

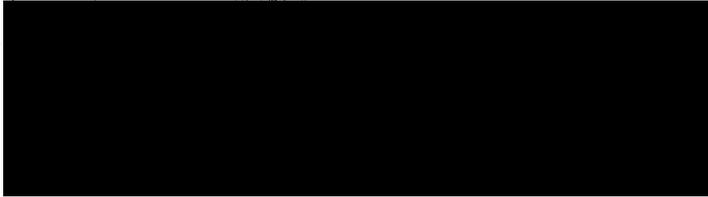
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U.S. Citizenship
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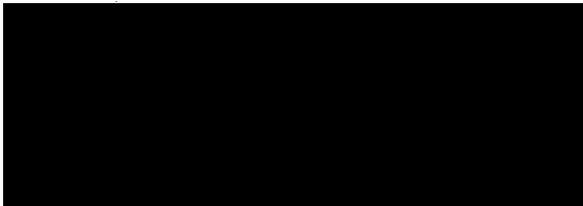
FILE: WAC 03 150 50117 Office: CALIFORNIA SERVICE CENTER Date: DEC 13 2005

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 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 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 engaged in the business of civil/structural engineering and computer steel detailing, with five employees. It seeks to hire the beneficiary as an administrative office manager. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was 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; (3) counsel's response to the director's request for evidence; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The 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) 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.

To determine whether a particular job qualifies as a specialty occupation, CIS 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. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). 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.

The petitioner states that it is seeking the beneficiary's services as an administrative office manager. Evidence of the beneficiary's duties includes: the Form I-129; an April 14, 2003 letter from the petitioner; and counsel's October 21, 2003 response to the director's request for evidence.

At the time of filing, the petitioner stated that the beneficiary's duties entail organizing and analyzing office operations and procedures including typing, payroll preparation, management of flow of correspondence, requisition for supplies, filing of documents and such other clerical work including coordinating activities of office personnel and clerk; standardizing correspondence procedures as well as coming up with innovative program for the protection, transfer, disposition and recall of files and office documents and preparing reports of office activities; devising appropriate forms to conform to whatever procedures he may wish to revise; evaluating the rate of office production and changing the layout and flow of the office; conducting employee programs, rating them and coordinating activities in different divisions of the company; hiring and training employees; appraising management as to how the prepared budget fared through reports using computer programs. The petitioner indicated that its requirement for the position is a bachelor of science degree in business or a bachelor's degree in office administration.

The director issued a request for evidence specifically requesting a more detailed job description and information pertaining to the petitioner. The director requested a copy of the petitioner's organizational chart showing job titles and brief job duties for each employee. Additionally, the director requested an advisory evaluation of the beneficiary's foreign education credentials.

In response, counsel expanded on the listed duties of the proffered position which would include: organizing and analyzing office procedures (10% of time); managing and attending supplies requisition (15% of time); devising programs for better reports (15% of time); utilizing standard procedures in order that preparation of reports of office activities to management may be well guided (5% of time); formulating and designing appropriate forms to conform to revised procedures (10% of time); evaluating office productivity and changing office layout if needed (15% of time); conducting programs for the benefit of employees (15% of time); may recommend hiring of employees (15% of time); and performing other duties (15% of time).

The petitioner submitted a copy of its organizational chart indicating the positions of president/CEO, corporate secretary/sales manager, project manager, administrative office manager, structural steel detailer, subcontractor detailer, and structural steel detailer. The petitioner indicated five employees on the Form I-129. The petitioner submitted an educational evaluation indicating that the beneficiary holds a bachelor of

science degree, which has been determined to be equivalent to a bachelor of science degree in business administration from an accredited institution in the United States.

In his denial, the director noted that the duties of the position appear to reflect many of those performed by administrative services manager as described in the Department of Labor *Occupational Outlook Handbook* (the *Handbook*). The director referred to the *Handbook* which indicated that educational requirements for these managers vary widely: "[i]n small organizations, experience may be the only requirement needed to enter the position as an office manager." The director found that the petitioner failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into position. The director found that the proffered position did not meet any of the above listed criteria.

On appeal, counsel asserts that the petitioner has adequately established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position of administrative office manager. Counsel restates the job duties and asserts that the proffered position has complex and sophisticated duties such that knowledge required to perform the same is usually associated with the attainment of a baccalaureate or higher degree. Counsel restates the job duties and asserts that a bachelor's degree is the entry-level requirement for the position. Counsel refers to the wage library of the Department of Labor as support for his contentions. Additionally, counsel provides eleven internet job postings for office managers to support his contention that the prevailing industry practice is to engage the services of an administrative office manager who holds a degree in business or any other field appropriate to the nature of the company's business. Counsel further states that the proffered position is close to that of a management analyst as described in the *Handbook* and attaches the excerpt for management analysts from the *Handbook*. Counsel refers to an unpublished decision in support of his assertions that a management analyst is a specialty occupation.

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 considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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. 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*, 812 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a 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.

Counsel contends that the Department of Labor's Wage Library description of an administrative office manager position merits a Zone 4 classification meaning that a bachelor's degree is the normal minimum entry-level requirement. The wage library and the cross reference to the Department of Labor's *O*NET* are not persuasive

sources 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. The *O*NET* system supercedes the seventy-year old *Dictionary of Occupational Titles (DOT)*. The *O*NET* database is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O*NET* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. It does not describe the amount of training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the AAO does not rely on *O*NET* information.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, and, accordingly, considered the evidence of record in the light of the 2004-2005 edition of the *Handbook*. A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example, mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion, as the *Handbook* indicates that educational requirements vary widely. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits several internet job postings for the position of office manager. The petitioner has not established that the advertising firms are a similar organization to it. For example, Cushman and Wakefield is a real estate firm, Central Title, Inc. is a real estate company; Miami Valley Hospital is a hospital. Additionally, the majority of the postings do not indicate that the bachelor's degree requirement be in a specific field of study. Accordingly, the petitioner has not established that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Counsel refers to an unpublished decision to support his contention that the position of administrative assistant is a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO

precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree. Again, the *Handbook* reveals that the duties of the proffered position are performed by administrative managers, a position that does not require a bachelor's degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. Counsel asserts that "it was proven without a doubt that the offered position details complex and sophisticated duties that knowledge required to perform the same is associated with the attainment of a baccalaureate or higher degree." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The majority of the listed duties are routinely performed by administrative services managers. The AAO notes that the petitioner has five employees. Counsel stated that the beneficiary's duties include typing, payroll preparation, management of the flow of correspondence, requisition for supplies, filing of documents and such other clerical work including coordinating activities of office personnel. The record does not contain evidence of how these duties require a degree in a specific specialty as required by the statute.

The petitioner indicated that its requirement for the position is a bachelor of science degree in business or a bachelor's degree in office administration. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

It cannot be concluded 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. Once again, the *Handbook* reveals that the duties of the proffered position are performed by administrative services managers, an occupation not requiring a bachelor's degree in a specific specialty.

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.

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.