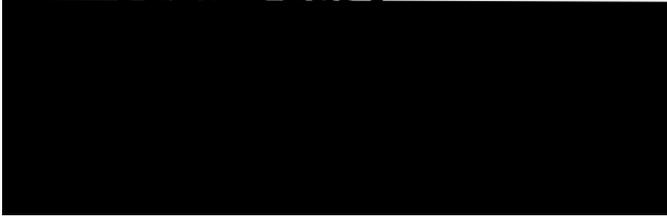


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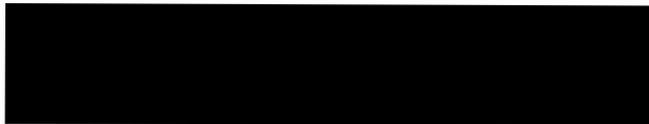


02

DEC 22 2006

FILE: WAC 02 250 51765 Office: CALIFORNIA SERVICE CENTER Date:

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.

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

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. 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 care facility for adult developmentally disabled residents, with twenty-one employees, and \$1,100,756 in gross annual income. It seeks to employ the beneficiary as a human resource specialist. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 determining that the proffered position is not a specialty occupation.

The record of proceeding before the AAO contains: (1) the August 5, 2002 Form I-129 with supporting documentation; (2) the director's February 10, 2004 request for additional evidence (RFE); (3) counsel for the petitioner's April 8, 2004 response to the director's RFE; (4) the director's August 27, 2004 RFE; (5) documentation submitted in response to the August 27, 2004 RFE; (6) the director's December 13, 2004 denial letter; and (7) the Form I-290B, with counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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.

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.

The petitioner seeks the beneficiary's services as a human resources specialist. Evidence of the beneficiary's duties includes the petitioner's August 1, 2002 letter in support of the petition and counsel's April 8, 2004 letter in response to the director's February 10, 2004 RFE. The petitioner initially indicated:

[The beneficiary] will work in conjunction with the management personnel and other professional staff personnel to assure that there is always a strong working relationship and that communication between the departments and residents is maintained so that the business operates efficiently and productively. [The beneficiary] will recruit and interview potential contracted workers and employees to determine the most qualified applicants for the positions offered. She will design and prepare testing for job applicants to determine their qualifications and suitability for the position offered. She will also study employees' performances and make recommendations to management. She will devise a plan to most effectively utilize the skills of the firm's employees and act as a liaison between management and labor force. She will meet with employees and management and gather data through interviews and studies of present company policies and procedures regarding working conditions. Utilizing her education in Psychology, she will revise as needed company policy, working conditions and personnel management to create the most effective and efficient workplace environment to ensure employees' satisfaction with the job.

In response to the director's February 10, 2004 RFE, counsel for the petitioner repeated the initial description provided and listed the duties and percentage of time spent on the duties as:

1. Recruit and interview potential employees and contracted professionals to determine the most qualified applicants for the position offered; Analyze training needs to meet the company's policies and practices – 15%
2. Study employees[] performances and make recommendations to management; Maintain records and compile statistical reports concerning personnel-related data – 25%
3. Devise a plan to most effectively utilize the skills of facilities employees and act as a liaison between management, medical professionals, employees and residents, and gather data through

interviews and studies of present company policies and procedures regarding working conditions- 25%

4. Utilizing her knowledge of psychology she will devise, administer and evaluate applicant tests. She will revise as needed company policy, working conditions and personnel management to create the most effective and efficient workplace environment to ensure employees['] satisfaction with the job – 35%

The petitioner also provided a copy of its Employer's Quarterly State Report of Wages Paid to Each Employee, for the quarter ending December 31, 2003, showing 25 part and full-time employees. In response to the director's August 27, 2004 RFE, the petitioner provided a copy of its organizational chart showing individuals in the position of president/administrator, vice-president/co-administrator, facility consultant, secretary, and the unfilled position of human resources manager. The organizational chart also listed six group homes, each with an administrator, a house manager, and a direct care employee.

On December 13, 2004, the director denied the petition determining that reliance on a list of duties taken from the Department of Labor's *Occupational Outlook Handbook (Handbook)* or the *Dictionary of Occupational Titles (DOT)*, or any other publication is misplaced. The director determined that the record does not establish that the petitioner's business operations, processes, or services are of a scope or complexity to require a human resources specialist. The director further determined that most organizations in the petitioner's type of industry would have little need for a permanent full-time or even a part-time human resources specialist. The director based his decision, in part, on finding that State regulations mandate the number of personnel at each facility and ensure that the staffing is in compliance with requirements through regular inspections by social workers. The director concluded that although the proffered position incorporated some analytical duties, the actual duties that would be performed by the beneficiary are more similar to duties performed by an office manager. The director further concluded that the evidence of record did not establish that the job offered could be performed only by an individual who had attained a bachelor's degree.

On appeal, counsel for the petitioner takes issue with the director's determination that the petitioner is not of a sufficient size and scope to employ a human resources specialist and notes the petitioner's staff of 21 employees and gross income of \$944,000 making it a medium sized business. Counsel contends that the director's reference to state regulations and implication that the state regulations make the proffered position unnecessary is without merit. Counsel asserts that the position of human resources specialist is a specialty occupation based on the *Handbook* and the *Occupational Information Network (O\*Net)* which places the position of a human resources specialist in job zone 4. Counsel also asserts that the petitioner requires the individual in the position of human resources specialist to have a bachelor's degree and that the complexity of work involved in the position warrants the individual in the position having a bachelor's degree. Counsel further asserts, that a person unfamiliar with modern principles and theories of psychology that are normally associated with the attainment of a baccalaureate degree or higher, would not be able to fulfill the duties the petitioner requires of the proffered position.

