



U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 09 217 51537 Office: CALIFORNIA SERVICE CENTER Date: DEC 07 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the California 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 nonprofit health and human services organization with 24 employees. It seeks to employ the beneficiary as a housing counselor 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the documentation submitted by the petitioner in response to the RFE; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

The sole issue that the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks the beneficiary’s services as a housing counselor. Evidence of the beneficiary’s duties includes: the Form I-129; the petitioner’s July 1, 2009 letter of support; and documentation submitted in response to the RFE.

In the support letter, the petitioner describes itself as an organization that educates and organizes tenants to promote housing as a human right. Specifically, it provides tenants with assistance regarding tenant rights as well as regarding emergency services and subsidies for tenants with special needs.

The support letter indicates the proffered position would require the beneficiary to perform the following duties:

- Provide housing, counseling and referral services to individuals and/or families with HIV/AIDS and/or to individuals and families with special needs.
- Work with the program director to meet the goals and objectives of the program.
- Interact with the case manager to ensure that all appropriate supportive services are provided.
- Participate in seminars, workshops and conferences about housing and services for people with special needs.
- Educate the public about the program and its services.

The director, in the RFE issued August 24, 2009, requested evidence establishing that the proffered position is

a specialty occupation as well as evidence with respect to the beneficiary's current immigration status. In response, the petitioner provided a September 2, 2009 letter from the petitioner as well as a detailed job description for a housing counselor. In this letter, the petitioner states that the beneficiary will "help us provide individual housing counseling to our subsidized tenants, many of whom are living with HIV/AIDS. . . . [The beneficiary] will do more than provide in-house training and counseling services. He will enable [the petitioner] to do outreach to the Cambodian community in Philadelphia for the first time." The petitioner goes on to state that the beneficiary "will enable us to correct this shortfall by translating our educational materials and by doing workshops and trainings at nonprofit organizations around the City which serve the Cambodian community. . . . All of the housing counselors at [the petitioner] in this position have had either a college degree (bachelor or masters) **or from 8 to 20 years of experience.**" (Emphasis added.) The petitioner also provided copies of advertisements from other employers regarding similar positions as well as resumes from the petitioner's other employees holding the same position as the beneficiary.

The expanded duties and responsibilities as provided by the petitioner in response to the RFE include the following in pertinent part:

- Maintain monthly contact with participants to ensure that they are housed in safe, sanitary units and work with participants in conjunction with the case manager and landlords.
- Conduct intake interviews and review all documentation.
- Set up and maintain individual participant files and ensure that all required forms are accurate, complete, current and audit ready.
- Calculate rental payments, prepare lease/lease addendum in accordance with applicable agency regulations. Work with fiscal staff and/or landlords to resolve processing and payment problems.
- Ensure landlord compliance with tenant/landlord laws.
- Maintain contact with participant's case manager.
- Prepare and submit all required and/or assigned reports.
- Maintain awareness of trends in housing, tenant/landlord issues and resources and treatment intervention for people with HIV/AIDS and other special needs populations by participating in seminars, workshops, and conferences about housing and services for people with special needs.
- Work with participants to bring them into compliance with program requirements.
- Network with other social service providers and advocate to improve the quality and coordination of services to people with HIV/AIDS and other Special Needs populations.
- Assist clients living with HIV/AIDS to maintain their health and housing by providing information and advice about housing safety and cleanliness and by advocating on behalf of the client to get necessary repairs.
- Outreach and educate individuals, community organizations and nonprofit groups, particularly those in the Cambodian community, about the relationship between substandard housing conditions, health safety and living with HIV/AIDS.
- Translate organizational educational material on tenant rights and housing services into the Cambodian language.

The petitioner did not break down the duties by percentages so the AAO cannot determine which duties comprise the majority of the beneficiary's time for the proffered position.

On September 10, 2009, the director denied the petition, determining that the duties of the proffered position corresponded to the duties of a social and human service assistant as described in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director observed that the *Handbook* reported that the training for a social and human service assistant does not require a bachelor's degree in a specific specialty. The director also determined that the record did not contain evidence: that a degree in a specific field of study is common to the industry in parallel positions among similar organizations; or that the proffered position involved duties that were either unique or complex so that only an individual with a degree in a specific specialty could perform them; or that the petitioner had established that it only hired individuals with degrees in a specific specialty for the position; or that the nature of the duties is so specialized or complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree or higher in a specific specialty.

On appeal, counsel for the petitioner asserts that the director incorrectly categorized the position to be held by the beneficiary. Counsel contends that the description of duties provided shows that the proffered position is for that of a health educator, not a social and human service assistant. Counsel bases this on the alleged similarities between the proffered position and the position the beneficiary held in H-1B status as a health educator for another employer. Counsel contends that the petitioner seeks the services of a housing counselor to perform duties normally attributed to a health educator and who meets the requirements to hold such a position.

