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U.S. Citizenship  
and Immigration  
Services

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MAY 03 2007

FILE: SRC 05 217 51491 Office: TEXAS 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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the Texas Service Center 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 seeks to employ the beneficiary as a Clinic Instructor 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 based on a determination that the position was not a specialty occupation.

On appeal the petitioner asserts, through counsel, that the evidence establishes the petitioner has a need for a clinic instructor and that the proffered position is a specialty occupation. Specifically, the petitioner asserts that the proffered position duties “inherently involve and require the services of a professional with an education at least equivalent to Bachelor’s Degree in a health related specialty.” The petitioner asserts further that the evidence “shows that the petitioner has routinely employed only college graduates with specific degrees in a specialized area to carry out the teaching duties.” Lastly, the petitioner asserts that the proffered position’s duties, “involve supervising the work of these professionals, as well as teaching.”<sup>1</sup>

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the director’s request; (4) the director’s denial letter; (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

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:

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<sup>1</sup> Counsel indicates on the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), that he will send a brief and/or evidence to the AAO within 30 days of filing the Form I-290B. No brief or evidence was received by the AAO. It is further noted that counsel did not reply to a subsequent AAO fax requesting copies of any additional evidence and/or brief that may have been submitted for appeal purposes.

- (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.

U.S. 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.

In order to determine whether a particular job qualifies as a specialty occupation, CIS does not simply 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 (5<sup>th</sup> 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.

In the present matter, the petitioner asserts in the Form I-129 that it seeks the beneficiary’s services as a clinic instructor. It is noted that the job description contained in the record refers to the position as a health educator position, and in response to the director’s RFE, the petitioner refers to the proffered position as a clinical instructor position. The petitioner states in its Labor Condition Application that the position is that of a health instructor.

Evidence of the beneficiary’s duties is included in the Form I-129 and attached job description, and the petitioner’s response to the director’s RFE. The job description contained in the record reflects that the petitioner’s health educator position requires the beneficiary to have, “great knowledge of conventional and non-conventional medicines,” and to “provide workshops to patients and healthcare professionals.” In its response to the director’s RFE, the petitioner indicates that its clinical instructor position requires the beneficiary to instruct other professionals in the alternative and integrative medical field, and to prepare and conduct teaching workshops for other professionals not employed by the petitioner. The petitioner asserts that, “only a physician with great experience working and teaching within the field of conventional medicine, as well as open minded and versed in alternative therapies will do.”

To make its determination whether the employment described qualifies as 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; and 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 considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

To determine whether the duties of the proffered position support the petitioner's characterization of its employment, the AAO turns to the 2006-2007 edition of the *Handbook*. It is noted that the *Handbook* does not contain a description for a clinic instructor, health educator, or health or clinical instructor. The *Handbook's* discussion on postsecondary teachers, contained on pages 223-24 provides, however, that:

Postsecondary teachers instruct students in a wide variety of academic and vocational subjects beyond the high school level that may lead to a degree or to improvement in one's knowledge or career skills. These teachers include college and university faculty, postsecondary career and technical education teachers, and graduate teaching assistants.

....

*Postsecondary vocational education teachers*, also known as *postsecondary career and technical education teachers*, provide instruction for occupations that require specialized training, but may not require a 4-year degree . . . .

The *Handbook* discusses educational requirements for postsecondary teachers on page 225, stating in pertinent part that:

The education and training required of postsecondary teachers varies widely, depending on the subject taught and educational institution employing them. Education requirements for teachers are generally the highest at 4-year research universities while experience and expertise in a related occupation is the principal qualification at career and technical institutes.

....

Training requirements for postsecondary career and technical education teachers vary by State and by subject. In general, teachers need a bachelor's or higher degree, plus at least 3 years of work experience in their field. In some fields, a license or certificate that demonstrates one's qualifications may be all that is required.

The *Handbook* reflects that the educational requirements for postsecondary teachers range from no degree requirement to a bachelor's or higher degree requirement.

