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20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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DA

FILE: WAC 02 286 52816 Office: CALIFORNIA SERVICE CENTER Date: DEC 23 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 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 Montessori school, with 40 employees. It seeks to employ the beneficiary as a human resources specialist 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 he determined the position was not a specialty occupation and that the beneficiary was not qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's two requests for evidence; (3) counsel's responses to those requests; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief, and new and previously submitted documentation. 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, the 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 a Montessori school seeking the beneficiary’s services as a human resources specialist. Evidence of the beneficiary’s duties includes: the Form I-129; a September 4, 2002 letter of support from the petitioner; and counsel’s April 29, 2004 response to the director’s second request for evidence. The petitioner has indicated that the proffered position would require the beneficiary to:

- Be in charge of the general recruitment of new employees, as well as the evaluation of existing employees;
- Determine the most qualified applicants for new positions and evaluate and screen existing employees, with such decisions to include consideration of employees’ behavioral patterns and proclivities;
- Handle various psychological testing and interpretations, interviews and evaluations pertaining to new and existing employees;
- Maintain and update the personnel records of employees;
- Plan, develop and implement company policy regarding employees in all aspects;
- Deal directly with employee-related issues and attend to counseling of employees, including transmitting management decisions to employees;
- Set policy, working conditions and personnel management areas to create the most effective and efficient work place environment;
- Oversee the hiring and separation of employees, including screening, interview and the checking of references;
- Be informed about Equal Employment Opportunity and affirmative action guidelines and laws;
- Collect and examine detailed information about job duties, training, and skills required by each job;
- Devise ways to ensure fair and equitable pay rates;
- Conduct surveys to see how the petitioner’s rates compare with others and to see that the petitioner’s pay scale complies with changing laws and regulations;

- Be responsible for a wide array of programs covering occupational safety and health standards and practices; and
- Perform other incidental tasks consistent with the goals and objectives of this position.

To make its determination whether the employment just 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 or its equivalent is the normal minimum requirement for entry into the particular position; and 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 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; 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)).

Based on the petitioner's description of the proffered position, the AAO finds most of its duties to fall within the occupational title of human resources, training and labor relations managers and specialists. As stated at page 47 of the 2004-2005 edition of the DOL *Handbook*:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization. However, many enterprises are too large to permit close contact between top management and employees. Human resources, training, and labor relations managers and specialists provide this link. In the past, these workers have been associated with performing the administrative functions of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers juggle these tasks and, increasingly, consult top executive regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies . . .

In an effort to improve morale and productivity and to limit job turnover, they also help their firms effectively use employee skills, provide training opportunities to enhance those skills, and boost employees' satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the office, dealing with people is an essential part of the job.

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require a broad range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs . . .

However, the petitioner has also indicated that the beneficiary, in carrying out her duties, would be required to evaluate potential job candidates as to their “behavior patterns and proclivities” and to handle psychological testing and interpretation of that testing for new and existing employees. These types of responsibilities are not discussed by the *Handbook* in relation to human resources employment. Instead, they appear to describe the work performed by industrial-organizational psychologists, employment described under the occupational title of psychologists at page 175 of the *Handbook*:

Industrial-organizational psychologists apply psychological principles and research methods to the workplace in the interest of improving productivity and the quality of worklife They conduct applicant screening, training and development, counseling and organizational development and analysis

Accordingly, the AAO concludes that the proffered position combines the employment of a human resources manager with that of an industrial-organizational psychologist and turns to the *Handbook* for its discussion of the educational requirements imposed by employers in both fields of employment.

The requirements for human resources employment are outlined by the *Handbook* at page 49:

Because of the diversity of duties and levels of responsibility, the educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, personnel administration or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

. . .

The duties given to entry-level workers will vary, depending on whether the new workers have a degree in human resources management, have completed an internship, or have some other type of human resources-related experience. Entry-level employees commonly learn the profession by performing administrative duties – helping to enter data into computer systems, compiling employee handbooks, researching information for a supervisor, or answering the phone and handling routine questions. Entry-level workers often enter formal or on-the-job training programs in which they learn how to classify jobs, interview applicants, or administer employee benefits. They then are assigned to specific areas in the personnel department to gain experience. Later, they may advance to a managerial position, overseeing a major element of the personnel program – compensation or training, for example.

