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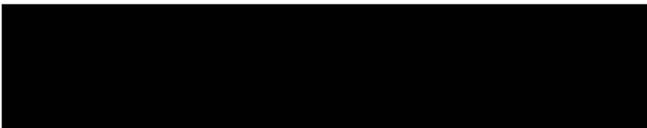
FILE: WAC 07 146 50763 Office: CALIFORNIA SERVICE CENTER Date: APR 03 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John Grissom, Acting Director  
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 home health services provider that seeks to employ the beneficiary in the position of staff education and training coordinator. The petitioner 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 based on two independent grounds of ineligibility: 1) the proffered position is not a specialty occupation; and 2) the beneficiary is not qualified to perform a specialty occupation.

On appeal, counsel submits a brief disputing the director's grounds for denial and the various underlying findings that served as the basis for the director's decision.

The first issue to be addressed in the decision is whether the proffered position is a specialty occupation as claimed by the petitioner.

Section 214(i)(1) of the Immigration and Nationality Act (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.

U.S. Citizenship and Immigration Services (USCIS) 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) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

In support of the Form I-129, the petitioner submitted a letter dated March 24, 2007 stating that the proffered position requires an individual with a professional degree in a related medical field. In a separate document, which was also submitted in support of the petition, the petitioner stated that the beneficiary would report to the human resources manager and further provided the following statement describing the beneficiary's principal function:

The work involves responsibility for coordinating all aspects of training and educational activities. The work is performed in accordance with established policies and procedures and involves planning, directing and implementing staff development programs for the entire department through utilization of in-house department personnel or qualified external personnel. Additionally, she/he is responsible for insuring that staff development records are complete and up to date on all agency staff who has received training. Work is performed under the supervision with latitude for independent judgment in planning and meeting the objectives of the program. Direct supervision may be exercised over the work of trainers, and clerical support employees.

Additionally, the petitioner expanded on the above by submitting a list of the beneficiary's proposed job duties and responsibilities. However, as the director has incorporated the list into his decision, the AAO need not repeat the same information in the current discussion.

On May 10, 2007, USCIS issued a request for additional evidence (RFE), instructing the petitioner to provide, inter alia, the following information establishing that the proffered position is a specialty occupation: 1) a more detailed job description listing the beneficiary's specific job duties and the percentage of time to be spent performing each duty; 2) a discussion explaining why the proffered position requires the services of a person with a college degree in nursing; 3) evidence of past employment practices showing that persons with a baccalaureate degree had been previously hired to fill the position currently offered to the beneficiary; 4) present and past job vacancy announcements; and 5) evidence that the petitioner's competitors normally require degrees for positions similar to the one being offered to the beneficiary.

In response, counsel submitted a letter dated August 1, 2007 in which she claimed that more than 50% of the beneficiary's time would be spent training licensed clinicians including nurses and physical, occupational, and speech therapists. Additional submissions from the petitioner included a letter from [REDACTED] newspaper job announcements issued by [REDACTED]; a job announcement for a clinical nurse educator at Duke University; and the following percentage breakdown of the beneficiary's duties:

1. Develops new orientation programs for newly appointed clinician[.] (10%)
2. Conducts formalized orientation programs according to clinicians' job description[s]. (10%)
3. Coordinates and assists in the development, revision and installation of training procedures and programs for continuing education of all clinicians. (20%)
4. Arranges for physical facilities, equipment, instructors or lecturer required for implementation of necessary training of the clinicians. (15%)
5. Advises supervisors and coordinators on methods and techniques to be used for the improvement of supervisory and staff development. (10%)
6. Maintains materials related to training programs such as training guides, films, visual aids, books and related materials. (10%)
7. Recommends outside educational programs and develops a selection process for employees to participate in these programs. (10%)
8. Maintains records relative to employee participation in training sessions. (10%)
9. Maintains lists of resources for training. (5%)
10. Participates in workshops, committees and conferences designed to promote intellectual, social and physical welfare of clinicians. (5%)
11. Observe work of new clinicians during the orientation process . . . . (10%)

On September 27, 2007, the director denied the petition finding that the proffered position does not qualify as a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2006-2007 edition, the director found that the beneficiary's position is most similar to the job description pertaining to human resources, training, and labor relations manager and specialist, which does not require a baccalaureate degree in a specific specialty as a normal, minimum requirement for entry into the occupation. The director further found 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 emphasizes that the beneficiary would be training and educating members of the petitioner's medical staff and further asserts that the training is specialized and complex and entails working in a heavily licensed and regulated industry. Counsel also placed significant emphasis on the job advertisements of other healthcare employers, asserting, contrary to the director's findings, that the job announcements were for positions similar to the beneficiary's in that they all sought individuals to do in-house medical professional education. Lastly, counsel objected to the director's comparison of the beneficiary's proffered position to that of a human resources clerk/specialist, asserting instead that the proffered position should be classified as an instruction coordinator as

found in the Department of Labor's *O\*Net*, which he claims requires no less than a baccalaureate degree.

