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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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Date: **DEC 06 2011** Office: CALIFORNIA SERVICE CENTER



IN RE:



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 \$630. 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,

Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the instant nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The visa petition will be denied.

On the Form I-129 visa petition, the petitioner stated that it is a medical clinic with three employees. In order to employ the beneficiary in what it designates as a medical office/practice administrator position, the petitioner seeks 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, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis that the petitioner had failed to establish that it would employ the beneficiary in a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the evidence submitted demonstrates that the petitioner would employ the beneficiary in a specialty occupation.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE¹; (4) the director's denial letter; and (5) and the Form I-290B.²

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. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

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

¹ The AAO notes that the petitioner, through counsel, did not take the opportunity to submit a substantive response to the RFE. Rather, the petitioner merely requested an extension of time to respond to the RFE. Of course, such a request may not be granted under the governing regulations. See the regulations governing the RFE process, at 8 C.F.R. § 103.2(b).

² The AAO has received no brief or additional evidence to supplement the Form I-290B. Accordingly, the record of proceeding is considered complete.

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 a particular position 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). 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the visa petition, counsel submitted a letter, dated March 31, 2009, from [REDACTED] [REDACTED] who appears to be a medical doctor at the petitioning medical clinic. [REDACTED] provided the following description of the duties of the proffered position:

- Conduct and administer fisical [sic] operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting.
- Direct, supervise and evaluate work activities of personnel.
- Review and analyze facility activities and data to aid planning and cash and risk management and to improve service utilization.
- Plan, implement and administer programs and services in a health care or medical facility.
- Direct or conduct recruitment, hiring and training of personnel.
- Establish work schedules and assignments for staff, according to workload, space and equipment availability.
- Maintain awareness of the staff in advances in medicine, computerized diagnostic and treatment equipment, data processing technology, government regulations, health insurance changes, and financing options.
- Monitor the use of diagnostic services and staff to ensure effective use of resources and assess the need for additional staff, equipment, and services.
- Develop and maintain computerized record management systems to store and process data such as personnel activities and information, and to produce reports.

[REDACTED] further stated, “To be qualified for the position, we require a minimum of a M.S. in business administration, management, or related.”

The AAO notes that one of the optional degrees is an otherwise unspecified degree in business administration. Any position the educational requirement of which can be satisfied by an otherwise unspecified degree in business administration does not qualify as a position in a specialty occupation. This is because, to qualify as a specialty occupation, a position must require a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further

specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

assertion that a degree in business administration would be a sufficient educational qualification for the proffered position indicates that it does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and is tantamount to a concession that the proffered position does not qualify as a specialty occupation position and that the visa petition may not be approved. This is sufficient reason, in itself, to dismiss the appeal and to deny the visa petition. Nevertheless, the AAO will continue its analysis of the specialty occupation issue, in order to identify additional evidentiary deficiencies which preclude a finding that this petition has been filed for a specialty-occupation position.

Because the evidence submitted did not demonstrate that the proffered position qualifies as a position in a specialty occupation, the service center, on May 14, 2009, issued an RFE in this matter. The service center requested, *inter alia*, evidence that the proffered position qualifies as a specialty occupation position. The service center also requested the petitioner's 2008 quarterly wage reports, its Form W-2 and W-3 Wage and Tax Statements, its 2008 Federal Income Taxes, a copy of its lease, a copy of its business premises' floor plan, and photographs of its business premises. The petitioner was accorded until June 25, 2009 to respond.

In a letter submitted to the USCIS on June 24, 2009, counsel stated that the petitioner was unable to respond within the time allotted, and requested an additional 15 days. No further evidence was provided with that response or subsequently.

The director denied the visa petition on August 13, 2009 finding, as was noted above, that the petitioner had failed to demonstrate that it would employ the beneficiary in a specialty occupation position.

On appeal, counsel states, in the Form I-290B:

The petitioner hereby files its appeal of the I-129 nonimmigrant worker petition denied on August 13, 2009. Appeal is timely.

The Service decision of August 13, 2009 contains erroneous conclusions of law and fact.

Firstly, the Service contends that the degree requirement is not common to the industry and that the job duties are unique or complex enough that a degree would be required to perform them. The petitioner submitted evidence of the degree requirement, as well as a detailed job description showing the complexity of the position.

Secondly, the Service contends that the beneficiary's job duties do not qualify as a specialty occupation. The petitioner submitted evidence that the job does in fact qualify as a specialty occupation.

The petitioner will submit a brief detailing its arguments, points of law, and additional evidence to the AAO within 30 days.

Counsel did not submit any other argument on appeal. Counsel did not provide any additional evidence.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The *Handbook* describes the duties of Medical and Health Services Managers as follows:

Healthcare is a business and, like every business, it needs good management to keep the business running smoothly. *Medical and health services managers*, also referred to as *healthcare executives* or *healthcare administrators*, plan, direct, coordinate, and supervise the delivery of healthcare. These workers are either specialists in charge of a specific clinical department or generalists who manage an entire facility or system.

