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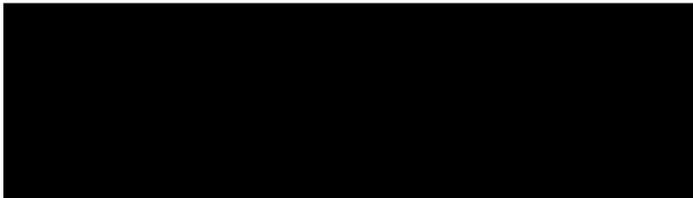
U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE: EAC 06 138 53155 Office: VERMONT SERVICE CENTER Date: NOV 14 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:



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, Vermont 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 a dental office established in 1996, with 44 employees¹, and \$5.6 million stated gross income. It seeks to hire the beneficiary as an administrative 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 petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the director erred in denying the petition, and that the proposed position qualifies for classification as 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) the petitioner's response to the director's request for evidence; (3) the director's denial letter; and (4) the Form I-290B, the petitioner's letter and previously submitted evidence. The AAO reviewed the record in its entirety before reaching its decision.

The first issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 In response to the RFE the petitioner described itself as a subsidiary of My Family Dental Care, P.C. which employs approximately 150 individuals.

- (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 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.

The petitioner states that it is seeking the beneficiary's services as an administrative manager. Evidence of the beneficiary's duties includes: the petitioner's April 1, 2006 letter; the petitioner's response to the RFE; and the petitioner's appeal letter. In response to the director's request for evidence, the petitioner offered a similar list of duties as stated at the time of filing with the inclusion of the percentage of time for each duty.

The petitioner stated that the beneficiary would be required to:

- (25%) Plan, direct, and coordinate all supportive services of A-1 Family Dental Care such as hiring and firing, employee orientation, training and re-training, recordkeeping, mail distribution, telephone operator/receptionist, and other office support services;
- (10%) Serve as a link between management and employees by handling questions, interpreting and administering contracts and helping to resolve work-related problems;
- (10%) Communicate with customers, employees, and other individuals to answer questions, disseminate or explain information, take orders and address complaints;
- (10%) Set goals and deadlines for the HR and Administrative Department personnel;
- (10%) Prepare and review operational reports and schedules to ensure accuracy and efficiency;
- (10%) Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes, improving scheduling, and the disposal of records;

(10%) Maintain and update filing, inventory, mailing, and database systems, both manually and using a computer. Review files, records, and other documents to obtain information to respond to requests;

(5%) Plan and conduct new employee orientation to foster positive attitudes toward the office's objective, i.e. customer service;

(5%) Answer telephones, direct calls and take messages when necessary;

(5%) Monitor the facility to ensure that it remains safe, secure, and well-maintained.

The petitioner's response to the RFE also included a second description of the beneficiary's proposed duties and responsibilities with some additional duties not mentioned at the time of filing, but without a percentage of time allocated for each duty. These additional duties include:

- Supervise all front and back office staff members;
- Monitor employee performance and provide performance feedback on a regular basis;
- Motivate staff to increase production and maximize their potential;
- In the absence of any of the subordinate personnel, perform or reassign those functions;
- Assist patients with financing options, insurance and benefits questions, treatment concerns, and pre- and post-treatment responsibilities, etc.;
- Supervise insurance and HMO billing;
- Monitor patient financing and ensure that all information on the credit applications is filled out completely and verified in accordance with Company policy;
- Ensure that private and insurance payments are received in a timely manner;
- Coordinate and facilitate monthly office staff meetings;
- Close office at the end of the day.

On appeal, the petitioner lists an additional requirement for the position which is eluded to but never specifically stated in previous filings. That requirement is the ability to translate and communicate with patients who do not speak English. The petitioner did not allocate a percentage of time for translation; therefore, the AAO is unable to determine how much time the beneficiary will devote to translation, or to the additional duties listed in the response to the RFE.

