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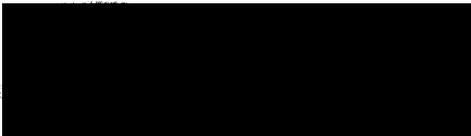


FILE: EAC 03 251 56635 Office: VERMONT SERVICE CENTER Date: JUN 30 2005

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 materials have been returned
to the office that originally decided your case. Any further inquiry must be made to that office.

for *Michael T. Kelly*
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a settlement house offering economic and social services to the Bronx community. It seeks to employ the beneficiary as a workforce development specialist and to classify her 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 on the ground that the record does not establish that the proffered 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

As indicated in Form I-129 and supporting documentation, the petitioner is a non-profit organization that was established in 1972, had 365 employees operating from 21 sites in 2003, and serves over 25,000 Bronx residents annually. In a letter accompanying Form I-129 the petitioner's executive director stated that she proposed to hire the beneficiary for the position of workforce development specialist to perform the following duties:

A. Program Management

- Orientation and supervision of staff
- Management of training and job placement program
- Coordination of training and supportive services
- Development of training, worksite agreements, inventory and maintenance and program compliance
- Analyze data, set goals, determine and implement strategies
- Establish and maintain collaborative relationships with project partners and staff
- Oversee data management and prepare required reports

B. Job Readiness / Life Skills Training

- Provide onsite classroom training and instruction
- Develop and implement training curriculum
- Manage and resolve classroom situations
- Identify and coordinate outside speakers to supplement training workshops
- Administer and maintain attendance records and evaluations

C. Recruitment

- Display agencies' resources in specific venues
- Make contact with and publicize services to specific target groups
- Prepare and oversee distribution of publicity materials

D. Career Counseling

- Evaluate clients using interviews, aptitude and achievement tests and tools
- Assist clients to understand their abilities, interests and skills
- Elaborate employment and training plans
- Apply principles and practices of career counseling

The petitioner asserted that the beneficiary has the educational qualifications to perform the job by virtue of her bachelor of arts degree in psychology from Florida International University in August 1982, and that such a degree was the minimum requirement for the position. In response to the RFE the petitioner indicated that the proffered position is classifiable within the occupational category of "human resources, training, and labor relations managers and specialists" in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The petitioner interpreted the *Handbook's* description of the educational requirements for positions in this field as indicating that a baccalaureate degree in a specific specialty was required, thus qualifying the proffered position as a specialty occupation under 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1). The petitioner stated that it also employed two job readiness trainers, who are at a lower level but perform some of the tasks of the workforce development specialist, and that both of them hold bachelor's degrees (though no specific specialty was indicated).

In his decision the director reviewed the DOL *Handbook*'s description of the educational requirements for the proffered position and concluded that it did not indicate that a baccalaureate degree in a specific specialty was required. The director found that the proffered position lacked sufficient complexity, uniqueness, or specialization to require the services of an individual with a specialty degree, and that the petitioner had no record of requiring such a degree for the proffered position in the past. The director concluded that the proffered position did not meet any of the criteria of a specialty occupation enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the petitioner has always required its workforce development specialist to have a bachelor's degree. Three individuals have been employed in the position since 1986, counsel asserts, and all had bachelor's degrees. Counsel referred to an unrelated H-1B petition in which the AAO overruled the service center director and determined that a proffered position qualified as a specialty occupation based on newly submitted evidence that it required a bachelor of science degree in metallurgical engineering, a specialty degree.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*'s occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the petitioner and the director that the position at issue in this petition – workforce development specialist – fits within the *Handbook*'s broad occupational category of human resources, training, and labor relations managers and specialists. The occupational sub-categories most applicable to the proffered position are training and development managers and specialists, which are described as follows:

Training and development managers and specialists conduct and supervise training and development programs for employees

Training managers provide worker training either in the classroom or onsite. This includes setting up teaching materials prior to the class, involving the class, and issuing completion certificates at the end of the class.

Training specialists plan, organize, and direct a wide range of training activities. Trainers respond to corporate and worker service requests. They consult with onsite supervisors regarding available performance improvement services and conduct orientation sessions and arrange on-the-job training for new employees. They help rank-and-file workers maintain and improve their job skills, and possibly prepare for jobs requiring greater skill

Handbook, 2004-05 edition, at 48. Reflecting the wide range of positions within the occupational category, educational requirements also vary. As explained in the *Handbook*, 2004-05 edition, at 49-50:

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 field offers clerical workers opportunities for advancement to professional positions. Responsible positions sometimes are filled by experienced individuals from other fields, including business, government, education, social services administration, and the military.

According to the *Handbook*, therefore, different employers look for different educational credentials in hiring human resources, training, and labor relations managers and specialists. The record does not establish that a baccalaureate or higher degree in a specific specialty, or its equivalent, is the normal minimum requirement for entry into a position of workforce development specialist. Thus, the proffered position does not meet the first alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With respect to the second alternative criterion of a specialty occupation, set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that a baccalaureate degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. The reference in the appeal to an AAO decision approving an H-1B petition for an alien beneficiary with a bachelor of science degree in metallurgical engineering is not relevant to the instant petition because (a) it does not involve a parallel position in the petitioner's industry and (b) the degree is in a specialty unrelated to the beneficiary's degree or the petitioner's line of activity. Nor does the record show that the proffered position in this case is so complex or unique that it can only be performed by an individual with a baccalaureate degree in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, the petitioner asserts that all of its workforce development specialists since 1986 have had bachelor's degrees, as do its current job readiness trainers. The petitioner has not submitted any documentation pertaining to the employment of previous workforce development specialists or their educational credentials. Moreover, the petitioner has not indicated that any of their degrees were in a specific specialty directly related to the position. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the record does not establish that the petitioner normally requires a specialty degree or its equivalent for its workforce development specialist, as required for the position to meet the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the duties of the workforce development specialist are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate degree in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the record does not establish that the proffered position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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