

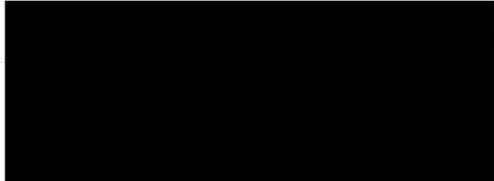
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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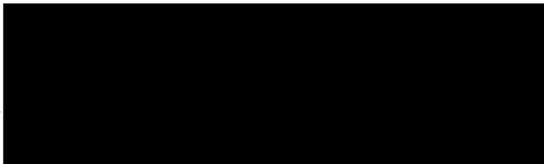
FILE: WAC 05 007 52686 Office: CALIFORNIA SERVICE CENTER Date: **DEC 19 2006**

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the California 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 residential care facility for the developmentally disabled. The petitioner seeks to extend the beneficiary's employment as an administrator, and 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 determined that the proffered position was not a specialty occupation and denied the petition accordingly.

The petitioner, through counsel, asserts on appeal that the beneficiary was previously approved as an H-1B nonimmigrant visa holder for the same position, that the evidence in the record continues to establish that the proffered position is a specialty occupation, and that the present denial is an abuse of the director's discretion.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's denial letter; (3) Form I-290B, with counsel's brief and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the position it is offering to the beneficiary meets the following statutory and regulatory requirements.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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.

U.S. Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In order to determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In the present matter, the petitioner operates a residential care facility for up to six developmentally disabled adults. The petitioner states that it has a staff of seven employees, and that its gross annual income is \$285,000. The petitioner seeks the beneficiary's services as an administrator. Evidence of the beneficiary's duties includes: the Form I-129 and attachments, and the Form I-290B and attachments. As described by the petitioner, the duties of the proffered position would require the beneficiary to:

- Be responsible for staff screening, orientation, and performance evaluation;
- Be responsible for client screening and admissions;
- Attend Individual Program and develop Direct Support Professionals;
- Schedule and ensure transportation for medical and dental appointments;
- Ensure compliance with health codes and regulations and administer fiscal operations;
- Direct and coordinate activities of care and training, basic care, skill training and behavioral training;
- Develop policies and procedure to related personnel;
- Improve efficiency in the facility and quality of the health care provided;
- Represent facility, attend community meetings, and promote programs;

Conduct biweekly meetings and in-house service training for staff;

May represent owner at conventions, annual meetings of Society of California Care Home Operators and seminars.

To make its determination whether the employment described qualifies as a specialty occupation, 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; and 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 considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, 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 petitioner has stated that the title of the proffered position is that of an administrator. The director determined that the proffered position duties were similar to those of an Administrative Services Manager, as set forth in the *Handbook*. The petitioner asserts on appeal, however, that the proffered position duties are those of a Medical and Health Services Manager, as described in the *Handbook*.

In asserting that the proffered position qualifies as a medical and health services manager, the petitioner submits evidence that the California Employment Development Department (EDD) classified the proffered administrator position as such, when making a prevailing wage determination for the position and its duties, pursuant to Section 11-9111 of the U.S. Department of Labor Standard Occupational Classification Code (SOC).

The AAO's review of SOC section 11-9111, reflects that in general, medical and health services managers, "plan, direct, or coordinate medicine and health services in hospitals, clinics, managed care organizations, public health agencies, or similar organizations." The petitioner states that because the California EDD classified the position, upon review of the job duties, as a medical and health services manager, as found in the SOC, that CIS should also find the position is a medical and health services manager.

The SOC classifies workers into one of over 820 occupations according to their occupational definition. See, <http://www.bls.gov/soc/home.htm>. It is not a useful source of information to determine whether a position may be classified as a specialty occupation, as it does not indicate the education and training required for a position. Further, the AAO notes that the petitioner is not proposing to pay the beneficiary the prevailing wage for medical and health services managers, \$36.31/hour (\$75,525/year.) Rather, the wage rate listed on the LCA is \$3911/month (\$46,932/year), and the job title is listed as administrator.

The California Code of Regulations (CCR), Title 22, Division 6, Chapter 6, sets forth the administrator qualifications and duties for the administration of an adult residential facility. Subsections 85064(a) through (g), describe the qualifications and duties of an administrator and reflect that: “[a]ll adult residential facilities shall have a certified administrator;” the administrator must be at least 21 years of age and have a high school diploma or pass a general educational development (GED) test; and “[t]he administrator of a facility for seven to 15 (*sic*) clients shall have one year of work experience in residential care.”

CCR, Title 22, Division 6, Chapter 6, subsection 85064(j) provides that “[t]he administrator shall perform the following duties:

- (1) Where applicable, advise the licensee on the operation of the facility and advise the licensee on developments in the field of care and supervision.
- (2) Development of an administrative plan and procedures to define lines of responsibility, workloads, and staff supervision.
- (3) Recruitment, employment and training of qualified staff, and termination of staff;
- (4) Provision of, or insurance of the provision of, services to the clients, required by applicable law and regulation, including those services identified in the client’s individual needs and services plans. . . .
- (5) Arrangement for special provisions for the care and supervision and safety and guidance of clients with disabilities including visual or auditory deficiencies
- (6) Arrangement for the clients to attend available community programs, when clients have needs, identified in the needs and services plan, which cannot be met by the facility but can be met by community programs.

