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20 Massachusetts Avenue NW, Room 3000
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U.S. Citizenship
and Immigration
Services

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FILE: WAC 05 220 50730 Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 property and casualty claims and loss cost management service provider that seeks to employ the beneficiary as a claims examiner. 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 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 petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition, determining that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 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 proposed position.

The petitioner is a property and casualty claims and loss cost management service provider with 1,925 employees, of whom 140 are claims examiner. The beneficiary would work in its Pasadena, California branch office, which currently employs seven other claims examiners. According to the petitioner's August 1, 2005 letter of support, the duties of the proposed position would include reviewing and investigating claim documents for both medical and indemnity workers compensation claims to determine compensability, establish reserves, and set course of claims management; employing appropriate claim management techniques and direct intervention (i.e., independent medical examinations, referral for rehabilitation, litigation, etc.) to effectively manage each claim; negotiating settlements as appropriate; documenting significant activity and the decision on each claim via the petitioner's online claim system; completing state reports and related filings; evaluating all pertinent information and work in conjunction with clients to pursue the most appropriate claim resolution; investigating and pursuing third party recoveries on behalf of the client; participating in litigation management of case/claims files; and performing other duties as assigned.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* provides the following information regarding the duties of claims adjusters, appraisers, examiners, and investigators:

Individuals and businesses purchase insurance policies to protect against monetary losses. In the event of a loss, policyholders submit claims, or requests for payment, seeking compensation for their loss. Adjusters, appraisers, examiners, and investigators work primarily for property and casualty insurance companies, for whom they handle a wide variety of claims alleging property damage, liability, or bodily injury. Their main role is to investigate the claims, negotiate settlements, and authorize payments to claimants, all the while mindful not to violate the claimant's rights under Federal and State privacy laws. They must determine whether the customer's insurance policy covers the loss and how much of the loss should be paid to the claimant. Although many adjusters, appraisers, examiners, and investigators have overlapping functions and may even perform the same job, the insurance industry generally assigns specific roles to each of these claims workers.

Adjusters plan and schedule the work required to process a claim that would follow, for example, an automobile accident or damage to one's home caused by a storm. They

investigate claims by interviewing the claimant and witnesses, consulting police and hospital records, and inspecting property damage to determine the extent of the company's liability. Adjusters may consult with other professionals, such as accountants, architects, construction workers, engineers, lawyers, and physicians, who can offer a more expert evaluation of a claim. The information gathered, including photographs and written or audio-taped or video-taped statements, is set down in a report that is then used to evaluate the associated claim. When the policyholder's claim is legitimate, the claims adjuster negotiates with the claimant and settles the claim. When claims are contested, adjusters will work with attorneys and expert witnesses to defend the insurer's position.

Many companies centralize claims adjustment in a claims center, where the cost of repair is determined and a check is issued immediately. More complex cases, usually involving bodily injury, are referred to senior adjusters. Some adjusters work with multiple types of insurance; however, most specialize in homeowner claims, business losses, automotive damage, or workers' compensation.

Claimants can opt not to rely on the services of their insurance company's adjuster and may instead choose to hire a public adjuster. These workers assist clients in preparing and presenting claims to insurance companies and in trying to negotiate a fair settlement. They perform the same services as adjusters who work directly for companies; however, they work in the best interests of the client, rather than the insurance company.

Claims examiners within property and casualty insurance firms may have duties similar to those of an adjuster, but often their primary job is to review the claims submitted in order to ensure that proper guidelines have been followed. They may assist adjusters with complex and complicated claims or when a disaster suddenly greatly increases the volume of claims. Most claims examiners work for life or health insurance companies. In health insurance companies, examiners review health-related claims to see whether costs are reasonable on the basis of the diagnosis. The examiners are provided with guides that supply information on the average period of disability, the expected treatments, and the average hospital stay, for patients with the various ailments for which a claim may be submitted. Examiners check claim applications for completeness and accuracy, interview medical specialists, and consult policy files to verify the information reported in a claim. Examiners will then either authorize the appropriate payment or refer the claim to an investigator for a more thorough review. Claims examiners usually specialize in group or individual insurance plans and in hospital, dental, or prescription drug claims.

In life insurance, claims examiners review the causes of death, particularly in the case of an accident, because most life insurance policies pay additional benefits if a death is accidental. Claims examiners also may review new applications for life insurance to make sure that the applicants have no serious illnesses that would make them a high risk to insure and thus disqualify them from obtaining insurance. . . .

The *Handbook* provides the following information regarding the educational background necessary for claims adjusters, appraisers, examiners, and investigators:

Training and entry requirements vary widely for claims adjusters, appraisers, examiners, and investigators. Although many in these occupations do not have a college degree,

most companies prefer to hire college graduates. No specific college major is recommended, but a variety of backgrounds can be an asset. A claims adjuster who, for example, has a business or an accounting background might specialize in claims of financial loss due to strikes, breakdowns of equipment, or damage to merchandise. College training in architecture or engineering is helpful in adjusting industrial claims, such as those involving damage from fires or other accidents. Some claims adjusters and examiners apply expertise acquired through specialized professional training to adjust claims. A legal background can be beneficial to someone handling workers' compensation and product liability cases. A medical background is useful for those examiners working on medical and life insurance claims.