To make its determination whether the employment described qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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 takes note of the following discussion in the *Handbook* regarding health educators:

Health educators work to encourage healthy lifestyles and wellness through educating individuals and communities about behaviors that promote healthy living and prevent diseases and other health problems.

They attempt to prevent illnesses by informing and educating individuals and communities about health-related topics, such as proper nutrition, the importance of exercise, how to avoid sexually transmitted diseases, and the habits and behaviors necessary to avoid illness. They begin by assessing the needs of their audience, which includes determining which topics to cover and how best to present the information. For example, they may hold programs on self-examinations for breast cancer to women who

are at higher risk or may teach classes on the effects of binge drinking to college students. Health educators must take the cultural norms of their audience into account. For example, programs targeted at the elderly need to be drastically different from those aimed at a college-aged population.

After assessing their audiences' needs, health educators must decide how to meet those needs. Health educators have a lot of options in putting together programs to that end. They may organize a lecture, class, demonstration or health screening, or create a video, pamphlet or brochure. Often, planning a program requires working with other people in a team or on a committee within the organization that employs them. Also, health educators must plan programs that are consistent with the goals and objectives of their employers. For example, many nonprofit organizations educate the public about just one disease or health issue and, therefore, limit their programs to cover topics related to that disease or issue.

Next, health educators need to implement their proposed plan. This may require finding funding by applying for grants, writing curriculums for classes, or creating written materials that would be made available to the public. . . .

Generally, after a program is presented, health educators evaluate its success. . . .

\* \* \*

Health educators in nonprofits strive to get information out to the public on various health problems and make people aware of the resources their programs have to help people to the community. While some organizations target a particular audience, others educate the community regarding one disease or health issue. Therefore, in this setting, health educators may be limited in the topics they cover or the population they service. Work in this setting may include creating print-based material for distribution to the community, often in conjunction with organizing lectures, health screenings, and activities related to increasing awareness.

Regarding the training, other qualifications, and advancement for health educators, the *Handbook* reports:

A bachelor's degree is generally required for entry level health educator positions, but some employers prefer a bachelor's degree and some related experience gained through an internship or volunteer work. A master's degree may be required for some positions and is usually required for advancement. In addition, some employers may require candidates to be Certified Health Education Specialists.

The AAO also notes the *Handbook's* discussion regarding the duties of social and human service assistants that provides:

Social and human service assistant is a generic term for people with a wide array of job

titles, including human services worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skill counselor, or gerontology aide. They usually work under the direction of workers from a variety of fields, such as nursing, psychiatry, psychology, rehabilitative or physical therapy, or social work. The amount of responsibility and supervision they are given varies a great deal. Some have little direct supervision; others work under close direction.

Social and human service assistants provide direct and indirect client services to ensure that individuals in their care reach their maximum level of functioning. They assess clients' needs, establish their eligibility for benefits and services such as food stamps, Medicaid, or welfare, and help to obtain them. They also arrange for transportation and escorts, if necessary, and provide emotional support. Social and human service assistants monitor and keep case records on clients and report progress to supervisors and case managers.

Social and human service assistants play a variety of roles in a community. . . . They review clients' records, ensure that they take correct doses of medication, talk with family members, and confer with medical personnel and other caregivers to gain better insight into clients' backgrounds and needs. Social and human service assistants also provide emotional support and help clients become involved in their own well-being, in community recreation programs, and in other activities.

Regarding the training for a social and human service assistant, the *Handbook* reports that “a bachelor’s degree is not required for most jobs in this occupation, but employers increasingly seek individuals with relevant work experience or education beyond high school.” It also states that “some jobs may require a bachelor’s or master’s degree in human services or a related field such as counseling, rehabilitation, or social work.”

The descriptions of the duties of the proffered position contain elements of both a health educator and a social and human service assistant position as defined under the *Handbook*. Given that the petitioner does not break down the percentage of time spent in each of the proffered duties so that the AAO can analyze which duties will be primarily performed by the beneficiary and, as mentioned earlier, given that the petitioner states that it is hiring the beneficiary to reach out to Cambodian communities for the first time (and therefore to provide translation and other services in areas unrelated to health education), the AAO must conclude that the beneficiary will be involved in providing direct and indirect client services with respect to housing needs as much as, if not more than, he will be providing HIV/AIDS education.

Counsel tries to distinguish the proffered position from that of a social and human service assistant by stating that:

As a Social and Human Service Assistant, one’s role is to *support* other professionals in their industry. As a Housing Counselor, the role is not to support but rather to plan, produce and initiate programs and cases. For example, as a Social and Human Service

Assistant, one would monitor and keep case records on clients and report progress to supervisors and case managers. As a Housing Counselor, the worker would determine what points of a client would need to be monitored by maintaining awareness of trends in their respective industries. This requires an individual with adequate background education, experience and capacity. The difference between these two positions is that as a Social and Human Service Assistant one would learn on the job whereas a Housing Counselor to the individual brings a package of knowledge and experience and *applies* it to the job. To be relevant, it is a job that requires a theoretical and practical application of a body of highly specialized knowledge.