(A) Such arrangements shall include, but not be limited to, arranging for transportation.

Subsection (k) provides that, “within six months of becoming an administrator, the individual shall receive training on HIV and TB Thereafter, the administrator shall receive updated training every two years.”

The record contains an HIV and TB training certificate, as well as basic training certificates consistent with the requirements discussed in subsection 85064.

The AAO finds that the administrator position description and duties as set forth in CCR, Title 22, Division 6, Chapter 6, are generally reflected in the duties described for the proffered position. Subsection 85064(c) educational requirements for the administrator position are a high school diploma or passage of a GED test. The educational requirements for the administrator position for an adult residential facility in California thus do not require a bachelor’s or higher degree.

The AAO next turns to the 2006-2007 edition of the *Handbook* to further determine whether the duties of the proffered position support the petitioner’s characterization of its employment. With regards to medical and health services managers, page 59 of the *Handbook* states that:

Medical and health services managers, also referred to as health care executives or health care administrators, plan, direct, coordinate, and supervise the delivery of health care. Medical and health services managers include specialists and generalists. Specialists are in charge of specific clinical departments or services, while generalists manage or help manage an entire facility or system.

In smaller facilities, top administrators handle more of the details of daily operations. For example, many nursing home administrators manage personnel, finances, facility operations, and admissions and also have a larger role in resident care.

The *Handbook's* discussion on educational requirements for medical and health services managers states that:

A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities.

The AAO finds that the petitioner has failed to establish that the proffered position qualifies as a medical and health services manager position. The petitioner does not require a master's degree for the position. The position therefore does not meet the standard educational requirement for most generalist positions in the medical and health service manager field. Moreover, the position duties contained in the record fail to establish that the proffered position is that of a generalist medical or health services manager. The financial, facility operation, and admission duties described by the petitioner are vague and unsupported by staff and organizational structure, budget, or financial evidence. Going on record without supporting documentation is not sufficient to meet 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 AAO finds that based on the evidence in the record, the proffered position is most similar to that of an administrative services manager in the *Handbook*. Page 25 of the *Handbook* reflects that administrative services managers coordinate and direct support services in organizations, and that they:

[M]anage 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, telecommunications management, security, parking, and personal property procurement, supply, and disposal.

The *Handbook* states that, "the nature of managerial jobs varies as significantly as the range of administrative services required by organizations," and that "[i]n small organizations, a single administrative services manager may oversee all support services."

The *Handbook* discusses the educational requirements for an administrative services manager position on page 26, and states that:

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.

The present record lacks evidence to support a contention that the extent or complexity of the petitioner's operations establishes the need for an administrator with a level of knowledge that may only be obtained through a baccalaureate degree in a public health or business administration field. Instead, the proffered position duties are closely aligned to the responsibilities that may be performed by administrators, as set forth in CCR, Title 22, Division 6, Chapter 6 - employment that does not impose a baccalaureate degree requirement. For the reasons stated above, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation that requires a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the particular position, as set forth in 8 C.F.R. § 214.2(h)(4)(A)(iii)(I).

To establish the proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must establish that a specific degree requirement is common to its 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. In the instant case, the petitioner has submitted no evidence that responds to either prong of the criterion. While the petitioner states on appeal that CIS should characterize the position as a medical and health services manager, as did the California EDD, the AAO notes that the petitioner proposes to pay the beneficiary over \$25,000/year less than the prevailing wage in the area for a medical and health services manager. Thus, the EDD's classification of the position will be accorded no weight. Further, as discussed above, the CCR reflects that the proffered administrator position requires only a high school degree or GED. Therefore the record does not establish the proffered position as a specialty occupation based on an industry-wide degree requirement or its complex and unique nature.

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which states that the employer normally requires a degree or its equivalent for the position, the AAO may review the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant case, the petitioner asserts that it previously employed the beneficiary, a degreed individual in the proffered position. It is noted that the record contains no evidence of the petitioner's employees prior to the beneficiary, and the record contains no evidence to establish that any employee prior to the beneficiary held a degree in a related field, as required for classification as a specialty occupation. The record contains no evidence relating to the petitioner's normal hiring practices since 1992, and the petitioner's assertions regarding the beneficiary as the previous incumbent of the proffered position fail to establish the proffered position as a specialty occupation based on the petitioner's normal hiring practices. The petitioner has thus not established that previous to the beneficiary, it employed a degreed individual in the proffered position.

The AAO is unpersuaded by the petitioner's assertion that CIS has already determined that the proffered position is a specialty occupation since CIS previously approved a similar petition on the beneficiary's behalf. The present record of proceeding does not contain all of the supporting evidence submitted to the service center in the prior case, and in the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted in the present matter are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition. Moreover, 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 case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition 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).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires the petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. As previously discussed, the AAO finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by an administrative services manager, as described in the *Handbook*, or an administrator of an adult residential facility under California law. Furthermore, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of an administrative services manager or administrator. As a result, the record fails to establish that the proffered position meets the specialized and complex threshold of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has therefore failed to establish the proffered position as a specialty occupation. 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. The appeal will therefore be dismissed, and the petitioner will be denied.

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