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U.S. Citizenship
and Immigration
Services

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FILE: WAC 04 209 53740 Office: CALIFORNIA SERVICE CENTER Date: MAR 22 2006

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.

For Michael T. Kelly
Robert P. Wiemann, Director
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 an intermediate care facility for the developmentally disabled that seeks to employ the beneficiary as a full-time budget analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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, counsel submits a brief.

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 full-time budget analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 21, 2004 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to the petitioner's June 21, 2004 letter, the beneficiary would perform duties that entail: coordinating, organizing, and examining the petitioner's financial information and budget requirements; analyzing economic factors such as income, management processes, and business practices; forecasting economic conditions and budget requirements and determining ways to improve cost efficiency; preparing and consolidating budget worksheets; providing management with an overview of the petitioner's financial status, reports on the current economic conditions, and availability of funds; assisting management with major budget components; and assisting in the development of the annual operating plans. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation because petitioner did not establish that there was a bona fide position for the beneficiary to fill.

On appeal, counsel states, in part, that the petitioner requires a full-time budget analyst to forecast, monitor, and allocate expenditures for its six facilities. Counsel cites to court decisions to state that the petitioner's size bears no rational relationship to the need for a professional. Counsel states further that the petitioner already has an accountant and financial/accounting staff and, therefore, the proffered position is not that of a bookkeeper.

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 *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)).

In this case, information on the petition reflects that the petitioner is an intermediate care facility for the developmentally disabled, with 34 employees and a gross annual income of \$1.1 million. It is noted that the petitioner has provided no evidence that it generates the amount of income that is reflected on the petition. The petitioner's 2002 federal income tax return reflects only \$170,551 in gross receipts or sales, no compensation of officers paid, and only \$52,675 in salaries and wages paid. Going on 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 Dec. 190 (Reg. Comm. 1972)).

As most of the proposed duties of the proffered position are largely focused on the petitioner's budget and financial operations, the AAO turns to the *Handbook's* discussion of the educational requirements for budget analysts. The *Handbook* indicates that:

[p]rivate firms and government agencies generally require candidates for budget analyst positions to have at least a bachelor's degree, but many prefer or require a master's degree. . . . Sometimes a degree in a field closely related to that of the employing industry or organization, such as engineering, may be preferred. Some firms prefer candidates with a degree in business because business courses emphasize quantitative and analytical skills. . . . Occasionally, budget-related or finance-related work experience can be substituted for formal education.

Based on the above discussion, no budget-related duties would require the beneficiary to hold a baccalaureate degree in a directly related academic field, as required for classification as a specialty occupation. Accordingly, the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for budget analysts. 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 budget analysts for a variety of businesses, including major hospitals and the Global Aids Project. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as those duties described in the advertised positions, such as developing the financial plans and budgets for the Ambulatory Services department of a major hospital, interfacing with clinical directors and serving as their business advisor in the finance department of another major hospital, and coordinating Global Aids Project requirements relating to contracts, grants, cooperative agreements, and reimbursable agreements. Thus, the advertisements have no relevance.

To the extent that it is depicted in the record, the proffered position is not demonstrated to be so unique or complex that it can be performed only by a person with at least a bachelor's degree or its equivalent in a specific specialty. The petitioner limits its description of the duties comprising the position to generalized and generic functions that could comport with any budget analyst position, such as: "[E]xamine past and current budget," "Research local and national financial conditions and financial developments," "Examine budget estimates and proposals," "Project future budget needs of the company based on research findings and analysis of company's financial documents," and "Regularly monitor company budget by reviewing reports and accounting records," and "Prepare special budget analysis reports to highlight problems." Such generalized statements provide no information about the substantive, petitioner-specific matters upon which the beneficiary would work, and they provide no basis for distinguishing the proffered position from the general range of budget analyst positions for which the *Handbook* indicates that there is no requirement for a bachelor's degree in a specific specialty.

The record also does not include any evidence from industry individuals, firms, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

For the reasons discussed above, the petitioner 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. As counsel does not address this issue on appeal, it will not be discussed further.

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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, 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. 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.