The structure and financing of healthcare are changing rapidly. Future medical and health services managers must be prepared to deal with the integration of healthcare delivery systems, technological innovations, an increasingly complex regulatory environment, restructuring of work, and an increased focus on preventive care. They will be called on to improve efficiency in healthcare facilities and the quality of the care provided.

Large facilities usually have several *assistant administrators* who aid the top administrator and handle daily decisions. Assistant administrators direct activities in clinical areas, such as nursing, surgery, therapy, medical records, and health information.

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

In smaller facilities, top administrators handle more of the details of daily operations. For example, many *nursing home administrators* manage personnel, finances, facility operations, and admissions, while also providing resident care.

The AAO finds that the description of the duties of the proffered position is consistent with the duties of Medical and Health Services Managers as described in the *Handbook* and finds that the proffered position is such a position. The *Handbook* describes the educational requirements of Medical and Health Services Managers positions as follows:

Medical and health services managers must be familiar with management principles and practices. A master's degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration is the standard credential for most generalist positions in this field. However, a bachelor's degree is adequate for some entry-level positions in smaller facilities, at the departmental level within healthcare organizations, and in health information management. Physicians' offices and some other facilities hire those with on-the-job experience instead of formal education.

The petitioner is a physician's office with three employees. The *Handbook* does not indicate that a bachelor's degree is normally a minimum requirement for such positions, as it states that physician's offices and some other facilities hire based on experience, rather than on educational level. The AAO finds that this information is decisive in the context of this particular petition, as the petitioner disregarded the opportunity presented by the RFE to present additional information and evidence that may have distinguished the proffered position from those physician-office position that the *Handbook* indicates are held by persons without at least a bachelor's degree in a specific specialty.

Further, the AAO observes that the *Handbook* indicates that, for the positions that do require a bachelor's or master's degree, a degree in health services administration, long-term care administration, health sciences, public health, public administration, or business administration may suffice. That array of degree disciplines is not indicative of at least a bachelor's level body of highly specialized knowledge in a specific specialty that would be common to and attained by each of the specified types of degrees. Further still, as was noted above, any position with an educational requirement that can be satisfied by an otherwise undifferentiated degree in business administration is not a position in a specialty occupation.

No evidence in the record indicates that medical office/practice administrator positions of the petitioner's asserted size typically require a minimum of a bachelor's degree or the equivalent in a specific specialty. The *Handbook*, to the contrary, indicates that they do not.

For the reasons discussed above, the petitioner has not demonstrated that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position. Therefore, it has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO will consider the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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 was noted above, the *Handbook* does not support the proposition that the proffered position is a specialty occupation position. The record contains no evidence of a professional association of Medical and Health Services Managers or Medical Office/Practice Administrators that requires a minimum of a bachelor's degree or the equivalent in a specific specialty for membership. Counsel provided no letters or affidavits from similar firms attesting to such firms' recruiting and hiring practices with regard to educational requirements to demonstrate that they typically recruit and hire only Medical and Health Services Managers or Medical Office/Practice Administrators with a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will now consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that the particular position proffered is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree or the equivalent in a specific specialty.

The evidence submitted into the record of proceeding does not refute the aforementioned information in the *Handbook* suggesting that positions such as that asserted by the petitioner may be performed by persons without at least a bachelor's degree in a specific specialty. This fact alone precludes approval of the proffered position under the instant criterion. Further, [REDACTED] stated that a degree in business administration, management, or a related field is a sufficient educational credential for entry into the proffered position. For reasons discussed above, this demonstrates conclusively that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

As discussed above, the petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in

a specific specialty. Accordingly, the petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that, as the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, the petitioner has not made the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) an issue for consideration on appeal.

Finally, the AAO will consider the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates 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. To the very limited extent that the duties of the proffered position are as described in this record of proceeding, they do not appear to exceed those of a titular Medical and Health Services Manager employed by a physician's office. The *Handbook* does not support that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the AAO notes, again, that [REDACTED] indicated that a degree in business administration, without any further specification, would suffice to qualify one for the proffered position, and that this concession is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner has not demonstrated 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 petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue that was not addressed in the decision of denial. The May 14, 2009 RFE requested that the petitioner provide its 2008 quarterly wage reports, its Form W-2 and W-3 Wage and Tax Statements, its 2008 Federal Income Taxes, a copy of its lease, a copy of its business premises' floor plan, and photographs of its business premises. The petitioner has never submitted any of those documents. All of those documents are relevant to whether the petitioner operates the business it claims to and, therefore, to the material issue of whether it actually has a position in which to employ the beneficiary.

Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The failure to provide any of those requested documents would have been sufficient reason, in itself, to deny the visa petition. The appeal will be dismissed and the visa petition denied on the additional bases that the petitioner failed to submit each of those requested documents.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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