The AAO acknowledges that some of the proffered duties reflect the type of work to be performed by health educators. The problem is that a number of other duties to be performed by the beneficiary (such as maintaining monthly contact with participants to ensure that they are housed in safe, sanitary units; conducting intake interviews; calculating rental payments and preparing lease/lease addendum in accordance with applicable agency regulations; and ensuring landlord compliance with tenant/landlord laws) have little to do with the duties of a health educator according to the description in the *Handbook*, despite the petitioner's assertion in its letter of September 2, 2009, that "we believe housing is healthcare." Instead, these duties are closer to those of a social and human service assistant. Moreover, counsel's argument on appeal that "this position would require the individual to manage and monitor his/her own caseload with no immediate guidance or supervision" does not contradict the classification of this position under the *Handbook's* section on social and human service assistants as the *Handbook's* description states that some social and human service assistants have little direct supervision.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See *generally Defensor v. Meissner*, 201 F. 3d 384. 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.

As the proffered position described by the petitioner encompasses many duties from the *Handbook's* section on social and human service assistants, the AAO concludes that the performance of a significant part of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner failed to establish its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *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)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. To establish its degree requirement as an industry norm, the petitioner has submitted eight advertisements from other companies for housing counselors. Of the job announcements submitted by the petitioner, all except three either require a bachelor's degree without listing a specific specialty or do not require a bachelor's degree at all. The three other announcements require a bachelor's degree or equivalent experience, without defining what level of experience is equivalent to the degree. Specifically, the first requires a bachelor's degree in social work, real estate, or other related field or equivalent experience; the second requires a bachelor's degree or equivalent in social work, credit counseling, mortgage processing or related field; and the third requires a degree or equivalent experience in education, human services, social work, or a related field. Because these three announcements do not provide what level of experience is considered to be equivalent to the degree, the AAO cannot evaluate whether such experience meets one of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Moreover, the specific fields listed in these advertisements, including social work, human services, education, or real estate, vary widely and therefore do not constitute a specific specialty or related field under the regulation. Therefore, the petitioner has not demonstrated that a specific degree requirement is common to its industry in parallel positions among similar organizations.

Neither does the petitioner provide sufficient information to distinguish the proffered position as more complex or unique than similar, but non-degreed, employment, as required by the second prong of the second criterion. The petitioner does not identify which duties are more unique or specialized than the duties performed by non-degreed individuals in the same field, or even than the other seven housing counselors employed at its own organization, many of whom do not have degrees.

On appeal, the petitioner submitted a letter dated October 5, 2009 from [REDACTED] of Community Advocacy Training Services INC. [REDACTED] states that he was the Executive Director for 11 years of an agency in Philadelphia that provided training to service staff in housing organizations in Philadelphia. In his capacity as Executive Director, [REDACTED] employed housing counselors as part of his permanent staff and had regular occasion to interact with housing counseling staff and supervisors from all of the other housing counseling agencies in Philadelphia. With respect to minimum qualifications for the position, [REDACTED] writes, "It is typically required that a housing counselor must have a minimum of a bachelor's degree to enter such work." However, [REDACTED] does not state that the bachelor's degree must be in a specific specialty as required under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), and so this letter is not probative in demonstrating that attainment of a baccalaureate or higher degree in a specific specialty is required for minimum entry into the proffered occupation.

Therefore, the record does not contain evidence that establishes either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Turning to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), whether the petitioner normally requires a degree for the position, as stated above, there are eight housing counselors employed by the petitioner, including the beneficiary. In response to the RFE, the petitioner provided resumes for present and past employees in the position of housing counselor. With the exception of the beneficiary, only one of these appears to have been awarded a bachelor's degree, and she does not appear to be employed or to ever have been employed as a housing counselor. Therefore, the petitioner's own hiring practices indicate that it does not require a bachelor's degree in a specific field for the proffered position. A petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. 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. The AAO acknowledges counsel's contention that a health educator is a position that generally requires a bachelor's degree irrespective of the petitioner's self-imposed requirements. However, as determined above, the petitioner in this matter has not demonstrated, even based on its own past hiring practices, that the position encompasses the duties of a housing counselor that requires the theoretical and practical application of a body of highly specialized knowledge. The petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Turning to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the description of the duties in the record does not substantiate that the duties are sufficiently specialized or complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific field of study. In this matter, the petitioner has not provided an adequate distinction between the duties of a housing counselor and the duties of a social and human service assistant. Moreover, the petitioner has not even distinguished between the duties of the other housing counselors it employs, none of whom even appear to have bachelor's degrees, and those of the proffered position. The petitioner has not provided definitive information regarding the proffered position or otherwise established that the duties it describes are specialized or complex. Accordingly, the petitioner has failed to classify the proffered position as a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.