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's* discussion of the duties of office and administrative support worker supervisors and managers states the following:

Although specific functions of office and administrative support supervisors and managers vary significantly, they share many common duties. For example, supervisors perform administrative tasks to ensure that their staffs can work efficiently. Equipment and machinery used in their departments must be in good working order. If the computer system goes down or a fax machine malfunctions, the supervisors must try to correct the problem or alert repair personnel. They also request new equipment or supplies for their department when necessary.

Planning the work and supervising the staff are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the results required from and time allotted to each job. Supervisors must make allowances for unexpected staff absences and other disruptions by adjusting assignments or performing the work themselves if the situation requires it.

After allocating work assignments and issuing deadlines, office and administrative support supervisors and managers oversee the work to ensure that it is proceeding on schedule and meeting established quality standards. This may involve reviewing each person's work on a computer—as in the case of accounting clerks—or listening to how a worker deals with customers—as in the case of customer services representatives. When supervising long-term projects, the supervisor may meet regularly with staff members to discuss their progress.

The position also includes some duties of an administrative services manager described in the *Handbook*. That description includes the following:

Planning the work and supervising the staff are key functions of this job. To do these effectively, the supervisor must know the strengths and weaknesses of each member of the staff, as well as the results required from and time allotted to each job. Supervisors must make allowances for unexpected staff absences and other disruptions by adjusting assignments or performing the work themselves if the situation requires it.

The *Handbook* reports that for the position of office and administrative support worker supervisors and managers, many employers require postsecondary training and “in some cases, an associate or even a bachelor's degree.” It does not however, indicate that a baccalaureate degree is the minimum educational requirement for office and administrative support worker supervisors and managers or that the degrees held by candidates must be in a field directly related to the proffered position, as required for classification as a specialty occupation. The *Handbook* reports that for administrative services managers, educational requirements vary widely, depending on the size and complexity of the organization. In small organizations experience may be the only requirement. In large organizations, administrative services managers are normally hired from outside and each position has formal education and experience requirements. Specific requirements vary by job responsibility. Accordingly, the listed duties do not establish the proffered position as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

In his response to the director's request for evidence, the AAO notes that counsel references the rating of Job Zone 4 for administrative services managers by the *Occupational Information Network O*Net OnLine (O*Net)*. However, the AAO does not consider *O*Net* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *O*Net* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. Furthermore, the Job Zone 4 rating assigned by *O*Net* to the occupation of administrative services manager does not indicate that a bachelor's degree in a specific specialty is required. The job zone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. The job zone rating 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.

Counsel also referenced the May 17, 2005 Department of Labor Memorandum to State Workforce Agency Administrators. Counsel highlighted the last paragraph on page 10 which states

Professional Occupations by O*Net-SOC category and the related education and training category code are listed in Appendix A to the Preamble of the PERM regulations. The education and training categories assigned to those occupations shall be considered the usual education and training required *when considering the education level for prevailing wage determinations* (emphasis added). A listing of occupations designated as professional occupations and the related education and training category can be found in Appendix D of this document.

Although the petitioner references this memorandum for the purposes of establishing that the position requires at minimum a bachelor's degree, this guidance is specific to "prevailing wage determinations." As stated above, the AAO does not consider *O*Net* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under the criterion 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.

Nor does the proposed position 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.

In response to the director's RFE, counsel included internet job postings for administrative managers from the following companies: The Gold Standard; MeadWestvaco; Cornell Companies, Inc.; Palmetto Health; Ingersoll-Rand; Sherbrooke Associates; BISYS Group; and The Brattle Group. Counsel states that "employment positions similar to that of administrative manager, regardless of industry, require at minimum a baccalaureate degree in management or a related field, or its equivalent." However, none of these companies are similar to the petitioner. Only Palmetto Health provides healthcare services; however, it does not provide

dental care and it is a much larger company than the petitioner.² To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement is common in parallel positions among similar organizations. 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)).

