

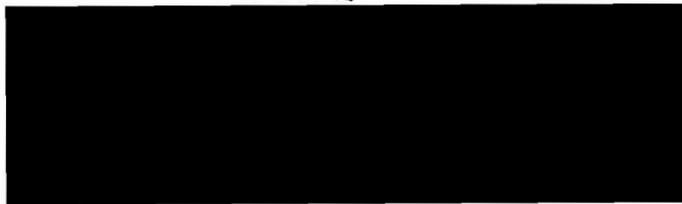


U.S. Citizenship
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FILE: WAC 04 214 54317 Office: CALIFORNIA SERVICE CENTER Date: MAR 01 2006

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
Robert P. Wiemann, Director
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 doctor's office that seeks to employ the beneficiary as a project manager and to 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 denied the petition on the basis that the position is not a specialty occupation. On appeal, counsel submits a brief.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documents including the petitioner's letter of support, the excerpt for medical and health services managers from the U.S. Department of Labor's Online Wage Library (OWL), an approved labor condition application (LCA), the petitioner's articles of incorporation and public health license, a credentials evaluation from the Foundation for International Services, Inc. (the Foundation), and the beneficiary's birth certificate; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE including an

announcement for the proposed position, the petitioner's medical license, two documents relating to the credentials evaluation service, the beneficiary's resume, past employment verification letters, the petitioner's quarterly wage reports and income tax returns, and the petitioner's company profile; (4) the director's denial letter; and (5) Form I-290B with accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

On the form I-129, the petitioner described the proposed duties as setting deadlines, assigning responsibilities, monitoring and summarizing the "progress of projects," and "preparing reports for upper management regarding status of project[s]."

According to the petitioner's letter of support filed with the Form I-129, the beneficiary would be in charge of setting up "procedural and operational guidelines[,] including but not limited to, newly discovered techniques and procedures, which must be closely observed and followed."

According to counsel's letter filed with the Form I-129, the petitioner needed the beneficiary "to enhance its team and improve its productivity." Counsel stated, verbatim:

In this capacity, Beneficiary as Project Manager will be in charge of coordination and completion of projects. She will oversee all aspects of the employer's current and future projects. She will set deadlines, assign responsibilities, monitors and summarizes progress of each project; Prepares reports for upper management regarding status of project.

Counsel stated that the petitioner required the beneficiary to have a bachelor's degree in health science.

The petitioner submitted a prevailing wage document from the OWL for medical and health services managers but did not list this as the job title on the Form I-129 or the LCA. Instead, the Form I-129 and LCA list the job title for the proposed position simply as project manager.

The petitioner's company profile describes the solo practice of a doctor who specializes in gastroenterology and internal medicine.

The director found the description of proposed duties inadequate and, in the RFE, asked the petitioner to provide a more detailed job description of the actual duties to be performed by the beneficiary.

Counsel's letter of response to the RFE included these comments about the position:

Beneficiary being applied for as Project Manager of the employer. In this capacity, she will be in charge of marketing, advertising, and promoting the employer's services and enhancing its overall reputations. She will plan to improve the capability of employer and will follow implementation and progress of each project.

Counsel further stated that the beneficiary would "update employer's computerized system in order to enable competition in the ever-increasing demand," and "[i]mplement highly technical plans for expediting into market . . ."

Counsel asserted that the position required vast knowledge of medical terminology and related experience in the field of medicine.

The director found that, based on the proposed duties, the position was that of a marketing manager. The director further found that the position of marketing manager is not a specialty occupation.

On appeal, counsel asserts that the petition is for a project manager, not a marketing manager. Counsel further asserts that it is “totally inappropriate” to ask the petitioner to divulge any more details about the projects that the beneficiary is expected to coordinate and implement for the petitioner.

Upon review of the record, the AAO finds that the petitioner has not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 bachelor’s degree in a specific field of study 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 (*Handbook*) for its information about the duties and educational requirements of particular occupations.

Based on the petitioner’s description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position are too generally described to establish that they comprise any occupation that requires the beneficiary to hold the equivalent of at least a bachelor’s degree in a medical field. The AAO finds that the information about the proposed duties is too vague to support the director’s finding of a marketing manager position or the petitioner’s assertion that it is a project manager or health services manager position. The various descriptions of the duties the petitioner and counsel offer are insufficiently detailed to establish what the proposed position actually is.

Most of the duty description in the original petition simply listed what the beneficiary would do regarding various, undefined “projects”: “monitor . . . summarize . . . coordinate . . . complete . . . oversee all aspects of . . . prepare reports about . . . set deadlines and assign responsibilities regarding current and future projects.” The petitioner also stated generally that the beneficiary would “set up procedural and operational guidelines including but not limited to, newly discovered techniques and procedures, which must be closely observed and followed.”

In the response to the RFE, when asked to specifically breakdown and describe each of the duties in relation to the petitioner’s business, counsel simply lists another set of general duties. Also, counsel does not explain how being “in charge of marketing, advertising, and promoting the employer’s services and enhancing its overall reputations” (the duties listed in the RFE) relates to being “in charge of set[ting] up procedural and operational guidelines including but not limited to, newly discovered techniques and procedures (the duties listed in the original petition).” These additional duties do not elaborate on the duties previously listed.

On appeal, counsel refuses to elaborate on details of the “highly sensitive, and yet subjective” projects the beneficiary is expected to work on for the petitioner because to do so would be “totally inappropriate.” Without more useful documentation of the day-to-day services the beneficiary is expected to provide the petitioner, the AAO cannot analyze whether the beneficiary will be performing the duties of a project manager, a health services manager, or a marketing manager. Likewise, the lack of meaningful

information about the substantive work the beneficiary would actually perform precludes the AAO from reasonably concluding that the proposed position meets any specialty occupation criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A), a bachelor's or higher degree or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position.

Next, the AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). As already discussed, the information about the proposed duties is too general to align the position with any occupation for which the *Handbook* reports employers normally require at least a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study for the position, is not a factor in this proceeding as the position is being offered for the first time, in order "to expand [the petitioner's] services through studying and implementing new projects."

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position – the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Again, the petitioner has failed to provide concrete information about the specific day-to-day tasks that the beneficiary would perform and about the specific skills and competencies that she would need to apply. On appeal, counsel asserts that "[t]his position involves complex and sophisticated Medicaid marketing knowledge" and "use [of] sophisticated research methods to gather data on patient preference, set competitive environment, and implement marketing methods." Counsel's assertions are not supported by any document in the record. 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).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation.

The burden of proving eligibility for the benefit sought remains entirely 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.