The AAO finds the discussion on postsecondary career education teachers to be generally reflected in the petitioner's description of the position's duties. However, the AAO finds that the duties of the proffered

position as listed by the petitioner, are generic and provide no meaningful description of the specific tasks that the beneficiary would perform for the petitioner on a daily basis. The AAO requires information about the specific duties of a proffered position in the context of the petitioning entity's business operations, in order to make a determination regarding the nature of that position and its degree requirements, if any. In the present matter, the record does not contain a detailed, meaningful description of the proffered position, or of the beneficiary's duties. The AAO is thus unable to determine the educational requirements for the proffered position.

The record also lacks a meaningful and detailed description of the petitioner's business operations. The petitioner's Form I-129 reflects that the petitioner has one employee. The petitioner provides no information regarding the employee or the employee's position. The petitioner indicates in response to the director's RFE, that it has hired independent contractors in the past. However, the petitioner provides no corroborative evidence of such hiring. Furthermore, the record lacks wage payment information for any employees. The petitioner also provides no federal tax information or annual income information for its company, and the petitioner provides no detailed evidence or information to establish the nature of its business or its business operations. It is noted that the record contains a 1-page brochure indicating that Integrated Health & Wellness performs acupuncture, homeopathy, samassati colorthery, reiki, herbaology, and workshops relating to various emotional, stress and physical ailments of youth and teens. The brochure is not discussed or explained by the petitioner, and the brochure provides no specific information regarding workshops, participants, or instructors, or regarding the petitioner's organizational structure, employees, or customers. The record thus fails to demonstrate that the petitioner operates a business, or that the petitioner provides health-related workshops to health professionals or any one else.

Going on record without supporting documentation is not sufficient to meet 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)). In the present matter, the record lacks evidence to support the contention that the petitioner operates a health-care facility or conducts health-related workshops, or that the petitioner will employ a clinic or health instructor with a level of knowledge that may only be obtained through a baccalaureate degree in a health related field. Accordingly, the AAO finds that the petitioner has failed to establish that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. *See Defensor v. Meissner*, 201 F. 3d. 384 (5<sup>th</sup> Cir. 2000).

The petitioner has also failed to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which states that a "[d]egree 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." The record contains no information from a professional association in the petitioner's industry, and no letters or affidavits from firms or individuals in the industry attesting to the educational requirements of the proffered position. Moreover, the record fails to demonstrate that the petitioner operates a health and wellness center or that it conducts health-related workshops. The evidence also fails to establish the specific job duties of the proffered position. The petitioner has thus failed to establish that a degree requirement is common within the petitioner's industry in parallel positions among similar organizations. The petitioner has additionally failed to establish the company's position needs, or that the proffered position duties are so complex or unique that they can only be performed by an individual with a degree in a related specialty.

The petitioner has additionally failed to establish that the proffered position qualifies as a specialty occupation under the third prong of 8 C.F.R. § 214.2(h)(4)(iii)(A), which states that, “the employer normally requires a degree or its equivalent for the position.” The record contains no evidence of the petitioner’s past hiring practices for the proffered position, and the petitioner does not claim or establish that the proffered position existed in the past. The petitioner has therefore failed to establish that the position is a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Lastly, the record fails to establish that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which states that, “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.” The description of the proffered position duties is too generic to determine the specific tasks that the beneficiary would perform for the petitioner. The petitioner has provided no context or description of the specific tasks to be performed by the beneficiary, and the record contains no evidence to establish any specialized and complex nature of those tasks. This generic description makes it impossible to determine whether the proffered position’s duties meet the specialized and complex threshold of the fourth criterion contained in 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the petitioner has failed to demonstrate that the proffered position is a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the above discussion, the AAO finds that the petitioner has failed to establish that the proffered position meets any of the requirements of a specialty occupation as set forth in section 241 of the Act, and at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 its burden. The appeal will therefore be dismissed and the petition denied.

**ORDER:** The appeal is dismissed. The petition is denied.