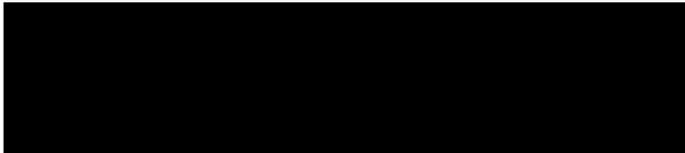




U.S. Citizenship
and Immigration
Services

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DZ

FILE: EAC 03 211 52653 Office: VERMONT SERVICE CENTER Date: FEB 20 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 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 law office with five employees and an unstated gross annual income. It seeks to employ the beneficiary as an office operations manager and endeavors to classify her 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 does not qualify as a specialty occupation. On appeal the petitioner submits a brief stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with counsel’s brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as an office operations manager. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Coordinate the activities of clerical and administrative personnel
- Prepare records and reports, such as recommendations for solutions of administrative problems and annual reports;
- Study management methods to improve workflow, simplifying reporting procedures, or implementing cost reductions;
- Maintain software systems and their applications;
- Analyze internal processes and plans;
- Implement procedural and policy changes to improve operations;
- Prepare and review operational reports and schedules to ensure accuracy and efficiency;
- Formulate budgetary reports;
- Record financial transactions and resolve discrepancies on accounting records; and
- Verify balances and entries.

The petitioner requires a minimum of a bachelor’s degree or its equivalent in administrative services for entry into the proffered position.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position as described in relation to the petitioner's business operations fall within those noted for administrative service managers as stated by the petitioner. The *Handbook* states in its discussion of administrative services managers that the educational requirements for these managers vary widely, depending on the size and complexity of the organization. In smaller organizations, experience may be the only requirement needed to enter a position as an office manager, and when a position in administrative services management occurs, the office manager may be promoted to that position based on past performance. There is no requirement in the petitioner's business environment that an administrative services manager have a baccalaureate level education in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner states that a degree in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position, and in support of that assertion submits copies of five job advertisements for office managers and related positions. Four of the job advertisements are from organizations that are not similar to the petitioner's business operation, and are, therefore, of little evidentiary value. One advertisement is for a legal office manager but states that a college degree is preferred, not required. The advertisements submitted do not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations.

The petitioner also submitted an evaluation from [REDACTED] of HR Analytical Services which classified the proffered position as an administrative services manager and states that it qualifies as a specialty occupation. The AAO does not agree. No information of record establishes the expertise of [REDACTED] to render an opinion on the hiring practices of U.S. businesses for the position of administrative services manager, or on the variety of government publications cited. The opinion cites to the skills and tasks criteria under the Department of Labor's *O*NET*. The classification system utilized by the *O*NET* relies on specific vocational preparation (SVP) tables, which are not useful in determining whether a position is a specialty occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require.

The opinion draws a correlation between the educational requirements for operations managers in sample organizations and those required for the present position. The representative sample organizations have not been shown to be similar to the petitioner, and the analysis does not establish a standard in the industry in parallel positions among similar organizations. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The evaluation submitted by HR Analytical Services shall be given little weight in this proceeding. The petitioner has not established that a baccalaureate degree in a specific specialty is required for the position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), or that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the proffered position, as the position is a new position with the petitioner's office. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The record does not establish that the duties of the offered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty, or that they are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties of the position as outlined by the petitioner are only generally described and do not establish a uniqueness or complexity requiring a degree in a specific specialty. The petitioner states that it has acquired a new office space and intends to hire 8 – 10 new individuals and to rent out a portion of the new space. Other than a contract of sale between [REDACTED] and [REDACTED] [REDACTED] whose relationship to the petitioner is not apparent from the record, no evidence of record establishes the intended growth of the petitioner's business. Simply going on the record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N 190 (Reg. Comm. 1972)). No details are given about the beneficiary's duties in relation to the petitioner's business. The petitioner has not established that only an individual with a bachelor's degree in a specific specialty may perform the duties of the position. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the services of a specialty occupation. The record contains an evaluation of the beneficiary's combined education and work experience. A credentials evaluator may evaluate credentials only. 8 C.F.R. §214.2(h)(4)(iii)(D)(3). The record does not establish that the evaluator is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required under 8 C.F.R. §214.2(h)(4)(iii)(D)(1). The record does not establish that the beneficiary has the equivalent of a baccalaureate degree in a specialty. For this additional reason, the petition may not be approved.

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 and the appeal shall accordingly be dismissed.

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