

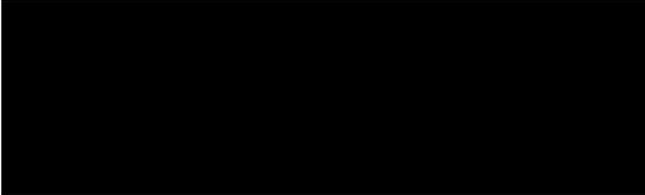
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U.S. Citizenship  
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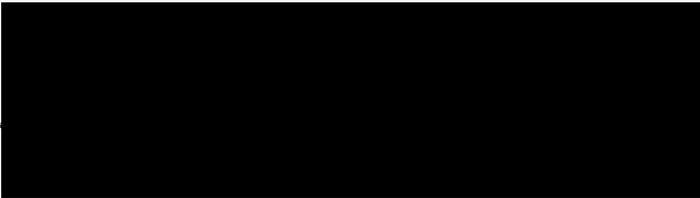


FILE: WAC 02 207 52637 Office: CALIFORNIA SERVICE CENTER Date: **DEC 27 2005**

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 a business that provides residential care to the elderly at five locations. It employs 18 individuals and seeks to hire the beneficiary as a human resources manager 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 proffered position is not 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) the petitioner's response to the director's request; (3) the director's denial letter; and (4) Form I-290B, with counsel's brief 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 (5<sup>th</sup> 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 a human resources manager. Evidence of the beneficiary’s duties includes: the Form I-129; a June 10, 2002 letter of support from the petitioner; and its March 25, 2003 response to the director’s request for evidence. The petitioner has indicated that the proffered position, which would involve the beneficiary in the implementation, interpretation and enforcement of the petitioner’s personnel policies and regulations, would require him to:

- Recruit, interview and select employees to fill vacant positions, including solicitation, resume review and conferring with the petitioner’s management on selections (40 percent of the beneficiary’s time);
- Plan and conduct new employee orientation to foster positive attitudes toward company goals, and develop and implement the employee handbook, organizational set-up, policies and procedures (20 percent of the beneficiary’s time);
- Maintain records of personnel transactions, including hires, promotions, transfers, and terminations, and establish employee files, including pre-employment requirements, memoranda and records of attendance, reprimands and other employee-specific information (20 percent of the beneficiary’s time); and
- Analyze and recommend policies on payroll, promotion, and job reclassifications, ensuring adherence to state and federal work-hour regulations affecting employees (20 percent of the beneficiary’s time).

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)).

In his denial, the director determined that while true human resources management would qualify as a specialty occupation, the beneficiary had failed to establish that the proffered position as that of a human resources manager. The AAO does not agree with either of these conclusions.

Based on the petitioner’s description of the proffered position, the AAO finds the proffered position to be that of a human resources manager. The position’s duties fall directly within the occupational title of human resources, training and labor relations managers and specialists discussed 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 . . . . 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, unlike the director, the AAO does not find the occupation of human resources managers to impose a degree requirement on those seeking entry-level employment. The educational 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.

While the *Handbook's* discussion notes that many employers require job candidates for human resources positions to hold degrees, it does not state that a degree requirement is normally required for entry into the profession. It further observes that those employers who do require job candidates to hold degrees do not require those degrees to be in a field of study directly related to their employment, as required for classification as a specialty occupation. The *Handbook's* discussion of entry-level human resources employment also appears to indicate that some employers are willing to fill entry-level positions based on candidates' experience. Therefore, the AAO concludes that the proffered position's duties do not impose a degree requirement on the beneficiary. Accordingly, the proffered position may not be established 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.

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove either that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. In the instant case, the petitioner has submitted 14 Internet job advertisements for human resources managers to establish its degree requirement as the norm within its industry. Each announcement indicates the organization publishing the announcement imposes a degree requirement on those seeking employment. However, these advertisements do not satisfy the requirements of the criterion's first prong.

None of the 14 announcements are published by organizations similar to the petitioner, a residential health care facility. Instead, they advertise human resources employment at large medical facilities, a manufacturing plant, a direct mail business, an insurance broker, media businesses, law firms, a marketing business, an entertainment corporation, and office retail and electronics businesses. The AAO also notes that, with the exception of one job description, these announcements either do not provide a meaningful description of the employment advertised or do not outline employment that is not parallel to the proffered position. Accordingly, the announcements do not establish a degree requirement in parallel positions among similar organizations, as required by the first prong.

The record also fails to establish that the position qualifies as a specialty occupation under the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(2) – the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty. The AAO finds no evidence in the record that would distinguish the proffered position from similar non-degreed employment based on its complexity or unique nature. Accordingly, the petitioner has not established the proffered position as a specialty occupation under either prong of the second criterion.

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner's response to the director's request for evidence indicated that the proffered position was newly created in response to the growth of its business. Therefore, the petitioner is unable to supply evidence of its normal hiring practices regarding the proffered position and cannot establish it as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To qualify a proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must establish that the nature of the position's specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Therefore, as the occupation of human resources managers does not normally impose a degree requirement on those seeking employment, the petitioner must distinguish the proffered position's duties from those generally performed by human resources managers in order to satisfy the criterion's requirements.

However, the petitioner's discussion of the proffered position's responsibilities does not indicate that the duties to be performed by the beneficiary would require a greater level of knowledge or skill than that normally possessed by human resources managers. Neither does the petitioner describe duties that represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications other than those held by a human resources manager. As there is no indication that the duties of the proffered position set it apart from other human resources managers, the proffered position has not been established as a specialty occupation based on the complexity and specialization of its duties under the fourth criterion.

For the reasons related in the preceding discussion, the record does not establish the proffered position as 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 with regard to the beneficiary's qualifications.

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