Because they often work closely with claimants, witnesses, and other insurance professionals, claims adjusters and examiners must be able to communicate effectively with others. Knowledge of computer applications also is extremely helpful. In addition, a valid driver's license and a good driving record are required for workers for whom travel is an important aspect of their job. Some companies require applicants to pass a series of written aptitude tests designed to measure their communication, analytical, and general mathematical skills. . . .

These findings do not support the contention that a bachelor's degree is required for entry into the field, as it reports that most companies "prefer to hire college graduates." Employer preferences do not equate to employer requirements, and do not rise to the "normally required" standard imposed by the regulation. That many in this field possess a degree is not synonymous with a finding that a degree is a standard entry requirement.

Moreover, the AAO notes that of those positions that do require a degree, the *Handbook* states that "[n]o specific college major is recommended." As noted previously, 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 proposed position. When a range of degrees, or a degree of generalized title without further specification, can perform a job, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

Nor do the documents submitted on appeal aid the petitioner's case. The printout from CollegeGrad.com states that although employers prefer to hire college graduates, a high school education is sufficient for most positions.¹ For those that do require a degree, no specific college major is recommended. The printout from CadClassified.com also states that most companies prefer college graduates. The printout from Career-Planning-Education.com also states that most companies prefer college graduates. It also states that for those that do require a degree, no specific college major is recommended. The printout from CareerOverview.com states that occupations such as the one proffered in this petition do not coincide with a specific college degree. Although no specific major is required or even recommended, most companies have a preference for college graduates. Finally, the printout from the website of the California Employment Development Department states the following:

¹ Although the author of this printout was referring to claims representatives when making this statement, the author later states that the term claims representatives is another term for claims examiners.

Many employers require a bachelor's degree for this job. Some do not ask for a degree, but they do prefer those who have degrees. . . .

Again, employer preferences do not equate to employer requirements, and do not rise to the "normally required" standard imposed by the regulation.

The printout from the National Association of Public Insurance Adjusters (NAPIA) is not relevant to this proceeding. The petitioner has not indicated that this position is a public insurance adjuster position, nor has it indicated that NAPIA certification is necessary to perform the duties of the position.

Finally, the AAO will accord no weight to the information counsel submits from the Department of Labor's *O*Net* system. *O*Net* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. Its assessment (the JobZone classification) does not specify the particular type of degree, if any, that a particular position would require. Again, 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 proposed position.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel in response to the director's request for additional evidence and on appeal. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

First, the AAO notes that these job postings do not establish the petitioner's degree requirement as an industry norm. Of the eleven job postings contained in the record, only five require a degree. The posting from the State Auto Insurance Companies states that a college degree (no field of study mentioned) is a plus; the two postings from SAFECO state that a college degree (no field of study mentioned) is preferred; the three postings from Sedgwick Claims Management Services state that a

college degree (no field of study mentioned) is preferred. Again, employer preferences are not synonymous with employer requirements.

Although a degree requirement is stated, the postings from The Redwoods Group, the unnamed company advertising its vacancy through Craglist.com, and Octagon Risk Services do not specify that the degree be in any particular field of study.

Thus, of eleven job postings submitted by the petitioner, only two—Nationwide Insurance and the Michigan Department of Civil Service—specify a degree requirement in a specific field of study. However, two job requirements out of eleven do not establish that a degree requirement in a specific discipline is common to the industry. Moreover, the record does not contain sufficient evidence to establish that the job postings are from companies “similar” to the petitioner, a property and casualty claims and loss cost management service provider. There is insufficient evidence to establish that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply 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)). Even if the AAO were to find that these companies were similar to the petitioner, the job postings are too few to establish an industry-wide standard, particularly in light of the fact that most of the job postings submitted by the petitioner do not require a bachelor’s degree in a particular field of study.

The information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner’s degree requirement as an industry norm in parallel positions among similar organizations. The petitioner has not satisfied the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Therefore, the proposed position does not qualify as a specialty occupation under the criteria set forth at the first prong of the second criterion.

In the alternative, the petitioner may show that that the proposed position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner and counsel have provided descriptions of the proposed position that correspond to the duties of a claims examiner. Neither counsel nor the petitioner has provided information that distinguishes the proposed position from similar, but non-degreed employment based on its unique nature or complexity. The petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Therefore, the petitioner has not established that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner’s ability to meet this criterion, the AAO normally 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.

On appeal, the petitioner provides the names of seven individuals² that it claims work in its Pasadena, California branch office (the location at which the beneficiary would work). According to the petitioner, all of these individuals possess degrees. However, the petitioner has not provided copies of the individuals' diplomas or evidence that the employees' degrees are in specific disciplines that relate directly to their positions. Nor has the petitioner provided evidence substantiating its employment of these individuals. Moreover, the AAO notes that while a petitioner may believe that a proposed position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought into the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d at 384. 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), which requires a demonstration that 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.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has provided voluminous information relating to its type of business. However, the petitioner also provides descriptions of the duties of the proposed position that list the routine tasks of a claims examiner for an insurance company, an occupation which the *Handbook* reports does not require a degree in a specific discipline. The petitioner has not provided information or documentary evidence to demonstrate how the duties of the proposed position are so specialized or complex, that the knowledge to perform the duties requires the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has failed to establish the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.

² Counsel states that it is not possible to obtain data for all 140 of the claims examiners that it employs.