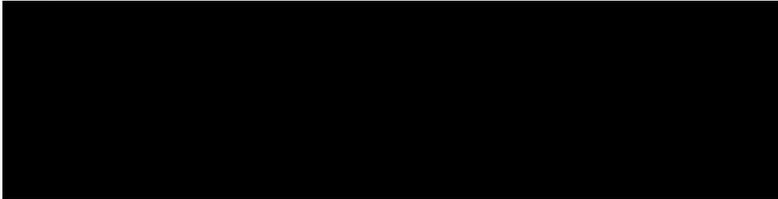


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U.S. Citizenship  
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DZ

FILE: WAC 03 236 54178 Office: CALIFORNIA SERVICE CENTER Date: NOV 02 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:  
[Redacted]

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.

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 health care facility. It seeks to employ the beneficiary as a business manager 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 proffered position does not qualify 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 additional evidence; (3) the petitioner's response thereto; (4) the notice of decision; and (5) Form I-290B and an appeal brief. The AAO reviewed the record in its entirety before issuing its decision.

In Form I-129 the petitioner described itself as a health care facility, established in 1995, with 18 employees and gross annual income of \$675,000. The petitioner stated that it proposed to hire the beneficiary as a business manager to “manage and direct the operation of the business activities of the company.” The duties of the position were described as follows:

- Directs and coordinates business operations of the healthcare facility.
- Confers with management to formulate operational policies and procedures in conducting business.
- Manages and coordinates the activities of the residents and the care providers to achieve effective service and maximum welfare benefits of the facility residents.
- Ascertains needs for and secures services of physician for residents.
- Administers business operations of company.
- Oversees financial aspects of business, keeps financial records and prepares quarterly and/or annual financial reports for management use in its profile.
- Develops policies and office procedures in procuring supplies needed for its operations.
- Updates accounting reports.

Along with its Form I-129 the petitioner submitted its employment contract with the beneficiary which describes the duties and responsibilities of the business manager position somewhat differently. In place of the last four duties listed in the petition, the employment contract substitutes the following four duties and responsibilities:

- Responsible for the security and hygienic condition of the facility.
- Provides information to family members of residents about their health condition and treatment improvement.
- Plans menus, keeps inventory, orders food supplies and maintains completed medical records of residents.
- Assists residents in their therapeutic treatment.

In response to the RFE the petitioner submitted its posted job announcement for the proffered position, which describes the duties of the business manager in accordance with those listed on Form I-129. The petitioner also submitted copies of the beneficiary’s diploma and transcripts showing that she graduated from the University of the East in Manila, the Philippines, in November 1968 with a bachelor of science in business administration, majoring in banking and finance.

In his decision the director found that the duties of the proffered position reflected those of a health services manager, as described in the Department of Labor (DOL)’s *Occupational Outlook Handbook (Handbook)*, as well as those of a general manager. Drawing on information in the *Handbook*, the director concluded that a baccalaureate degree in a specific specialty is not the normal minimum requirement for a health services manager in a small health care facility like the petitioner’s. The director also indicated that general managers do not normally qualify as a specialty occupation, and there was no evidence that the beneficiary would be supervising employees in a specialty occupation, which could make the general manager position a specialty occupation. The director concluded that the beneficiary was ineligible for H-1B classification.

On appeal the petitioner asserts that the duties of the business manager position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The petitioner refers to the DOL's *Dictionary of Occupational Titles (DOT)* and contends that its entry for business managers confirms that such positions require a baccalaureate degree. According to the petitioner, the proffered position qualifies as a specialty occupation under all four criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook, supra*, 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.

Based on the evidence of record, the AAO determines that the proffered position is closer to the *Handbook's* description of a general or operations manager than it is to the *Handbook's* description of a health services manager. General managers and operations managers are included in the *Handbook's* occupational category entitled "top executives," and their duties are described as follows:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

*Handbook*, 2004-05 edition, at 65. The foregoing description reflects the duties of the proffered business manager position as initially listed by the petitioner in Form I-129 and as listed in the posted job announcement. The *Handbook* describes the educational background and experience of top executives, including general and operations managers, as follows:

The formal education and experience of top executives varies as widely as the nature of their responsibilities. Many top executives have a bachelor's or higher degree in business administration or liberal arts . . . . Some top executives in the public sector have a background in public administration or liberal arts. Others might have a background related to their jobs . . . . Because many top executive positions are filled by promoting experienced, lower level managers when an opening occurs, many top managers have been promoted from within the organization. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies

prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations.

*Handbook, id.*, at 66. While the foregoing excerpt indicates that some general and operations manager positions may require baccalaureate or higher degrees in a specific specialty, it is not the normal minimum requirement for entry into such a position. The AAO concludes, therefore, that the proffered position does not meet the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

On appeal counsel cites the DOL's *Dictionary of Occupational Titles (DOT)*, which rates business managers at an SVP ("specific vocational preparation") of level 8. According to counsel that means the occupation requires a bachelor's degree. The *DOT*, however, is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate the total number of years of vocational preparation required for a particular position. It does not specify how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a particular position would require. Thus, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a general manager or operations manager position.

With respect to the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no evidence in the record that the requirement of a bachelor's degree in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations. Nor does the record establish that the proffered position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. The petitioner has submitted no evidence demonstrating the uniqueness of the position, or that its complexity exceeds that of other operations managers or general managers in small health care businesses like the petitioner's, such that a degree in a specific specialty would be required. Accordingly, the business manager position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Thus, the petitioner cannot show that it normally requires a bachelor's degree in a specific specialty for the position, as required to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, though the petitioner asserts on appeal that the duties of the business manager position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty, no documentary evidence has been submitted in support of that claim. 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)). The AAO is not persuaded, based on the evidence of record, that the duties of the position could not be performed by an experienced individual without a baccalaureate level knowledge in a specific specialty. Accordingly, 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).

Thus, the proffered position does not meet any of the qualifying criteria of a specialty occupation enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.