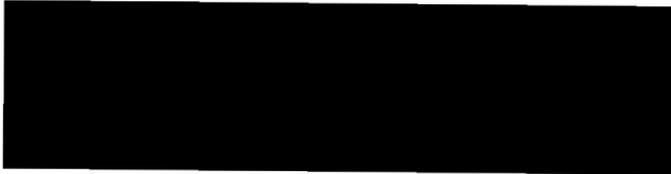


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FILE: WAC 04 259 54115 Office: CALIFORNIA SERVICE CENTER Date: **SEP 08 2006**

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, 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 private medical practice providing health care services to women. It seeks to employ the beneficiary as a health services manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant employed 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 determining that the position was not a specialty occupation.

On appeal, counsel for the petitioner asserts that the proffered position clearly meets the regulatory criteria for a specialty occupation. Counsel submits a brief in support of his assertion.

The record contains: (1) the Form I-129 filed September 27, 2004 and supporting documentation; (2) the director's October 5, 2004 request for evidence (RFE); (3) the petitioner's December 27, 2004 statement and supporting documentation in response to the director's RFE; and (4) the Form I-290B with counsel's assertions and brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

Preliminarily, the AAO observes that the record does not include a certified labor condition application (LCA). The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B) requires that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner must obtain a certified LCA from the Department of Labor in the occupational specialty in which the H-1B worker will be employed. The instructions that accompany the Form I-129 also specify that an H-1B petitioner must document the filing of a LCA with the Department of Labor when submitting the Form I-129. The failure to provide a certified LCA precludes the approval of the petition.

The AAO now turns to 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not 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.

The petitioner seeks the beneficiary's services as a "health services manager." The duties of the proffered position were outlined by the petitioner in its September 13, 2004 letter in support of the petition and reiterated in its December 27, 2004 response to the director's request for a more detailed description of the duties of the proffered position. The petitioner has listed the duties of the proffered position as:

Develop, direct and supervise the implementation and maintenance of [the petitioner's] business policies and procedures, goals and objectives[.] 25%

Confer with physicians, other healthcare professionals and clinical staff to formulate new policies and improve existing policies and recommend procedural changes[.] 15 %

Develop and implement [a] system to be used by [the petitioner's] all four clinics clinic [sic] and the business office to assure a smooth flow of work, medical record information and maintenance, and improve overall efficiency[.] 15%

Assure clinical staffing levels and staff competencies are appropriate to accomplish duties and responsibilities productively and efficiently[.] 10%

Coordinate and participate in facility orientation/development/maintenance activities specific to utilization management. 5%

[Assist] in the identification and reporting of potential quality improvement issues and [be] responsible for assuring these issues are reported and discussed with the management. 10%

Participate in the budgetary process at the plan level, including [the] preparation of budget reports and monitoring for adherence. 5%

Identify cost-reduction opportunities and maintain cost-effectiveness in the provision of health care services[.] 8%

Formulate and implement programs to enhance patient satisfaction and retention and increase productivity and satisfaction among members of the health care team. 7%

The director determined that the above description of the beneficiary's duties most closely resembled the employment of an administrative services manager as discussed in the Department of Labor's *Occupational Outlook Handbook (Handbook)*. The director noted that the specific educational requirements for an administrative services manager varied widely, including a high school diploma and experience, an associate's degree, or postsecondary technical school training and that the *Handbook* did not report that an administrative services manager must have a bachelor's degree. The director referenced the job announcements provided and determined that the petitioner had not provided sufficient evidence to establish that a degree requirement is common to the industry in parallel positions among similar organizations. The director also determined that the petitioner's description of the proffered position's duties was generic and did not detail the complexity or uniqueness of the position. The director observed that the petitioner had not provided evidence to establish that it normally required a degree or its equivalent for the proffered position. The director finally determined that the petitioner had not established that the duties of the proffered position are more specialized and complex or that the knowledge required to perform the duties would be associated with the attainment of a baccalaureate or higher degree in a specific specialty. The director concluded that the petitioner had not met its burden of proof in establishing that the proffered position is in a specialty occupation.