Counsel's assertions are not persuasive. While, as discussed below, the AAO does not find the record to demonstrate that the petitioner would employ the beneficiary in a specialty occupation, it has reached its conclusions on grounds other than those relied upon by the director. The director's decision is withdrawn as it

relates to his determination that state regulations would essentially replace the need for a human resources specialist.

When determining whether the employment described qualifies as a specialty occupation, the AAO first turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. One of the factors considered by the AAO when determining this criterion includes whether the *Handbook* reports that the industry requires a degree. The proffered position's duties fall within the occupational title of human resources, training and labor relations managers and specialists discussed in the 2006-2007 edition of the DOL *Handbook*:

Attracting the most qualified employees and matching them to the jobs for which they are best suited is important for the success of any organization . . . . In the past, [human resources, training, and labor relations managers and specialists] have been associated with performing the administrative functions of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management. Today's human resources workers manage these tasks and, increasingly, consult top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies . . . .

In an effort to enhance morale and productivity, limit job turnover, and help organizations increase performance and improve business results, they also help their firms effectively use employee skills, provide training and development opportunities to improve those skills, and increase employees' satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the office, dealing with people is an essential part of the job.

In a small organization, a *human resources generalist* may handle all aspects of human resources work, and thus require an extensive range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs . . . .

The educational backgrounds that may qualify an individual for a career in human resources management are also diverse. As indicated by the *Handbook*:

The educational backgrounds of human resources, training, and labor relations managers and specialists vary considerably because of the diversity of duties and levels of responsibility. In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations. Other employers look for college graduates with a technical or a business background or a well-rounded liberal arts education.

The duties given to entry-level workers will vary, depending on whether the new workers have a degree in human resource management, have completed an internship, or have some other type of human resources-related experience. Entry-level employees commonly learn the profession by performing administrative duties – helping to enter data into computer systems, compiling employee Handbooks, researching information for a supervisor, or answering the phone and handling routine questions. Entry-level workers often enter formal or on-the-job training programs in which they learn how to classify jobs, interview applicants, or administer employee benefits. They then are assigned to specific areas in the human resources department to gain experience. Later, they may advance to a managerial position, overseeing a major element of the personnel program – compensation or training, for example.

While the *Handbook's* discussion notes that many employers require job candidates for human resources positions to hold degrees, it does not state that a degree requirement is normally required for entry into the profession. It further observes that those employers who do require job candidates to hold degrees do not require those degrees to be in a field of study directly related to their employment, as required for classification as a specialty occupation. The *Handbook's* discussion of entry-level human resources employment also appears to indicate that some employers are willing to fill entry-level positions based on candidates' experience. Therefore, the AAO concludes that the proffered position of human relations manager does not impose a degree requirement on the beneficiary. Accordingly, the proffered position may not be established as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

In reaching its decision, the AAO has considered the description of duties submitted by the petitioner and the *Handbook*. The AAO also acknowledges counsel's reference on appeal to the *O\*NET* and its placement of the proffered position in job zone 4. However, the *O\*NET* is not a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. It provides 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. Moreover, the *O\*NET* job zone 4 rating does not establish that a degree in a specific specialty is required for employment.

To establish a proffered position as a specialty occupation under the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must prove either that a specific degree requirement is common to the 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 specific specialty. The AAO reiterates that when a job, like that of human resources manager, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. CIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) to require a degree in a specific specialty that is directly related to the proffered position.

In this matter, the petitioner did not submit evidence or information to demonstrate that a degree requirement in a specific discipline is the norm within its industry. In addition, the record does not contain information or evidence explaining the uniqueness or complexity of the proffered position. The description of the proffered position's duties generally coincides with the information in the *Handbook* regarding the occupation. The record does not demonstrate how the proffered position is distinguished from the routine duties of human resources specialist, an occupation that can be performed by an individual without a degree in specific specialty. The AAO acknowledges counsel's assertion that only an individual with a degree in psychology can perform the proffered position. However, counsel does not substantiate this assertion with facts and 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).

The petitioner has not established that the proffered position qualifies as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): whether the employer normally requires a degree or its equivalent for the position; or whether the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, the AAO normally reviews 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 matter, the petitioner has submitted no evidence to establish its hiring practices with regard to the proffered position. Further, the critical element is not the title of the position or 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. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

To qualify a proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), a petitioner must establish that the nature of the position's specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. To establish the proffered position as a specialty occupation under the fourth criterion, the petitioner must distinguish its duties from those normally performed by human resources managers, employment the *Handbook* has indicated does not require a degree in a specific discipline. As observed above, the record does not provide information regarding the proffered position, other than the petitioner's description of duties. The description of the proffered position's responsibilities does not indicate that the duties to be performed by the beneficiary would require a greater level of knowledge or skill than that normally possessed by human resources managers. Accordingly, the duties of the proffered position do not set it apart from the work routinely