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U.S. Citizenship
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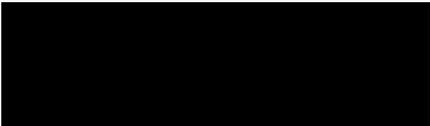
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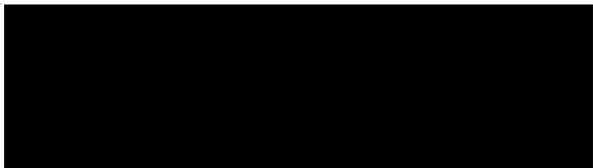
FILE: EAC 04 231 50496 Office: VERMONT SERVICE CENTER Date: AUG 31 2005

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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a medical practice. It seeks to employ the beneficiary as an administrative assistant and to classify her 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 on the ground that the proffered position is not a specialty occupation.

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.

As provided in 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 decision; and (3) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a four-employee medical practice which was established in 1999 and had gross annual income (in 2003) of \$350,000. Though the petitioner referred in Form I-129

to an attached job description, no such attachment was submitted with the petition. Documentation in the record indicates that the beneficiary took some business-related courses at the University of Valencia, in Spain, during the years 2001-2003, but it does not show that she earned a degree.

The director denied the petition on the ground that the proffered position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the duties of the position were those of a secretary and cited information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* indicating that a baccalaureate degree in a specific specialty is not required to enter into such a position. Rather, a high school education and basic office skills may qualify for entry-level secretarial positions.

On appeal counsel asserts that a baccalaureate degree or its equivalent is the minimum requirement for entry into the proffered position. He described the duties of the administrative assistant as follows:

The administrative assistant would coordinate office services, such as personnel, budget preparation and control, records control, and special management studies: Study management methods in order to improve workflow, simplify reporting procedures, or implement cost reductions. Analyze unit operating practices, such as record keeping systems, forms control, office layout, suggestion systems, personnel and budgetary requirements, and performance standards to create new systems or revise established procedures. Study methods of improving work measurements or performance standards. Coordinate collection and preparation of operating reports. Prepare reports for the doctor including conclusions and recommendations for solution of administrative problems. Issue and interpret operating policies. Review and answer correspondence.

Counsel asserts that the duties of the proffered position are not those of an entry-level secretary, as found by the director. Rather, the duties of the position are much more complex and demand the services of an administrative assistant with a baccalaureate degree. Counsel cites an excerpt from the DOL *Handbook* that a baccalaureate degree is becoming increasingly important for secretaries and administrative assistants. Counsel also refers to two other DOL resources – the *Dictionary of Occupational Titles (DOT)* and *O*NET OnLine (Occupational Information Network)* – in support of his contention that a baccalaureate degree is a standard requirement for administrative assistant positions.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The petitioner's description of the proffered position accords with the description of administrative assistants in the DOL *Handbook*, 2004-05 edition, at 469-70. The *Handbook* summarizes the "core responsibilities" of secretaries and administrative assistants as "performing and coordinating an office's administrative activities, and storing, retrieving, and integrating information for dissemination to staff and clients." The duties of secretaries and administrative assistants are described in the *Handbook* more specifically as follows:

Secretaries and administrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. They serve as an information manager for an office, plan and schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information by using the telephone, postal mail, and e-mail. They also may handle travel arrangements

Specific job duties vary with experience and titles. *Executive secretaries and administrative assistants*, for example, perform fewer clerical tasks than do other secretaries. In addition to arranging conference calls and scheduling meetings, they may handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff.

Some secretaries and administrative assistants, such as legal and medical secretaries, perform highly specialized work requiring knowledge of technical terminology and procedures *Medical secretaries* transcribe dictation, prepare correspondence, and assist physicians or medical scientists with reports, speeches, articles and conference proceedings. They also record simple medical histories, arrange for patients to be hospitalized, and order supplies. Most medical secretaries need to be familiar with insurance rules, billing practices, and hospital or laboratory procedures

With regard to the educational requirements of administrative assistants, the *Handbook* indicates that a high school degree may be sufficient for an entry-level position, but that additional training and education is becoming increasingly important to acquire the skills needed for the modern workplace. As explained in the *Handbook, id.*, at 470-71:

Secretaries and administrative assistants acquire skills in various ways. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges Specialized training programs are available for students planning to become medical or legal secretaries or administrative technology specialists. Bachelor's degrees and professional certifications are becoming increasingly important as business continues to become more global.

Thus, the *Handbook* clearly indicates that a bachelor's degree in a specific specialty, or its equivalent, is not the normal minimum requirement for entry into an administrative assistant position. While bachelor's degrees are "becoming increasingly important," many other educational avenues are available to become an administrative assistant, even one with advanced responsibilities, including sub-baccalaureate training programs in business schools, vocational-technical institutes, and community colleges. According to the

Handbook, therefore, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for counsel's reference to two other DOL resources about occupations – *DOT* and *O*NET OnLine*—the *DOT* is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into an occupation. The *DOT*'s SVP (“specific vocational preparation”) rating is meant to indicate the total number of years of vocational preparation required for a particular position. It does not specify 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 particular position would require. The record includes the *O*NET OnLine* report for executive secretaries and administrative assistants and states that “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.” Thus, the *O*NET* report does not establish that a baccalaureate degree is the normal minimum requirement for entry into an executive secretary or administrative assistant position, or that a baccalaureate degree must be in any specific specialty.

For the reasons discussed above, the administrative assistant position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, there is no evidence in the record that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, as required for the administrative assistant position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record demonstrate that the proffered position is so complex or unique that it can only be performed by an individual with a specialty degree, as required for it to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a baccalaureate or higher degree in a specific specialty, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the proffered position does not meet the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the record does not establish that 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 in a specific specialty. As far as the record shows, neither the duties of the position nor the particular circumstances of the petitioner’s business distinguish the proffered position in any significant way from that of any other administrative assistant in the industry, for whom knowledge associated with a degree in a specific specialty is not normally required.

Based on the foregoing discussion, the AAO concludes that the proffered position does not qualify as a specialty occupation under any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.