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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **SEP 02 2010**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 describes itself as the owner and operator of “two Residential Care Facility/Adult Care Homes.” To employ the beneficiary in a position that the petitioner identifies as Administrative Services Manager, the petitioner 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 appeal is filed to contest the director’s decision to deny this H-1B petition on the basis that the petitioner had not established that the proffered position is a specialty occupation as that term is defined by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and the implementing regulations at 8 C.F.R. § 214.2(h)(4).

On review of the entire record of proceeding as supplemented by all of the submissions on appeal, the AAO finds that the petitioner has failed to establish the proffered position as a specialty occupation. Therefore the director did not err in denying the petition on the basis specified in her decision. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO analyzes the specialty occupation issue according to the statutory and regulatory framework below.

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

Section 214(i)(1) of the Act 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] 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 [2] 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000) (hereinafter referred to as *Defensor*). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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.

In her August 6, 2008 letter of response to the director's request for additional evidence (RFE), the petitioner's counsel stated that the beneficiary "will direct all of the support and administrative services for [the] petitioner's three care facilities."¹ Counsel presented the following table to describe the duties proposed for the beneficiary, their relative time expenditures during the beneficiary's 40-hour workweek, and the relevance of the beneficiary's degree to those duties:²

| Duties | % of time | Relevance of Degree |
|--|------------------|---|
| Preparation of all financial data for care facilities and over[sight of] all of the facilities' records. | 30% | Study of integration of components, including money, and study of mathematics. |
| Oversee the development and maintenance of an integrated computerized record management system. | 5% | Engineering concerning the development, improvement and implementation of systems. |
| Supervise all aspects of patient arrivals, intake registrations and departures. Maintain communication with clients and their families. | 15% | Study of integration of components, including people and information. |
| Coordinate staffing schedules, supervise and train staff as necessary. Handle all personnel issues including recommending the hiring, retention, and termination of employees to owners. | 20% | Study of integration of components, including people, equipment and processes. Analysis of social sciences. |
| Order, maintain and distribute supplies and equipment and oversee maintenance of medical equipment | 15% | Study of integration of components, including people, money, equipment, energy, material and process. |
| Monitor all facilities to ensure they remain well maintained and | 10% | Study of integration of components, including people, money, knowledge, |

¹ Counsel stated that one of the three facilities was under construction and anticipated to open in about six months from the date of this RFE reply letter.

² The record of proceeding indicates that the beneficiary holds a foreign degree equivalent to a U.S. bachelor's degree in Industrial Engineering. In a footnote to the table, counsel states:

[I]ndustrial Engineering is a branch of engineering that concerns the development, improvement, implementation and evaluation of integrated systems of people, money, knowledge, information, equipment, energy, and process. It draws upon the principles and methods of engineering analysis and syntheses, as well as mathematical, physical and social sciences together with the principles and methods of engineering analysis and design to specify, predict, and evaluate the results to be obtained from such systems.

| | | |
|---|----|--|
| direct/order services as needed. | | equipment, material and processes. |
| Responsible for all regulatory compliance issues. | 5% | Study of integration of components, including information and processes. |

The AAO recognizes the Department of Labor’s *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The AAO finds that the petitioner’s descriptions of the duties comprising the proffered position comport with the Administrative Services Managers occupational category as discussed in the 2010-2011 edition of the *Handbook*.³

The following excerpt from the Nature of the Work section of the *Handbook’s* chapter entitled “Administrative Services Managers” indicates that this occupational category encompasses a wide range of jobs that differ in scope and level of responsibilities:

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. They might, for example, coordinate space allocation, facilities maintenance and operations, and major property and equipment procurement. They also may oversee centralized operations that meet the needs of multiple departments, such as information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, recycling, wellness, and transportation services. Administrative services managers also ensure that contracts, insurance requirements, and government regulations and safety standards are followed and up to date. They may examine energy consumption patterns, technology usage, and personal property needs to plan for their long-term maintenance, modernization, and replacement.

Specific duties for these managers vary by size of company or office and degree of responsibility and authority. In small organizations, a single administrative services manager, sometimes called an *office manager*, may oversee all support services. . . . In larger ones, however, there may be several layers of administrative services managers that may specialize in different areas and report to directors of administration, or vice presidents of administration who oversee all administrative services.

The nature of these managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as *contract administrators* oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services. Other administrative services

³ All of this decision’s references to the *Handbook* are to the 2010-2011 edition, which may be accessed at the Internet site <http://www.bls.gov/OCO/>, and, unless otherwise noted, to the particular chapter “Administrative Services Managers.”

managers handle the acquisition, distribution, and storage of equipment and supplies, while others oversee the disposal of surplus or unclaimed property.

Consonant with the differences in duties and responsibilities that characterize particular positions within the administrative services manager occupation, the *Handbook* observes that a wide range of educational credentials are held by administrative services managers. In this regard, the “Training, Other, Qualifications, and Advancement” section of the *Handbook’s* Administrative Services Managers chapter states in part:

Education and experience requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement. In large organizations, however, administrative services managers may need a bachelor’s degree and appropriate experience.

Education and training. Specific education and training requirements vary by job responsibility. Office managers in smaller operations or lower-level administrative services managers with fewer responsibilities may only need a high school diploma combined with appropriate experience, but an associate degree is increasingly preferred.