The *Handbook* identifies the educational requirements for employment as an industrial-organizational psychologist at pages 176-177:

Persons with a master’s degree in psychology may work as industrial-organizational psychologist or school psychologists A master’s degree in psychology requires at least

2 years of full-time graduate study. Requirements usually include practical experience in an applied setting and a master's thesis based on an original research project

Based on the preceding discussions, the AAO does not find the majority of the proffered position's duties – those related to human resources activities – to impose a degree requirement on the beneficiary. Employers seeking human resources specialists not only do not require job candidates to hold baccalaureate degrees in a field directly related to their employment, they appear willing to fill entry-level positions with individuals who do not hold any academic degree. However, the several responsibilities associated with the psychological testing and evaluation of the petitioner's employees indicate a different set of educational requirements. As the proffered position would require the beneficiary to perform the duties of an industrial-organizational psychologist, it imposes the minimal degree requirement for employment in that occupation on the beneficiary – a master's degree in psychology. Therefore, based on the testing and evaluation duties of the proffered position, the petitioner has established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The director's finding to the contrary is withdrawn.

The petition may not be approved, however, as the record does not reflect that the beneficiary is eligible to perform the duties of the proffered position.

In determining whether an alien is qualified to perform the duties of a specialty occupation, CIS looks to the petitioner to establish that the beneficiary meets one of the requirements set forth at Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2) -- full state licensure to practice in the occupation, if such licensure is required; completion of a degree in the specific specialty; or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the

specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not possess a U.S. baccalaureate degree required by the specialty occupation. She does, however, hold a foreign degree that the petitioner contends is the equivalent of such a degree. To establish the beneficiary's qualifications under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the petitioner has submitted copies of the beneficiary's diploma from Miriam College in The Philippines and her academic transcripts, as well as an evaluation of the beneficiary's educational background provided by Morningside Evaluations and Consulting of New York City. This evidence does not, however, establish the beneficiary's qualifications to perform the duties of the proffered position.

The copy of the beneficiary's diploma included in the record indicates that the beneficiary holds a bachelor of science degree in psychology from Miriam College in The Philippines. However, the evaluation of the beneficiary's academic history from Morningside Evaluations and Consulting, which finds her to hold the equivalent of a U.S. bachelor of arts degree in psychology, states that she graduated from the Ateneo de Manila University, specifically referencing the credibility of this particular institution in reaching its conclusions. In light of this discrepancy, the AAO will not accept the Morningside evaluation as proof of the beneficiary's degree equivalency. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm. 1988). Accordingly, the AAO withdraws the director's finding that the beneficiary holds the equivalent of a baccalaureate degree in psychology.

However, a baccalaureate degree in psychology, even if established by the record, would not qualify the beneficiary to perform the duties of the proffered position, which has been found to require a master's degree in psychology. Therefore, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C) – holds a foreign degree determined to be equivalent to a U.S. baccalaureate or higher degree required by the specialty occupation from an accredited college of university.

As the proffered position does not require the beneficiary to hold a license, the AAO, therefore, turns to the final criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C), which allows a petitioner to establish that a beneficiary's training and employment experience, when combined with his or her education, is the equivalent of a degree in the specialty occupation. However, as just noted, the record does not establish that the beneficiary holds the equivalent of a U.S. baccalaureate degree. Moreover, it does not discuss or offer evidence of the beneficiary's previous training and employment. Therefore, the petitioner cannot establish the beneficiary as qualified to perform the duties of a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

For the reasons related in the preceding discussion, the petitioner, although it has established the proffered position as a specialty occupation, has failed to prove that the beneficiary is qualified to perform its duties. Accordingly, the AAO shall not disturb the director's denial of the petition.

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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 with regard to the beneficiary's qualifications.

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