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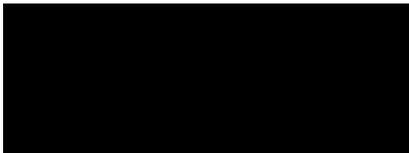
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FILE: SRC 04 056 52376 Office: TEXAS SERVICE CENTER Date: APR 20 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 non-profit that seeks to employ the beneficiary as a program coordinator. 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 proposed position is not a specialty occupation. On appeal, counsel states that the proposed position qualifies as 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a program coordinator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail coordinating the adult literacy outreach programs; liaising with other coordinators, tutors, and staff; assisting Spanish speaking students in their reading, writing, and comprehension studies; and facilitating and conducting teaching workshops, bi-lingual interviews, training, and speaking engagements for non-English speaking students. The petitioner's January 9, 2004 letter discussed the proposed position's duties. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in the social sciences, and be fluent in the Spanish language.

The director determined that the proposed position is not a specialty occupation. The director found that the petitioner had changed the description of the proposed position in the response to the request for evidence. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proffered position's duties are similar to an adult literacy teacher. The director found that the proposed position's duties did not combine those of a social worker and sociologist, as suggested by the petitioner. The director stated that the initial petition did not suggest that the proposed position involved counseling; that the *Handbook* indicates that a sociologist is a research position, which generally requires a master's degree or a Ph.D. The beneficiary does not qualify for a sociologist position, the director stated, because she does not hold an advanced degree.

On appeal, counsel states that the director improperly interpreted the regulatory guidelines because they do not require a degree in a specific specialty that is related to the specialty occupation. Counsel cites to *Tapis International vs. INS*, 94 F. Supp. 2d 172 (D.Mass 2000) to support her assertion. Counsel asserts that the director failed to consider that a bachelor's degree or its equivalent qualifies an occupation as a specialty occupation, and that:

The director's faulty interpretation precludes any position from satisfying the "specialty occupation" requirements where a specific degree is not available in the field. Thus, for instance in this case, the beneficiary's position could not qualify unless the beneficiary obtained a degree in Program Coordinating.

According to counsel, the *Dictionary of Occupational Titles' (DOT)* SVP rating for a social worker indicates that the proposed position is a specialty occupation. Counsel regards the *Handbook* as a secondary source for determining the requirements of occupations, and states that the proposed position falls under the *Handbook's* social worker sub-classification. Counsel asserts that the *Handbook* shows that the industry requires a bachelor's degree or higher for one of these occupations, and that a sociologist is a related occupation. Counsel states that a person must possess a bachelor's degree for membership in the National Association of Social Workers (NASW). Counsel references job postings and the *Career Guide to Industries* to establish the requirement of a bachelor's degree for parallel positions in social service organizations. The petitioner

normally requires a degree, counsel attests. Counsel maintains that since the proposed position is managerial, analytical, and research oriented in nature, it requires a baccalaureate degree and that it is reasonable to combine sociologist and social worker duties. Counsel emphasizes that the petitioner does not seek to employ the services of an adult literacy teacher, a general manager, or an instructional coordinator, and contends that the response to the request for evidence did not change the initial job description. Finally, counsel references an April 21, 1980 memorandum from Mr. Durward E. Powell, Jr.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers 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; a specific degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors often considered by CIS when determining these criteria 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)).

In determining whether a position qualifies as a specialty occupation, the AAO 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 that the AAO considers.

Counsel asserts, in part, that the *DOT's* SVP rating indicates that the proposed position is a specialty occupation. The *DOT* 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. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It 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.

The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide 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. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of the *DOT's* information.

The director concluded that in the petitioner's January 9, 2004 letter, which had been submitted in response to the request for evidence, the petitioner had materially altered the proposed position instead of providing a more detailed description of its duties. In the January letter, the petitioner states the beneficiary "[p]repares statistical reports for funding; processes internal survey results and disseminates information"; "[w]rites proposals to obtain grants or funding from government or private programs"; "[a]ssists in budget preparation and presentation"; [c]onducts research into development, structure and behavior groups"; "[c]ollects and analyzes scientific data associated with group learning and practices"; and "[c]onducts specialized research on affects of illiteracy in the community."

The AAO finds that job duties described in the response to the request for evidence do more than clarify and elaborate on the duties that the beneficiary will be performing; they materially alter the job description. The AAO will not consider this evidence on the ground that the purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

In light of the AAO's finding, the director properly determined that the proposed position's duties parallel those of an adult literacy teacher as that occupation is described in the *Handbook*. The *Handbook* states that adult literacy and remedial education teachers "provide adults and out-of-school youths with the education they need to read, write, and speak English and to perform elementary mathematical calculations."

The record reflects that the petitioner's mission is to "enable functionally illiterate adults and their "at-risk" children to develop reading, writing[,] and communication skills through trained volunteer tutors." The beneficiary will coordinate the adult literacy outreach programs, and like the adult literacy teacher, will assist in reading, writing, and comprehension studies.

The *Handbook* states that some part-time teachers are able to move into full-time teaching positions or program administrator positions such as coordinator or director. Thus, the proposed position – program coordinator – would be an advancement opportunity for a person who has experience as an adult literacy teacher. The *Handbook* reports that the requirements for teaching adult literacy vary by state and by program. Programs run by religious, community, or volunteer organizations generally develop standards based on their own needs and organizational goals. Most state and local governments and educational institutions require at least a bachelor's degree, and preferably a master's degree. In light of the *Handbook's* information that adult literacy teachers who are employed in non-governmental organizations, such as the petitioning entity which is a nonprofit, are not required to possess a bachelor's degree, and that these teachers can advance into program administrator positions such as a coordinator, the proposed position does not qualify as a specialty occupation since a baccalaureate or higher degree in a specific specialty is not the minimum entry requirement into the particular position, program coordinator.

No evidence establishes the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3): that a specific degree requirement is common to the industry in parallel positions among similar organizations; that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; or that the position normally requires a degree or its equivalent for the position. The AAO notes that the submitted job posting from the Reisa Group, Inc. is not persuasive in establishing the second criterion because the duties described in the posting do not involve literacy, rather they involve equipping children experiencing trauma to make choices.

No evidence in the record satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires that the petitioner show 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 in a specific specialty. As discussed in this decision, the *Handbook* reveals that the beneficiary would occupy an adult literacy teacher position in a nonprofit, which is not a specialty occupation. Thus, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on the ground that the proffered position is not a specialty occupation.

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.