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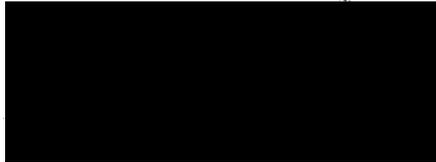


U.S. Citizenship
and Immigration
Services

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FEB 08 2005



FILE: WAC 03 005 54950 Office: CALIFORNIA SERVICE CENTER Date:

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:

SELF-REPRESENTED

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 private household that seeks to employ the beneficiary as a domestic helper. 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 proffered position is not a specialty occupation. On appeal, the petitioner submits additional evidence.

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 domestic helper. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 providing childcare services as a nanny; preparing breakfast, lunch, and dinner for the family; maintaining cleanliness in the home and performing household duties; running errands; shopping for groceries, organizing activities for the children; and providing for the wellbeing of the children such as recognizing symptoms of common childhood illnesses. The petitioner stated that a candidate for the proffered position must have at least five years of experience. The petitioner stated that the beneficiary's nursing background will contribute to the well-being and effective personal care of children.

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner did not provide independent evidence to support the statement that a domestic helper, notwithstanding her training as a nurse and the help of pediatrician and physical therapist, would be able to develop specific exercises and activities for a developmentally challenged boy of one year of age. The director found that in response to the request for evidence the petitioner submitted a detailed, but different job description. The director cited to *Matter of Izumii*, 22 I&N Dec. 169, and stated that a petitioner may not make material revisions to a petition for the purpose of making a deficient petition comply with requirements. Referring to the decision in *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988), the director stated that doubt cast on any part of the petitioner's proof may compel a reevaluation of the reliability and sufficiency of the other evidence provided with the petition. Finally, the director stated that the evidentiary record did not show that the job offered could not be performed by an experienced person whose educational training falls short of a bachelor's degree.

On appeal, the petitioner states that the beneficiary's possession of a bachelor's degree in nursing qualified her to provide nursing care for the petitioner's child who requires special care. The petitioner submits a letter from Children's Hospital Oakland.

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 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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.

The director properly concluded that the petitioner materially changed the duties of the proffered position in the June 29, 2003 letter submitted in response to the request for evidence. The duties submitted in the letter do more than clarify the daily duties that the beneficiary will be performing; they materially alter the job description. For example, the petitioner stated:

the main focus of [the beneficiary's] work is to use her training and expertise as a [n]urse to work with our developmentally challenged one-year-old son.

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 is a specialty occupation. See *Matter of Michelin Tire Corp.*, 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.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the duties of the proffered position are performed by a childcare worker, particularly a nanny. The *Handbook* states:

Childcare workers nurture and teach children of all ages in childcare centers, nursery schools, preschools, public schools, private households, family childcare homes, and before- and afterschool programs.

The *Handbook* continues:

Nannies generally take care of children from birth to age 10 or 12, tending to the child's early education, nutrition, health, and other needs. They also may perform the duties of a general housekeeper, including general cleaning and laundry duties.

The *Handbook* indicates that the training and qualifications required of childcare workers vary widely; it states:

Each State has its own licensing requirements that regulate caregiver training; these range from a high school diploma, to community college courses, to a college degree in child development or early-childhood education. Many States require continuing education for workers in this field. However, State requirements often are minimal. Childcare workers generally can obtain employment with a high school diploma and little or no experience. . . .

The AAO notes that the letter from Children's Hospital Oakland does not indicate that a bachelor's degree in a specific specialty is required for the proffered position. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, domestic helper.

There is no evidence in the record that would establish the second criterion - 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. Again, the *Handbook* reveals that the beneficiary's duties are performed by a nanny, an occupation that does not require a bachelor's degree. The letter from Children's Hospital Oakland does not indicate that a bachelor's degree in a specific specialty is required for the proffered position.

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. Again, the *Handbook* reveals that the beneficiary's duties are performed by a nanny, an occupation that does not require a bachelor's degree. The AAO notes that the petitioner submitted on appeal a letter from Children's Hospital Oakland. This letter does not indicate that a bachelor's degree in a specific specialty is required for the proffered position.

The AAO observes that the petitioner's June 29, 2003 letter referred to a job description from CARE On Line; however, the evidentiary record does not contain this job description.

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.