Upon review of the record, the AAO finds that counsel has failed to establish that the proffered position is a specialty occupation and, therefore, has not overcome the basis for ineligibility.

The AAO first turns 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 USCIS 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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 that of an instructional coordinator. According to *O\*Net*, the purpose of an instructional coordinator is to provide guidelines for educators and instructors. The job description of an instructional coordinator applies specifically in the context of education. There is no indication that this job description can be applied to individuals in the home healthcare industry. However, a review of the *Handbook* indicates that a number of the elements of the beneficiary's proffered position are encompassed in the description of a training development specialist, which is described as follows:

*Training specialists* plan, organize, and direct a wide range of training activities. Trainers respond to corporate and worker service requests. They consult with onsite supervisors regarding available performance improvement services and conduct orientation sessions and arrange on-the-job training for new employees. They help all employees maintain and improve their job skills, and possibly prepare for jobs requiring greater skill. They help supervisors improve their interpersonal skills in order to deal effectively with employees. They may set up individualized training plans to strengthen an employee's existing skills or teach new ones. Training specialists in some companies set up leadership or executive development programs among employees in lower level positions. These programs are designed to develop leaders, or "groom" them, to replace those leaving the organization and as part of a succession plan. Trainers also lead programs to assist employees with job transitions as a result of mergers and acquisitions, as well as technological changes. In government-supported training programs, training specialists function as case managers. They first assess the training needs of clients and then guide them through the most appropriate training method. After training, clients may either be referred to employer relations representatives or receive job placement assistance.

A comparison of the above description with the list of job duties used to describe the beneficiary's proffered position indicates that both positions focus on providing resources to train personnel in order to improve job performances. The above job description does not apply specifically to a particular industry, thereby indicating that a variety of industries, including home healthcare, utilize the services of training specialists.

With regard to the education requirements of training specialists, the *Handbook* states the following:

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business, and behavioral sciences is useful. Some jobs may require a more technical or specialized background in engineering, science, finance, or law, for example. Most prospective human resources specialists should take courses in compensation, recruitment, training and development, and performance appraisal, as well as courses in principles of management, organizational structure, and industrial psychology. Other relevant courses include business administration, public administration, psychology, sociology, political science, economics, and statistics. Courses in labor law, collective bargaining, labor economics, labor history, and industrial psychology also provide a valuable background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems also is useful.

An advanced degree is increasingly important for some jobs. Many labor relations jobs require graduate study in industrial or labor relations. A strong background in industrial relations and law is highly desirable for contract negotiators, mediators, and arbitrators; in fact, many people in these specialties are lawyers. A background in law also is desirable for employee benefits managers and others who must interpret the growing number of laws and regulations. A master's degree in human resources, labor relations, or in business administration with a concentration in human resources management is highly recommended for those seeking general and top management positions.

There is no indication based on the above information that a baccalaureate degree or its equivalent in a specific specialty is a prerequisite for entry into the profession of training specialist.

Furthermore, the job announcements the petitioner submitted in response to the RFE also fail to establish that the position being offered by the petitioner is a specialty occupation. More specifically, the job announcement from Resurrection Health Care states that its organization requires the job candidate to hold a master's degree in nursing and three years of clinical experience; the announcement issued by Family Home Health Services, Inc. indicates that their position requires a state registered nurse's license; and the Duke University job description also requires a master's degree in nursing as well as two years of experience. As properly pointed out by the director, the beneficiary does not meet any of criteria discussed in these three job announcements. Furthermore, unlike these three employers, the petitioner does not require a master's degree, state licensure as a registered nurse, or prior work experience. Therefore, counsel's attempt to liken the petitioner to the three employers in the above job announcements is unsuccessful, as there is a vast difference

between the criteria specified in the job announcements and those listed by the petitioner for the beneficiary's proposed position.

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. Counsel's personal observations do not constitute evidence in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, 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. In the present matter, the petitioner has indicated that the beneficiary's proffered position is new and had not been previously offered by the petitioning organization. Therefore, there is no record of the petitioner's past hiring practices such that would enable the petitioner to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(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. Additionally, the AAO notes that the petitioner's percentage breakdown of the beneficiary's duties accounts for 115% of the beneficiary's time, which is a mathematical impossibility. As such, it is unclear just how much time the beneficiary would spend in the enumerated duties, a number of which are of an administrative nature and, therefore, clearly not qualifying under the heading of a specialty occupation. Accordingly, 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 director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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.