



U.S. Citizenship
and Immigration
Services

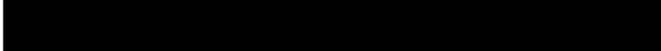
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FILE: EAC 06 167 51152 Office: VERMONT SERVICE CENTER Date: **MAR 31 2008**

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:



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.

For Michael T. Kelly
Robert P. Wiemarn, 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 petitioner is an assisted living facility that seeks to employ the beneficiary as a part-time health services 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 because the proffered position is not a specialty occupation.

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) counsel and the petitioner's responses to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with a letter from the petitioner. The AAO reviewed the record in its entirety before reaching its decision.

The 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 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 part-time health services manager. Evidence of the beneficiary’s duties includes: the petitioner’s April 5, 2006 job offer and counsel’s and the petitioner’s November 2, 2006 responses to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

Plan, direct and coordinate the petitioner’s health services. Analyze operating procedures to devise the most efficient methods of accomplishing work. Gather, organize, and analyze information on problems or procedures, and prepare recommendations of improvements to the petitioner’s owner. Install new systems and review results to ensure proper functioning. Update manual in accordance with established policies.

The director found that the proposed part-time health services manager duties do not require a bachelor’s degree. 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 proposed duties are so specific and complex as to require a related bachelor’s degree. The petitioner also states that this requirement is the industry standard. The petitioner submits an expert opinion 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 Department of Labor's (DOL) *Occupational Outlook Handbook (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. Preliminarily, the AAO notes that the *Handbook* indicates that physician's offices and some other facilities may substitute on-the-job experience for formal education for health services manager jobs, and that not all health services manager positions require a baccalaureate degree in a specific field or a master's degree. Moreover, the AAO does not concur with counsel or the petitioner that the proffered position is similar to that of a medical and health services manager, as described in the *Handbook*. In this matter, information on the petition reflects that the petitioner has three employees. The record contains no organizational chart and it is not clear what services each employee provides.¹ Of further note, although information on the petition indicates that the petitioner is an assisted living facility, established in 2000, with three employees and a projected 2005 gross annual income of \$150,000, the record contains no evidence in support of these claims, such as federal income tax returns and quarterly wage reports. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 Dec. 190 (Reg. Comm. 1972)).

Although the record contains generic and generalized information about the proffered position, the AAO finds that the job duties are similar to those of an administrative services manager, who, in small organizations, may oversee all support services. See the *Handbook*, 2006-07 edition.

In its *Handbook*, the DOL states the following about the employment of administrative services managers:

Administrative services managers held about 268,000 jobs in 2004. About 80 percent worked in service-providing industries, including Federal, State, and local government; health care; financial services; professional; scientific, and technical services; administrative and support services; and education. . . .

¹ The AAO notes that the beneficiary's background is in nursing. The record does not establish that any of the petitioner's employees provides nursing. The occupation of nurse is not a specialty occupation.

No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for administrative services manager positions. Further, in small organizations, experience may be the only requirement needed to enter a position as office manager. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

On appeal, the petitioner submits an expert opinion from a university professor who asserts that the proffered position requires at least a bachelor's degree in health services administration, or a related field. The record, however, does not indicate that the writer has adequate knowledge of the facts presented. The opinion does not include a discussion of the proposed duties and/or the actual work that the beneficiary would perform within the context of this particular petitioner's business. The writer does not demonstrate knowledge of the petitioner's particular business operations. He does not relate any personal observations of those operations or of the work that the beneficiary would perform. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operation to demonstrate a sound factual basis for his conclusion about the educational requirements for the particular position at issue. 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). As the opinion of the writer is not based on an adequate factual foundation, the AAO does not find it probative in this matter.

Regarding parallel positions in the petitioner's industry, the petitioner also submitted Internet job postings for health services manager positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The advertisements are for health service manager positions at hospitals and universities. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions, such as: directing staff engaged in providing health services for all university students and ensuring that departmental programs and standards meet all DOL, PRH, Center and Horizons Youth Services requirements; and oversee complex case management and transitional care services of a university medical school. Thus, the advertisements are not probative.

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 duties that comprise the proffered position, such as planning, directing and coordinating the petitioner's health services are routine to an administrative services manager position and do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty. 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. On appeal, counsel states that the petitioner is a new facility and thus unable to demonstrate this criterion. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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.

As described, the proposed duties appear no more specialized and complex than those general duties which the *Handbook* attributes to the general occupational category of administrative services managers, for which the *Handbook* does not indicate a normal requirement for usual association with at least a bachelor's degree 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 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.