In larger companies with multiple locations, equipment, and technologies to coordinate, higher-level administrative services managers need at least a bachelor’s degree. Managers of highly complex services, such as contract, insurance, and regulatory compliance, generally need at least a bachelor’s degree in business administration, human resources, accounting, or finance. Lower-level managers may also need a bachelor’s degree, but related postsecondary technical training may also be substituted for managers of printing, security, communications, or information technology. Those involved in building management should take a drafting class. Regardless of major, courses in office technology, accounting, computer applications, human resources, and business law are highly recommended.

Most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration, or facility management. Many also have backgrounds in real estate, construction, or interior design, in addition to managerial experience. Whatever the educational background, it must be accompanied by related work experience reflecting managerial and leadership abilities. Many administrative services managers obtained their experience by specializing in one area at first, then augmenting their qualifications by acquiring work experience in other specialties before assuming managerial duties.

Managers of property acquisition and disposal need experience in purchasing and sales, and knowledge of the variety of supplies, machinery, and equipment used by the organization. Managers concerned with supply, inventory, and distribution should be experienced in receiving, warehousing, packaging, shipping, transportation,

and related operations. Contract administrators may have worked as contract specialists, cost analysts, or procurement specialists.

In light of the fact that the *Handbook's* information indicates that administrative services manager positions do not categorically require at least a bachelor's degree level of highly specialized knowledge in a specific specialty closely associated with administrative services management, it is incumbent that the petitioner submit credible and persuasive documentary evidence distinguishing the proffered position from those administrative services manager positions that do not require at least a bachelor's degree or the equivalent in a specific specialty. This the petitioner has failed to do.

The AAO finds that the information that the petitioner has provided about the proffered position does not extend beyond general and generic functional descriptions (such as preparation of financial data; oversight, development and maintenance of "an integrated computerized record management system"; coordination of staffing schedules; monitoring the petitioner's facilities to ensure that they are well maintained; and overseeing the maintenance of medical equipment). To the extent that the proposed duties are developed in the record of proceeding, a necessary nexus between them and any baccalaureate or higher degree in a specific specialty is not apparent; and the petitioner does not supplement the record with any documentary evidence to establish such a nexus. While it appears that the beneficiary's degree may well equip the beneficiary to perform the proffered position, the record of proceeding does not establish that it or, for that matter, any other degree in a specific specialty, is necessary for proper performance of the position. Therefore, as the petitioner has not provided a substantive basis for the AAO to find that this petition's particular position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) has not been satisfied.

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or firms in the petitioner's industry.

The job advertisements submitted into the record as evidence of other employers' recruiting practices have no significant evidentiary weight, other than to illustrate the *Handbook's* observations regarding the wide spectrum of educational credentials that characterize the general occupation of administrative services managers.

The advertisements do not all specify as a hiring requirement a bachelor's degree or higher in a specific specialty. In this regard, the AAO notes that the [REDACTED] advertisement specifies a "High School diploma and three years experience" as acceptable credentials for its Residential Services Manager position; that the [REDACTED] advertisement specifies "a BA/BS" degree without regard to any specific major or academic concentration, and also states this broad degree credential as an attribute of the "ideal candidate," rather than an absolute hiring requirement; and that the "[REDACTED]" advertisement specifies a requirement for a "Bachelor's Degree," without reference to any particular major or academic concentration. As such, the advertisements do not suggest, let alone establish, that the degree requirement asserted by the petitioner is a common industry requirement.

Also, the record contains no documentary evidence of how representative the advertisements are of the advertising employers' recruiting and hiring history for the type of position advertised.

For the reasons discussed above, the petitioner has failed to establish that the degree requirement asserted by the petitioner is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner. Accordingly, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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 evidence of record does not distinguish the proffered position as unique from or more complex than such administrative services manager positions that the *Handbook* indicates are performed by persons without a specialty degree or its equivalent.

As noted earlier, the petitioner has limited the descriptions of the proffered position to generalized and generic terms. The AAO also notes that the evidence in the record of proceeding about the organizational structure in which the position would fit is skeletal, and that the record lacks evidence establishing the specific, substantive work that the beneficiary would perform with respect to the various organizational segments with which he would function. Consequently, neither counsel nor the petitioner documents in what respects, if any, the proffered position is unique from or more complex than administrative service manager positions not requiring at least a bachelor's degree in a specific specialty. Therefore, the petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, as the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO finds that one previously approved H-1B petition for a proffered position does not establish a history of a particular recruiting and requiring practice.

Further, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. The present record of proceeding does not establish that the petitioner's degree requirement is generated by the position's actual performance requirements.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

As reflected in this decision's earlier comments regarding the duties comprising the proffered position, the record of proceeding lacks substantive evidence of the specific duties that the beneficiary would actually perform, and, likewise, evidence as to the relative specialization and complexity of such specific duties in comparison to administrative-service-manager duties not requiring knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Consequently, the record of proceeding lacks an evidentiary basis for the AAO to determine that the specific duties of the proffered position are so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Finally, the AAO notes counsel's assertion on appeal that the director did not consider that USCIS had previously approved an H-1B petition filed by this petitioner, on behalf of a different

beneficiary, allegedly for the same position as is the subject of the present petition. However, that earlier petition and the result of its adjudication are not probative of the merits of the present matter. It must be emphasized that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the particular record of proceeding before it. *See* 8 C.F.R. § 103.2(b)(16)(ii). Therefore, the decision on the previous petition is irrelevant to the present appeal, and the merits of that previous decision are beyond the scope of this appeal. However, if the previous petition's approval was based upon evidence substantially similar to that in the present record of proceeding, it would have been material or gross error to approve that petition for the same reasons discussed in this decision, i.e., that the proffered position has not been established as qualifying as a specialty occupation.

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.