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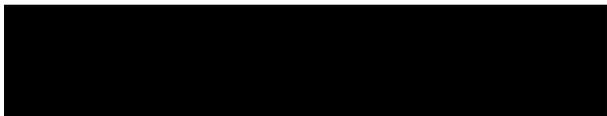


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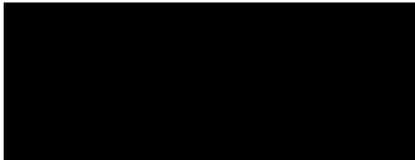
FILE: SRC 05 201 50215 Office: TEXAS SERVICE CENTER Date:

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.

James Blasinger, for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director of the 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 is a higher education university that seeks to employ the beneficiary as an administrative assistant to the vice president of academic affairs. 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 because the proffered position is not 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 evidence (RFE); (3) counsel's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The first issue before the AAO is whether the 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) consistently 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 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 (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 an administrative assistant to the vice president of academic affairs. Evidence of the beneficiary's duties includes: the petitioner's undated letter in support of the petition and counsel's July 22, 2005 response to the director's request for evidence. As stated by the petitioner, the proposed duties are as follows:

Assisting the Main Registrar and the Vice President of Academic Affairs in their everyday activities. Overseeing the student database and the collection, compilation, and distribution of final grade reports and university statistics on a semester basis, as required by the Department of Education and ACICS.

- Communicating with Campus Registrars in the U.S. and in Europe;
- Coordination of the university syllabi system and distribution;
- Surveys for College Board;
- University statistics;
- Processing adjunct faculty hiring forms;
- Verification letters; and
- Oversight of the registrar's database activities:

1. Collecting and processing new files (data input, file checkup, file organization and re-distribution);
2. Collecting and processing new registration forms; and
3. Collecting and processing final grades.

The director found that the proposed duties of the proffered administrative assistant to the vice president of academic affairs position do not require a bachelor's degree in a specific specialty. The director concluded 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 beneficiary is ideally suited for the proffered position due to her bachelor's degree in international business from the petitioning entity. Counsel also states that the previous person who filled the position held a bachelor's degree in international business. As supporting documentation, counsel submits letters from the petitioner's campus director, the vice president for academic affairs, the main registrar, and the information technology director.

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 Department of Labor's (DOL) *Occupational Outlook Handbook (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 find that the proffered position is a specialty occupation. A review of the Secretaries and Administrative Assistants occupation category in the *Handbook*, 2006-07 edition, finds that training for administrative assistants ranges from high school vocational education programs that teach office skills and keyboarding to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges. See Training, Other Qualifications, and Advancement for secretaries and administrative assistants in the *Handbook*, 2006-07 edition. Counsel's assertion on appeal that the beneficiary is ideally suited for the proffered position due to her bachelor's degree in international business from the petitioning entity, is noted. The petitioner, however, has not provided a definitive statement of duties associated with the proposed position that substantiates that the incumbent in the position must possess a bachelor's degree in a specific discipline. The record contains opinions from the petitioner's campus director, the vice president for academic affairs, the main registrar, and the information technology director. All of the writers assert that positions such as the proffered position

require a bachelor's degree; none of the writers, however, asserts that the proffered position requires a bachelor's degree in a specific specialty. Again, this information supports the finding from the director that the proffered position requires no specific degree requirement. It is noted that the vice president for academic affairs asserts that the proffered position requires at least a bachelor's degree, preferably in a business or management area. Employer preference, however, is not synonymous with the normally required language of the regulation. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

Regarding parallel positions in the petitioner's industry, counsel submits three Internet job postings for assistant positions at other institutions of higher education. One of the listings is for an "assistant to director of undergraduate studies" with duties that entail advising students in the psychology department and helping the director of undergraduate studies for psychology and the director of advising maintain the functions of the office of undergraduate academic services for psychology. This position requires a bachelor's degree in psychology or an equivalent thereof. The petitioner, however, has not demonstrated that the proposed duties of the proffered position are similar to the advertised position, such as advising the students in the psychology department. The other two listings for a "registrar assistant" and an "assistant registrar" do not stipulate the requirement of a bachelor's degree in a specific specialty. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record does not include sufficient evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the duties of the proffered position involve duties that are complex or unique; rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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 previous person in the proffered position held a bachelor's degree in international business, thereby proving that the petitioner normally requires a degree as a minimum requirement for the position. The petitioner has been in business since 1964, and does not submit evidence of its previous hiring history for the position of administrative assistant to the vice president of academic affairs. 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. To interpret the regulations any other way would lead to absurd 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. The evidence of record does not establish this criterion.

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.

Counsel states, on appeal, that the proffered position “requires someone who has literally gone through the process and understands the terminology, uniqueness of the multi-cultural learning environment, differing degree equivalencies in other countries, and specific requirements for each degree.” The petitioner, however, has not established that the proposed duties exceed in scope, specialization, or complexity those usually performed by administrative assistants, an occupational category that does not require a baccalaureate or higher degree in a specific specialty. 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 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.

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.