On appeal, counsel for the petitioner contends that the director misclassified the proffered position as an administrative services manager, a position that involves different duties than those for the position of a

health services manager. Counsel asserts that the proffered position does not involve mere general, office, secretarial, or clerical management duties, but assigns complex and degree-specific tasks consistent with the petitioner's business and which ultimately requires the incumbent to possess at least a bachelor's degree. Counsel references the description of the proffered position's duties and claims that the complexity and intricacy of these duties requires an in-depth comprehension and analysis of the petitioner's specific management needs.

Counsel's assertions are not persuasive. When making a determination whether the employment described qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates that health services managers "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." The petitioner's general description of the proffered position's duties indicates that the beneficiary's responsibility would center on implementing and improving the petitioner's policies and procedures and that she would provide general oversight of the flow of work. Although the petitioner is a health care clinic, the duties of the proffered position as described, are not those of a medical or health services manager, as they do not correspond to the fundamental functions of planning, directing, coordinating, or supervising the delivery of health care. The *Handbook* specifically notes that "[m]anagers in non-health areas, such as administrative services . . . finance and human resources . . ." are not health services managers. Instead the duties described by the petitioner are more closely aligned with that of office or administrative services managers, who the *Handbook* reports work in virtually every sector of the economy and coordinate the office and administrative support needed for organizations to operate efficiently. As the petitioner has failed to provide sufficiently detailed information to establish the position as that of a health services manager, the AAO finds it to be most closely aligned to that of a general administrative services manager.

The *Handbook* reports: "educational requirements for these [administrative services] managers vary widely, depending on the size and complexity of the organization." Based on the *Handbook's* statements, small organizations may only require experience, some organizations may require an associate degree in business or management or a high school diploma when combined with experience, and some organizations may require managers of highly complex services to obtain a baccalaureate degree or its equivalent, to enter into a position as an office manager. The variety of educational requirements for a position as an administrative services manager and the lack of evidence establishing that the actual duties of the proffered position include the duties of a health services manager demonstrate that the proffered position is not specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining

the industry standard include: 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 submitted three examples of job announcements for positions identified as health services managers. However, the job announcements do not indicate that the advertising businesses are similar to the petitioner in size, number of employees, or level of business. Moreover, two of the job announcements do not identify the nature of the advertising organization's business and the third indicates the advertising organization is a major insurance company. Nor are the duties of the advertised positions similar to the petitioner's description of the duties of the proffered position. Thus, the record does not demonstrate that a degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor has the petitioner established that the proffered position is complex or unique. Other than the generic job description and the three job announcements, the record contains no evidence that would support the petitioner's claim that the proffered position contains unique or complex elements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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 acknowledges counsel's assertion that the proffered position does not involve mere general, office, secretarial, or clerical management duties, but assigns complex and degree-specific tasks consistent with the petitioner's business; however, 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 failed to establish the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also does not contain evidence sufficient to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. To establish the proffered position as a specialty occupation under the third criterion, the AAO generally 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. The petitioner does not indicate that it employs or has employed personnel in the proffered position. The AAO notes as well that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform those

duties is usually associated with the attainment of a baccalaureate or higher degree. To determine whether the proffered position meets the requirements of the fourth criterion, the AAO has, once again, reviewed the duties listed by the petitioner in response to the director's request for evidence. It finds no evidence, however, to indicate that the beneficiary's duties would require greater knowledge or skill than that normally needed by an administrative services manager who works in a small but demanding health care practice. Further, the job, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills not normally possessed by an administrative services manager. As a result, the AAO concludes that the petitioner has failed to establish that its proffered position meets the specialized and complex threshold of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to comply with H-1B filing requirements or to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall 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.