in a specific specialty, as required by statute and regulation to establish a specialty occupation. For instance, on appeal, counsel states that the beneficiary will "[analyze] both federal and state regulations for compliance purposes." The record of proceeding, however, neither provides examples of documents including contracts with care centers/facilities that require such analysis nor establishes that such analysis would require the beneficiary to apply at least a bachelor's degree level of knowledge in a specific specialty. The generic description of the proposed duties does not establish the level of knowledge that would be required when actually performed for this particular petitioner's business, a business about which the record contains negligible information.

The record in this matter is insufficient to establish the proffered position as a specialty occupation. As reflected in the above discussion, the petitioner has described the proposed duties in generic terms. The duties described neither relate specific work that the beneficiary would perform, elucidate concrete business matters of this particular petitioner that would be the focus of that work, nor exemplify how performance of that work upon those matters would require the theoretical and practical application of at least a bachelor's level of a highly specialized body of knowledge. Consequently, because the proposed duties are limited to generic terms that do not relate what they involve in actual performance to this specific petitioner's particular business matters, the petitioner has not provided sufficient information to satisfy any of the specialty occupation criteria. The AAO cannot accept a broad overview of a position as definitive of a particular occupation's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position as it relates to its specific business. To recite generalities, rather than specifics substantiated by the

requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of the proffered position and must provide evidence of what the duties of the proffered position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The petitioner does not relate the nonspecific responsibilities described to the specifics of the petitioner's business nor does the petitioner define how these general duties apply to a specific discipline. Nor does the petitioner provide evidence of what the beneficiary does on a day-to-day basis. Only a detailed job description will suffice to meet the burden of proof in these proceedings. *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). As the duties of the proffered position are ill-defined and do not specifically correspond to the petitioner's business the petitioner cannot establish a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The record does not establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the generally described position. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. The AAO acknowledges the Internet job postings submitted by the petitioner but observes that the advertisers include businesses such as: the non-profit organization A Helping Hand; the city government of Phoenix, Arizona; the County government of Solano, California; the County government of San Bernardino, California; a state university; and the federal government. The petitioner has not provided evidence that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, level of revenue, or type of business. Moreover, as the record offers only a generalized description of the proffered position, the duties listed in the advertisements may not be established as parallel to those outlined by the petitioner.

The record does not include any evidence from individuals, firms, or professional associations regarding an industry standard. Again, as discussed above, the duties that comprise the proffered position are described in generalized terms that do not indicate the necessity of a body of highly specialized knowledge attained by at least a baccalaureate degree level of coursework in a specific specialty. Without a meaningful job description the petitioner cannot show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those

employees' diplomas to aid in determining the third criterion. As the petitioner's executive director indicates in her June 29, 2006 letter that the petitioner is a start-up business, the evidence of record does not establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Neither has the petitioner satisfied the requirements of the fourth criterion by distinguishing the proffered position based on the specialization and complexity of its duties. Again, the petitioner's general iteration of the duties of the proffered position cannot, without further detail, establish that the proffered position's duties are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As previously observed, the description of the petitioner's proffered position is general and provides no understanding of how the duties relate to the specific needs of the petitioner.

The petitioner has not provided sufficient information to establish that the duties as generally described are duties that correspond to a position that is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the criterion at 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 or that the beneficiary is coming to the United States to perform services in a specialty occupation as required by the statute at section 101(a)(15)(H)(i)(b) of the Act; 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director also found that the petitioner had not established that the beneficiary's master's degree in mathematics and additional studies in special education qualifies her for the proffered position. On appeal, the petitioner's executive director states, in part, that the beneficiary's master's degree in mathematics demonstrates "that she has the discipline and analytical ability to perform appropriate research, analyze the applicable regulations, and apply them to the functions of care centers/ facilities."

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The AAO accepts the credentials evaluation concluding that the beneficiary holds the U.S. equivalent of a bachelor's degree and a master's degree in mathematics. As discussed above, however, the petitioner has not provided evidence of the exact nature of its business activities or of the proposed duties that specifically correspond to the petitioner's business. As such, the AAO is unable to determine whether the beneficiary is qualified to perform the duties of the proffered position. The petitioner has not submitted argument or documentation on appeal sufficient to overcome the director's decision on this issue. For this additional reason, the petition will not be approved.

Accordingly, the AAO shall not disturb the director's denial of the petition.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.