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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: FEB 02 2011

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:

[REDACTED]

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,

*for Michael T. Kelly*  
Perry Rhew  
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 non-profit corporation operating a rehabilitation house for troubled youth. It seeks to employ the beneficiary as a child and family social worker. 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, finding that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner submits Form I-290B and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is considered complete as currently constituted.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's two requests for evidence (RFE); (3) the petitioner's responses to the RFEs; (4) the director's denial letter; and (5) the Form I-290B, with the petitioner's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

The 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 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 (5<sup>th</sup> 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.

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS 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. 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 is a non-profit corporation organized for the purpose of operating group homes that house troubled or at-risk youths who have had contact with the juvenile justice system. In a letter of support dated December 30, 2008, the petitioner claimed that the proposed position of child and family social worker included the following duties:

1. Provide one on one counseling for residents at [the petitioner] to understand and promote resolution to interpersonal problems within the house and their life.
2. Assist in mentoring for residents regarding youth delinquency/crime prevention programs.
3. Draft case management and reports.
4. Assist in developing individualized program guidance to promote behavioral modifications in an effort to keep the youth from run-ins with the criminal justice system.
5. Participate in group therapy sessions, which assist the residents in setting priorities for behavioral modifications.
6. Provide social services and educational assistance for residents to obtain a General Education Diploma.
7. Participate in meetings with multiple disciplinary team to evaluate the need and chart the progress of individual residents.
8. Counsel individuals regarding issues including mental health, substance abuse, physical abuse, social adjustment, and avoidance of gangs and other social influences, which may lead the residents onto the wrong path.

The petitioner concluded by stating that the proffered position required the incumbent to possess at least a bachelor's degree in social work or a related field, or its equivalent in experience.

Finding that the record contained insufficient evidence of eligibility, the director issued two RFEs, on February 4, 2009 and February 23, 2009. The first request pertained to the petitioner's business records, and in response, the petitioner submitted corporate and tax documentation such as quarterly wage reports and its company brochure. The second request specifically addressed the issue of whether the proffered position was a specialty occupation, and requested that the petitioner submit additional evidence to establish eligibility under this criterion.

In a response dated March 23, 2009, the petitioner provided additional details regarding the proffered position, and submitted copies of job postings for similar positions in the industry in support of the contention that a degree was a standard requirement for the proffered position.

On April 1, 2009, the director denied the petition. The director found that the duties of the proffered position do not require a bachelor's degree. Citing the U.S. Department of Labor's (DOL) *Occupational Outlook*

*Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent 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 submits Form I-290B accompanied by previously-submitted evidence such as the petitioner's March 23, 2009 response to the second RFE, and contends that the director misinterpreted the complexity of the duties of the proffered position. No new evidence is submitted in support of the appeal.

Upon review of the record, the AAO concurs with the director's decision and finds that the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position is 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 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a proposed position qualifies as a specialty occupation, USCIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Although the proffered position is entitled "child and family social worker," a review of the *Handbook* indicates that the section pertaining to Social and Human Service Assistants is most closely aligned with the proffered position as described. The "Social and Human Service Assistants" chapter of the 2010-2011 edition of the *Handbook* states, in pertinent part:

*Social and human service assistants help social workers, healthcare workers, and other professionals to provide services to people. Social and human service assistant is a generic term for workers with a wide array of job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skills counselor, social services aide, youth worker, psychological aide, client advocate, or gerontology aide. They usually work under the direction of workers from a variety of fields, such as nursing, psychiatry, psychology, or social work. The amount of responsibility and supervision they are given varies a great deal.*

Some have little direct supervision. For example, they may run a group home. Others work under close direction.

Social and human service assistants provide services to clients to help them improve their quality of life. They assess clients' needs, investigate their eligibility for benefits and services such as food stamps, Medicaid and welfare, and help clients obtain them. They also arrange for transportation, if necessary, and provide emotional support. They monitor and keep case records on clients and report progress to supervisors and case managers.

Social and human service assistants play a variety of roles in the community. For example, they may organize and lead group activities, assist clients in need of counseling or crisis intervention, or administer food banks or emergency fuel programs. In halfway houses, group homes, and government-supported housing programs, they assist adults who need supervision with personal hygiene and daily living tasks. They review clients' records, ensure that they take prescribed medication, talk with family members, and confer with medical personnel and other caregivers to provide insight into clients' needs. Assistants also give emotional support and help clients become involved in community recreation programs and other activities.

In psychiatric hospitals, rehabilitation programs, and outpatient clinics, social and human service assistants work with psychiatrists, psychologists, social workers, and others to help clients master everyday living skills, communicate more effectively, and live well with others. They support the client's participation in a treatment plan, such as individual or group counseling or occupational therapy.

The petitioner indicated in its response to the second RFE that the beneficiary works under the direction of Licensed Clinical Social Worker [REDACTED], which corresponds to the statement above which indicates that social and human service assistants help and work under the director of social workers and others. Moreover, the *Handbook* indicates that the title of social and human service assistant is a "generic term for workers with a wide array of job titles, including but not limited to human service worker, case management aide, social work assistant, community support worker, community outreach worker, social services aide, and youth worker." Upon review of the description of the duties of the proffered position, this list encompasses a number of the key duties of the proffered position.

