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U.S. Citizenship
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Services

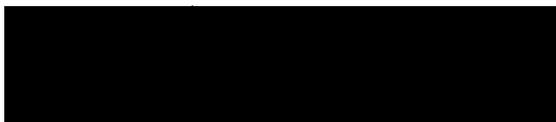
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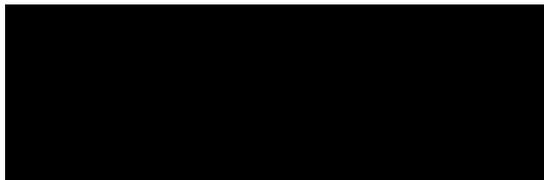
FILE: WAC 04 219 53237 Office: CALIFORNIA SERVICE CENTER Date: **AUG 07 2006**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 home health agency that seeks to employ the beneficiary as a health services analyst. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and the beneficiary is not qualified to perform a specialty occupation. The director also denied the request for an extension of nonimmigrant status because the record contains no evidence that the beneficiary is maintaining a valid nonimmigrant status. On appeal, counsel submits a brief.

Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form I-129 or I-539. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for an extension of stay, this issue will not be reviewed.

The AAO will first address the director's conclusion that the position is not 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.

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 health services analyst. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's August 2, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: monitoring the petitioner's quality of health services; conducting research studies on current innovations and updates; attending conferences and seminars regarding residential care, assisted living, and rehabilitative and wellness services to improve the petitioner's overall efficiency and quality of benefits; managing patient records; evaluating the petitioner's information processing system and developing a new system to improve operating procedures, data storage and retrieval, and workflow; overseeing billing and collection procedures; leading budget deliberations and planning; preparing reports and recommendations for management; supervising and participating in personnel activities such as hiring and performance evaluation; and preparing workflow charts, diagrams, and procedural bulletins for personnel. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position, which entails duties related to nursing, clerical activities, bookkeeping, budgeting, administrative activities, data entry, research, and human resources management, was not a specialty occupation because the petitioner has not established that it requires a bachelor's degree in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proposed duties, which entail reviewing and analyzing facility standards to determine the petitioner's quality of care, and conducting personnel training and orientation, are so complex as to require a related baccalaureate degree. Counsel states further that CIS has previously approved similar petitions.

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 record's descriptions of the proffered position and the duties comprising it are limited to generalized functions that counsel and the petitioner have ascribed to the position, such as "[C]onduct[ing] research studies on current innovations and updates"; [R]epresent[ing] the petitioner's company in conferences, trainings, and seminars, or any outside commitments pertaining to rehabilitative services coordination, health management, quality assurance, healthcare activity formulation, and financial issues"; and "[C]oordinat[ing] the development, implementation, and expansion of management information systems and programs emphasizing on their patients' medical records that include their cognitive, physical, and emotional upkeep to enable them to feel and act as important members of their families and society." The petitioner has not identified methodologies or applications of specialized knowledge that actual performance of the position's functions would involve, and has not provided details of concrete matters upon which the beneficiary would work. Nor has the petitioner explained or provided documentary evidence to establish how the beneficiary's actual substantive work would require at least a bachelor's degree level of knowledge in a specific specialty.

The AAO turns first 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; 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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation that requires a bachelor's degree in a medical-related field. A review of the Administrative Services Managers and Human Resources Managers occupational categories in the *Handbook*, 2006-2007 edition, finds that the job duties are primarily a combination of an administrative services manager and a human resources manager. No evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specialty, or its equivalent, is normally required for an administrative services manager or human resources manager job, as described herein. Further, although information on the petition reflects that the petitioner has 16 employees and a gross annual income of \$500,000, the record contains no evidence in support of these claims, such as quarterly wage reports and federal income tax returns. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding, however, does not contain the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the information submitted by counsel is not sufficient to enable the AAO to determine whether the positions offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve 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). Neither CIS nor any other 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).

Regarding parallel positions in the petitioner's industry, counsel submitted, in his response to the director's RFE, a list of similar organizations requiring a bachelor's degree for parallel positions. There is no evidence, however, to show that the employers on the list are similar to the petitioner, or that the positions, which include quality assurance coordinators, are parallel to the instant position, as the record does not contain a comprehensive description of duties for these positions. Thus, it cannot be determined whether the proffered position is similar to the positions described on counsel's list. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Thus, the list of parallel positions is not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position; and the duties that comprise the proffered position are described in generalized terms that do not establish the position as sufficiently unique or sufficiently complex to require a bachelor's degree level of knowledge in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The information in the record about the proposed duties does not establish that they exceed in scope, specialization, or complexity those usually performed by administrative services managers, an occupational category for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher 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.

The director also found that the beneficiary is not qualified to perform the duties of the proffered position because her foreign bachelor's degree in physical therapy is unrelated to the proposed duties. As discussed above, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specialty, or its equivalent, is required for an administrative services manager or human resources manager position. In small organizations, experience may be the only requirement for the position of administrative services manager; a human resources manager does not require a degree in a specialty. In this case, the beneficiary holds a foreign bachelor's degree in physical therapy. The record contains an evaluation from a company that specializes in evaluating academic credentials concluding that the beneficiary possesses the equivalent of a Bachelor of Science in Physical

Therapy degree awarded by regionally accredited colleges and universities in the United States. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.