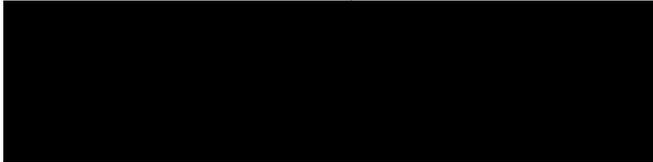


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**U.S. Citizenship
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02

FILE: WAC 03 125 50610 Office: CALIFORNIA SERVICE CENTER Date: **JAN 11 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, Director
Administrative Appeals Office

DISCUSSION: The 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 an adult residential facility that seeks to employ the beneficiary as a budget analyst. 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the 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) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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 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 proposed position.

The petitioner’s February 28, 2003 letter of support stated that the beneficiary would analyze and seek new ways of improving efficiency and increasing profits; provide advice and technical assistance in the preparation of annual budgets; examine budget estimates by management for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives; examine past and current budgets and research economic and financial developments that affect the organization’s spending; consolidate budgets and submit summaries containing supporting statements that support or argue against funding requests; submit proposed plans to management, which would then analyze the plan and devise possible alternatives if projected results are unsatisfactory; and monitor the budget by reviewing reports and accounting records to determine whether allocated funds have been spent as specified, and write reports explaining the causes of the variations along with recommendations for new or revised budget procedures.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO has reviewed the *Handbook* and finds that the duties of the proposed position fall within those noted for budget analysts. The *Handbook* states that private and governmental firms generally require candidates for budget analyst positions to hold a bachelor’s degree, but many prefer or require a master’s degree. Within the Federal Government, a bachelor’s degree in any field is sufficient for an entry-level position. State and local governments have varying requirements, but a bachelor’s degree in one of many areas – accounting, finance, business or public administration, economics, political science, statistics, or a social science such as sociology may qualify for entry into the occupation. Other employers may prefer a degree in a field closely related to that of the employing industry or organization, such as engineering or business. Many government employers may prefer candidates with strong analytical and policy analysis backgrounds that may be obtained through such majors as political science, economics, public administration, or public finance. Occasionally, budget-related or finance-related work experience can be substituted for formal education. The *Handbook* is clear, however, that a degree in a specific specialty is not normally required for entry into an occupation as a budget analyst, as degrees in a wide range of educational disciplines will suffice for positions requiring a college education.

As such, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires a demonstration that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. As conveyed earlier in this decision, 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 proposed position.

When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specialization, e.g., business administration, can perform the duties, 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 specific course of study.

Accordingly, the proposed position does not meet the first criterion required for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

On appeal, counsel submits several job postings to satisfy this prong of the second criterion. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

No evidence has been submitted to establish that any of these job postings are from organizations similar in size or scope of operations to the petitioner. The unnamed company advertising its vacancy through Hudson Global Resources is a financial services company, and no information was submitted regarding Kforce or The Judge Group, Inc.

The AAO is presented with no basis to conclude that any of the job postings submitted by counsel are from organizations that may be considered "similar" to the petitioner, an adult residential care facility, in size or scope of operations.

Moreover, the postings do not verify that there is an industry-wide requirement for a degree in a specialty. For example, the job posting from Kforce does not state that a bachelor's degree in a specific specialty is required. As noted previously, CIS interprets the term "degree" to mean not just any degree in any field, but one *in a specific specialty* that is directly related to the proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the proposed position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates* at 558.

Accordingly, the proposed position does not qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. Again, the *Handbook* reveals that the duties of the proposed position are analogous to those of budget analysts as outlined in the *Handbook*, which does not require a degree in a specific specialty. The record contains no evidence that would support a finding that the position proposed here is more complex or unique than such positions at organizations similar to the petitioner.

Therefore, counsel has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. 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 the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. None of these items were submitted.

Accordingly, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 in the specialty. The petitioner states on the Form I-129 that it is an adult residential facility with gross annual income of \$450,000 and 12 employees. Evidence of record indicates that the petitioner operates four residences for the developmentally disabled with a combined total bed capacity of 23. This evidence does not indicate that a degree in a specific specialty is required to perform the job. As previously discussed, the *Handbook* indicates that employers do not normally require a baccalaureate degree in a specific specialty for budget analysts, and no evidence has been submitted to demonstrate that the duties of the proposed position are more specialized and complex than those performed by budget analysts in other, similar companies. Thus, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO will accord no weight to the information counsel submits from the *O*Net*, as it is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The assessment (the S.V.P. rating) it provides is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe 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 position would require.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.