As the *Handbook* does not indicate that the social and human service assistant occupational category normally requires at least a bachelor's degree, or the equivalent, in a specific specialty, the proffered position does not appear to require at least a bachelor's degree level of knowledge in a specific specialty. Specifically, the *Handbook* states:

A high school diploma is the minimum education requirement, but employers often seek individuals with relevant work experience or education beyond high school.

**Education and training.** Many employers prefer to hire people with some education beyond high school. Certificates or associate degrees in subjects such as human services, gerontology

or one of the social or behavioral sciences meet many employers' requirements. Some jobs may require a bachelor's or master's degree in human services or a related field, such as counseling, rehabilitation, or social work.

Human services degree programs have a core curriculum that trains students to observe patients and record information, conduct patient interviews, implement treatment plans, employ problem-solving techniques, handle crisis intervention matters, and use proper case management and referral procedures. Many programs utilize field work to give students hands-on experience. General education courses in liberal arts, sciences, and the humanities also are part of most curriculums. Most programs also offer specialized courses related to addictions, gerontology, child protection, and other areas. Many degree programs require completion of a supervised internship.

Workers level of education often determines the kind of work they are assigned and the degree of responsibility that is given to them. For example, workers with no more than a high school education are likely to work in direct-care services and helping clients to fill out paperwork. They may receive extensive on-the-job training on how to perform these tasks. Workers with a college degree, however, might do supportive counseling, coordinate program activities, or manage a group home. Social and human service assistants with proven leadership ability, especially acquired from paid or volunteer experience in social services, often have greater autonomy in their work. Regardless of the academic or work background of employees, most employers provide some form of in-service training, such as seminars and workshops, to their employees.

According to the *Handbook*, a baccalaureate or higher degree, or its equivalent, is not required for a social or human service assistant.

As neither the duties as described by the petitioner nor any other evidence in the record of proceeding establishes that the performance of the proffered position requires at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. In support of this contention, the

petitioner submitted several job postings for the position of social worker. However, these job postings are not indicative that a degree is a common requirement in the industry since none of these positions align with the proffered position which has been determined to be that of a social and human service assistant. As discussed above, the duties of the proffered position as set forth by the petitioner indicate that rather than acting as a social worker, the beneficiary will be assisting social workers and/or other licensed personnel in providing support services to people. The job postings submitted, however, are for the occupations of social worker, case manager and/or counselor, which differ in terms of duties and responsibilities from those of the proffered position.

Moreover, the petitioner failed to submit documentation from professional associations of persons serving in the type of position proffered in this petition attesting that a bachelor's degree in a specific specialty, or its equivalent, is the standard minimum educational credential required for entry into the proffered position. Moreover, the petitioner has likewise failed to submit letters or affidavits from companies or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations. Therefore, the proposed position does not qualify for classification as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Furthermore, the AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty. According to the job description of the proffered position, it appears that the social and human service assistant will have similar job duties to those described in the *Handbook*; thus the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions. While the AAO notes that both the petitioner and counsel contend that the duties of the position are complex and specialized, they have submitted no evidence to support this contention. Going on 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 Dec. 190 (Reg. Comm. 1972)).

In the instant petition, the petitioner has submitted insufficient documentation to distinguish the proffered position from similar but non-degreed employment as a social and human service assistant. Moreover, the evidence of record about the particular position that is the subject of this petition does not establish how aspects of the position, alone or in combination, make it so unique or complex that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its equivalent. 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. In response to the RFE, the petitioner claimed that all of its other social workers hold bachelor's degrees. However, while the record does contain corroborating evidence of the employment of these persons with the petitioner, there is no evidence of the other employees' educational

backgrounds. Again, going on 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. at 165.

In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. 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 USCIS 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 non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). 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 the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner provides a general overview of the duties of the proposed position in the initial letter of support and in response to the request for evidence. The petitioner, however, has not established that the duties to be performed exceed in scope, specialization, or complexity those usually performed by social and human service assistants, an occupational category that does not normally require a baccalaureate or higher degree in a specific specialty or its equivalent. The AAO finds nothing in the record to indicate that the beneficiary, in her role at the petitioner's place of business, would face duties or challenges any more specialized and complex than those outlined in the *Handbook*.

To the extent that they are depicted in the record, the duties of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations, and no new evidence is submitted on appeal to support this contention. As the *Handbook* reveals, such organizations do not normally impose a bachelor's degree requirement in a specific specialty. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Therefore, for the reasons related in the preceding discussion, the proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied. The proposed position in this petition is not a specialty occupation, so the beneficiary's qualifications to perform its duties are inconsequential. Accordingly, the AAO will not disturb the director's denial of the petition.

As a final note, the AAO observes that USCIS approved another petition that had been previously filed on behalf of the beneficiary. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions.

If the previous nonimmigrant petition was approved based on the same unsupported and contradictory assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approval in this matter, therefore, does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.