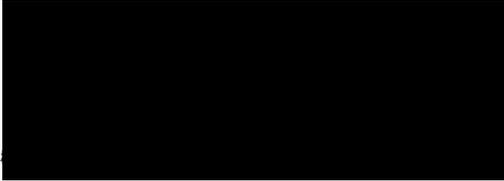




U.S. Citizenship
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Services

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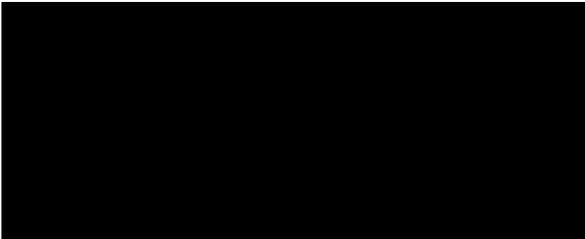
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FILE: SRC 04 139 50264 Office: TEXAS SERVICE CENTER Date: OCT 21 2005

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 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 engaged in the business of providing personal care home services and seeks to employ the beneficiary as an administrative assistant. 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 petitioner had not established that the proffered position is a specialty occupation. On appeal, counsel submits a brief and 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 documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an administrative assistant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 aiding executives in a staff capacity by coordinating office services, such as personnel, budget preparation and control, records control and special management studies; studying management methods in order to improve workflow, simplify reporting procedures, or implementing cost reductions; analyzing unit operating practices, such as record keeping systems, forms control, office layout, suggestion systems, personnel and budgetary requirements, and performance standards to create new systems or revise established procedures; analyzing jobs to delimit position responsibilities for use in wage and salary adjustments, promotions, and evaluation of workflow; studying methods of improving work measurements or performance standards; coordinating collection and preparation of operating reports, budget expenditures, and statistical conclusions and recommendations for solution of administrative problems.

The petitioner indicated that the incumbent must have at least a bachelor's degree specializing in the study of business administration.

The petitioner submitted an evaluation from Global Education Group, Inc. The evaluation was based on a review of the beneficiary's education, work history, curriculum vitae and personal affidavit. The author indicated that the beneficiary's education and work responsibilities in the field of business are equivalent to the U.S. degree of Bachelor of Business Administration.

The director issued a request for evidence that the proffered position meets one of the above listed criteria. Specifically, the director noted that an employer's statement that a degree is required is not sufficient; the employer must submit documentation to show that individuals with baccalaureate or higher degrees in a specialized area have been employed in the past. The director requested that if the petitioner currently employs or had previously employed personnel in the proffered position, to submit evidence such as copies of employment records.

Counsel responded to the director's request for evidence and submitted pages from the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) and the *O*NET* summary for the occupations of secretaries and administrative assistants in support of her contention that the proffered position is a specialty occupation. Additionally, counsel submitted an H-1B approval notice, and a credential evaluation indicating a bachelor of arts in psychology, and diploma from Ms. Maog. Counsel asserted that this evidence establishes that the petitioner requires a degree or its equivalent for the position. Counsel submitted another H-1B approval notice for a different petitioner asserting that this evidence supports her contention a degree requirement is common for the industry. Counsel referred to an unpublished AAO decision in support of her contention that the nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

The director noted that the *Handbook* indicated that high school graduates who have basic office skills may qualify for entry-level secretarial positions. The director noted that the petitioner had submitted a prior H-1B approval for another beneficiary as evidence, but that the beneficiary had a degree in psychology, therefore this evidence does not establish that the petitioner requires a degree in business administration. The director noted that a petitioner must establish the position realistically requires knowledge of such scope, and training in theory and fact. The director additionally noted that the petitioner must demonstrate that the position in which it seeks to employ the beneficiary requires at least a baccalaureate degree awarded for academic study

in a specialized major discipline. The director determined that the proffered position of administrative assistant was not a specialty occupation.

On appeal, counsel contends that the director erred in failing to consider supporting documents such as a section from the *Handbook*, the *O*NET* summary, H-1B approval notices and an unpublished AAO decision. Counsel asserts that the duties of the proffered position are so complex in nature that they require completion of a bachelor's degree.

The DOL has replaced the *DOT* with the *Occupational Information Network (O*NET)*. Both the *DOT* and *O*NET* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The *O*NET* describes occupations using Job Zones to indicate how many years of preparation are necessary for the specific occupation. However, Job Zones do not describe how the years are to be divided among training, formal education, and experience, and they do not specify the particular type of degree, if any, that a position would require. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because of its description in the *O*NET*.

Counsel further refers to an unpublished decision in which the AAO determined that a proffered position met the requirements of a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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 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.Minn 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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.

A thorough review of the *Handbook* discloses that the duties of the proffered position are for an administrative services manager. The *Handbook* indicates that administrative services managers perform a

broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services.

This is similar to the following duties of the position such as: coordinating office services, such as personnel, budget preparation and control, records control and special management studies; and collection and preparation of operating reports, budget expenditures, and statistical conclusions and recommendations for solution of administrative problems.

The *Handbook* states the following about the training and educational requirements for administrative services manager positions:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

The petitioner fails to establish the first criterion, as the *Handbook* indicates that educational requirements vary widely. As noted above 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. 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 proffered position.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits previously approved H-1B petitions. However, each nonimmigrant petition is a separate proceeding with a separate record. 8 C.F.R. §103.2(b)(16)(ii). Counsel notes that CIS approved other petitions that had been previously filed on behalf of other petitioners and beneficiaries. If the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service

center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The evidence fails to establish that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show 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 duties of the proffered position are performed by administrative managers, a position that does not require a bachelor's degree in a specific specialty.

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. Although the petitioner submitted an H-1B approval notice for an alien with a degree in psychology, the petitioner has not established that it requires a degree in a specific specialty, as it currently is seeking a candidate with a degree in business administration, which is not related to psychology.

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. The petitioner states that the level of specialization and complexity of the listed duties is "beyond those normally encountered in this particular occupation, which clearly demonstrates that the job offered cannot be performed by an individual whose educational training falls short of a baccalaureate degree." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 petitioner indicated that the proffered position required at least a bachelor's degree in business administration. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The petitioner has not sufficiently described the complexity of the listed job duties in relation to the petitioner's business interests to establish that this position requires a degree in a specific specialty. Once again, the *Handbook* reveals that the duties of the proffered position are performed by administrative services managers, an occupation not requiring a bachelor's degree in a specific specialty.

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.

Beyond the decision of the director, the petitioner contends that the beneficiary has the equivalent of a bachelor's degree in business administration. The AAO notes that a credentials evaluation service may not evaluate an alien's work experience or training; it may only evaluate educational credentials. *See* 8 C.F.R.

§214.2(h)(4)(iii)(D)(3). Because the position is not a specialty occupation, the beneficiary's qualifications need not be addressed.

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.