

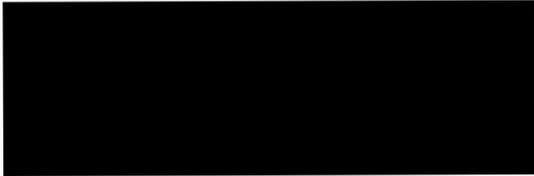
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**U.S. Citizenship
and Immigration
Services**

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02

FILE: SRC 04 202 50835 Office: TEXAS SERVICE CENTER Date: **MAY 10 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.

A handwritten signature in cursive script, 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 spa that seeks to employ the beneficiary as an administrative services manager. 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. On appeal, counsel submits a brief and additional evidence including W-2 forms and a copy of the BSN degree of the petitioner's former administrative service manager.

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 an administrative services manager. Evidence of the beneficiary's duties includes: the I-129 petition; counsel's July 15, 2004 memorandum in support of the

petition; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: managing the merchandising manager, reservationist, product consultant, and all support staff; training and supervising staff; acting as human resources liaison; hiring and training new employees; coordinating personnel programs and policies; managing inventory, product pricing and shelving, product application, and cashier balancing; and ensuring good vendor relations and customer satisfaction. Counsel indicated that the beneficiary is a qualified candidate for the job because she possesses the U.S. equivalent of a bachelor's degree in business administration with a major in management.

The director found that the proffered position was not a specialty occupation because the proposed duties do not require the theoretical and practical application of a body of highly specialized knowledge. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent 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 proffered position is not a typical administrative services manager, that it also combines the duties of human resources, marketing, and sales managers. Counsel states further that, as opposed to a typical day spa, the petitioner operates in conjunction with and at the direction of a plastic surgeon's office. Counsel also states that the petitioner's previous administrative services manager was a registered nurse with a BSN degree. Counsel submits a copy of this BSN degree as supporting documentation.

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 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 *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. No evidence in the *Handbook*, 2006-2007 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for an administrative services manager job in small organizations. Experience may be the only requirement needed to enter a position as office manager. Counsel's assertion that the proffered position is not a typical administrative services manager, as the petitioning entity operates in conjunction with and at the direction of a plastic surgeon's office is noted. The petitioner, however, does not require nor does the beneficiary hold a medical-related degree. 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). Also noted is counsel's assertion that the position combines the duties of human resources, marketing, and sales managers. A review of the Human Resources, Training, and Labor Relations Managers and Specialists training requirements in the *Handbook* finds no evidence indicating that a baccalaureate or higher degree in a specific specialty is required for a human resources specialist job. A wide variety of educational backgrounds is acceptable for entry into these positions including a well-rounded liberal arts education. Nor does a review of the Advertising, Marketing, Promotions, Public Relations, and Sales Managers training requirements in the *Handbook* find any evidence indicating that a baccalaureate or higher degree in a specific specialty is required for marketing and sales manager jobs. It is further noted that the petitioner did not provide its gross and net annual income amounts on Part 5 of the petition. Counsel's assertion that the petitioner is a "high-end" day spa is noted. Again, 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).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for positions related to administrative managers and officer managers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. One of the advertisements is for a human resources/administrative manager at the National Linen and Uniform Service. Another advertisement is for a regional sales and marketing assistant/office manager at Estee Lauder. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties described in the advertised positions. Moreover, the majority of the advertisements do not stipulate the requirement of a bachelor's degree in a specific specialty, thereby confirming the position of the DOL in its *Handbook*, namely that administrative, human resources, marketing, and sales manager jobs do not require a bachelor's degree in a specialty.

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. 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. On appeal, counsel states that the petitioner's former administrative services manager held a BSN degree and provides a copy of the degree as supporting documentation. Again, this information confirms the position of the DOL in its *Handbook*, namely that administrative, human resources, marketing, and sales manager jobs do not require a bachelor's degree in a specialty. Further, the petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. 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 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.¹ To interpret the regulations any other way would lead to absurd

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

results: 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 menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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).

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.

Beyond the decision of the director, the petitioner has not demonstrated that the beneficiary is qualified to perform a specialty occupation. The record contains an evaluation from a university professor at American Continental University in Plantation, Florida, who concludes that the beneficiary holds the U.S. equivalent of a bachelor's degree in business administration with a major in management. The record, however, contains no independent evidence, such as a letter from the university provost, that the evaluator is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). For this additional reason, the petition may not be approved.

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.