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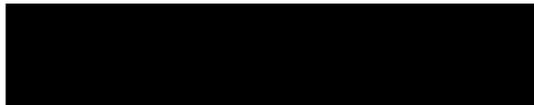
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FILE: WAC 06 248 50156 Office: CALIFORNIA SERVICE CENTER Date: FEB 08 2008

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

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 veterinary office/animal hospital that seeks to employ the beneficiary as a veterinary office manager. It endeavors to classify him 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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:

[A]n 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a veterinary office manager. Evidence of the beneficiary's duties was set forth in attachments to the Form I-129 and in the petitioner's response to the director's request for evidence. The petitioner describes the proffered position as follows:

. . . . The running of a veterinary office requires such specialized administra[tive] knowledge of technical terminology and procedures as well as protocol that by its very nature it is "specialized." It is necessary for the person who holds this position to not only be able to assist the veterinarians with reports, articles and conferences but to record medical histories, arrange for patients to be referred to specialists if and when necessary. The beneficiary must also have the ability to deal with and understand the ordering of inventory/supplies. Inventory is of a specific and specialized nature, knowledge of [p]harmacology, insurances, employment/labor laws, OSHA, human resources, and the [p]ractice [p]hilosophy are also required for the [p]osition.

Additionally, the beneficiary must have extensive knowledge of software applications and programs that are unique to veterinary practices. The production and analysis of spreadsheets and databases which are again unique to the business of a veterinary office, is also a highly specialized component of the position. Also[,] the position requires the tactful, if not artful liaison with patients and their owners. Discretion, ability to think on one's feet, prioritizes and makes important decisions immediately. Organization, initiative and the ability to think independently are not vital to the position; they are skills which cannot be exercised within the environment of a veterinary practice (of the Petitioner's size and volume) without the underlying specialized knowledge. . . .

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of her foreign education which was found by a credentials evaluation service to be equivalent to a Doctor of Veterinary Medicine degree from an accredited college or university in the United States.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general/operations managers in the petitioner's business environment. The *Handbook* notes that the formal education and experience of general managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. There are generally no minimum educational requirements for general/operations managers. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of two job advertisements. The advertisements are not from organizations similar in nature and scope to the petitioner's business operation. One advertisement is for an inventory management software implementer for veterinary clinics across the country who would travel with territory managers assisting in the implementation of clinic inventory management tools. The position is not similar to the proffered position. The second advertisement is for a territory manager who would be part of a district sales team and serve as a territory manager for a \$1.5 billion global division of Colgate-Palmolive. Neither the hiring company nor the duties of the advertised position are similar to the petitioner or the proffered position. As such, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree for the proffered position. The petitioner, however, offered no evidence in support of this statement. The educational credentials of former employees may be established by providing copies of the employees' degrees, or other documentation from the universities where the degrees were obtained. Although the petitioner states that this is the first veterinary office manager that it has employed, it must do more than simply state that it normally requires a degree for the position. Simply going on the 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 190 (Reg. Comm. 1972)). Further, 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 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 petitioner has not established the criterion at 8 C.F.R. § 14.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties detailed by the petitioner are general in nature and, as described by the petitioner, do not contain duties that require baccalaureate level education in a specific educational discipline to perform them. For example, the following duties are general managerial duties that would be performed by all managers in the petitioner's industry:

- Assist veterinarians with reports, articles and conferences;
- Record medical histories,
- Arrange for patients to be referred to specialists when necessary;
- Order inventory and supplies;
- Have some knowledge of pharmacology, insurance, employment/labor laws, OSHA, and human resources;
- Have knowledge of office software applications; and
- Interact with patients and their owners.

The record does not establish that these duties are any more unique, specialized or complex than those performed by veterinary office managers in the industry who do not possess a baccalaureate level education, or by those who have degrees in a wide range of unrelated disciplines. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner also refers to the SVP rating for the position to establish it as a specialty occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Finally, the petitioner asserts that it should not be required to establish that the present petition is a specialty occupation because an unrelated position held by the beneficiary was previously approved, and that position is similar to the position which is the subject of this petition. This record of proceeding does not contain the entire record of proceeding in the petition referred to by counsel. Accordingly, no comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such an occupation would require, as a *minimum* qualification, a baccalaureate or higher degree in the

specialty. In the present matter, the petitioner has offered the beneficiary a position as a veterinary office manager. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a similar petition based on identical facts would constitute material error and a violation of 8 C.F.R. § 214.2 paragraph (h).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 failed to sustain that burden.

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