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

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The *Handbook* reveals that the duties of the proposed position are similar to those of office and administrative support worker supervisors and managers and administrative services managers as outlined in the *Handbook*, which do not require a specific degree as a minimum entry requirement. In his response to the director's RFE, counsel states that the position is so complex or unique that it can only be performed by an individual with a bachelor's degree. However, the record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, CIS often reviews the position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. While it is not necessary that the petitioner currently employ or have hired another person in the proffered position, the petitioner has not hired an administrative services manager in the past and therefore, eligibility under this criterion cannot be established.

The AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Moreover, the critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a

² Palmetto Health is a nonprofit public benefit corporation consisting of three hospitals in South Carolina. See Palmetto Health's website at <https://www.palmettohealth.org/body.cfm?id=12>.

baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. 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.

To the extent that they are depicted in the record, the duties of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more specialized or complex than the general range of office and administrative support worker supervisors and managers and administrative services managers positions for which the *Handbook* indicates no requirement for the highly specialized knowledge associated with at least a bachelor's degree in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In its response to the director's RFE and on appeal, the petitioner states that the position is highly specialized because it "involves managing an eclectic group of people that includes both customers and colleagues of varying income brackets and education levels. This particular position is unique because the majority of the customers with which the administrative manager will be interacting do not speak English and live in a culture completely foreign to most U.S. workers." Although the beneficiary's fluency in Lithuanian, Belarusian, Ukrainian, Russian, Polish and Czech may be beneficial to the petitioner, it is not a requirement for the proffered position. Furthermore, although universities provide bachelor's degrees in modern languages, the ability to speak a language and to understand a culture in the petitioner's dental office has not been established in the record to be so specialized or complex that the knowledge required is usually associated with the attainment of a baccalaureate or higher degree.

In response to the director's RFE, counsel submits an opinion letter prepared by [REDACTED] associate professor of management science, [REDACTED] of Business, University of Maryland. The professor asserts that "after examining the responsibilities of this administrative manager position in detail, it became apparent that only a bachelor's or master's degree in management or a related field, or its equivalent, provides the student with the core competencies and skills needed for a[n] administrative manager position.... Various growing dental and medical offices that employ more than 50 individuals regularly hire an administrative manager and require the minimum attainment of a bachelor's degree for the position." Although [REDACTED] states that he reviewed the position in detail, [REDACTED] does not indicate that he reviewed company information about the petitioner, visited the site, or interviewed the petitioner. The professor's letter is conclusory, that is, it does not inform the reader of how the professor analyzed the general job functions to determine their requirement for at least a bachelor's degree in a specific specialty nor does he include evidence of other dental offices' educational requirements for the position of administrative services manager. While some administrative manager positions may require a bachelor's degree in management or a related field, the professor does not give sufficient details about the complexity of the duties in relation to the petitioner's business to substantiate his conclusions. There is thus an inadequate factual foundation established to support the opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in

any way questionable, the AAO 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 record establishes that the proposed duties do not exceed the scope of a typical administrative support worker supervisor or manager or administrative services manager position. The AAO is not persuaded by the evidence that the nature of the specific duties of the proposed position is more specialized and complex than customarily required of these positions and that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in management or a related field. The opinion of this professor is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Accordingly, the petitioner failed to otherwise establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the evidence submitted in support of the petition, the petitioner has failed to establish that the proffered position is a specialty occupation.

Beyond the decision of the director, the beneficiary does not appear to be qualified to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), the AAO does not accept the conclusion, reached by the petitioner, that the beneficiary has attained the equivalent of a master's degree in production management. There is no evaluation of the beneficiary's education in the record of proceeding and therefore, the petitioner cannot equate the beneficiary's credentials to a United States master's degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). Further, there is no evidence of record that the beneficiary is the same person as Rasa Budriene, to whom the degree was awarded. Thus, the beneficiary does not qualify to perform the duties of a specialty occupation. For this additional reason, the petition may not be approved.

The petitioner has not established that the proposed position qualifies for classification as a specialty occupation, or that the beneficiary is qualified to perform the duties of a specialty occupation. 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.