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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

D2



Date: OCT 06 2011

Office: VERMONT SERVICE CENTER

FILE: 

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:

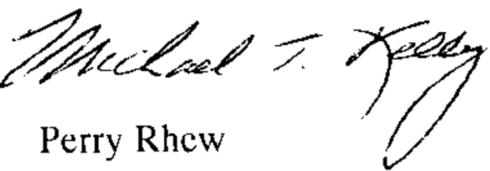


INSTRUCTIONS:

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 Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont 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 medical office with three employees and a stated gross annual income of \$250,000. It seeks to employ the beneficiary as a business office manager 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and brief submitted by counsel with supporting evidence. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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 [(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). 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.

In this matter, the petitioner seeks the beneficiary’s services as a business office manager. In the petitioner’s letter dated March 25, 2009, the petitioner states that it wishes to hire the beneficiary to:

- Manage compliance issues;
- Prepare and oversee payroll;

- Handle business affairs;
- Formulate business strategies;
- Coordinate day-to-day business;
- Establish and implement practice goals and engage in ongoing evaluation of goals;
- Establish operating budget;
- Create and implement marketing plans;
- Oversee personnel matters;
- Manage billing and collection;
- Conduct and administer fiscal operations, including accounting, planning budgets, authorizing expenditures, establishing rates for services, and coordinating financial reporting;
- Review and analyze facility activities and data;
- Maintain awareness of advances in data processing technology, government regulations, health insurance changes, and financing operations; and
- Develop and maintain computerized record management systems to store and process data.

In its support letter, the petitioner states that the proffered position requires at least a Bachelor's degree in Business Administration, or a related field such as health care management.

The petitioner also submitted copies of the beneficiary's foreign degree along with a credential evaluation finding that the beneficiary's foreign education is equivalent to a U.S. Bachelor of Science degree in Business Administration.

On April 17, 2009, the director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation.

Counsel for the petitioner reiterated the position duties and stated that the proffered position is closest to that of a medical and health services manager and, therefore, is a specialty occupation.

In support of his argument, counsel submitted copies of advertisements placed by other employers for their medical office managers. These advertisements were placed by employers that are much larger than the petitioner and entailing more complex duties than those proffered here. Further, of the advertisements submitted: two indicated that a bachelor's degree in health or business administration is merely preferred, but not required; three indicated a requirement for a bachelor's degree without stating that the degree must be in a specific specialty; and one did not require or prefer any degree at all. Only one of the advertisements submitted indicate that a bachelor's degree in business, accounting, or finance is required and this advertisement did not list the position duties so it is not clear whether the job is similar to the one proffered here and, further, this advertisement was placed by a medical specialty group with 11 doctors and its own onsite pathology, CT, and surgery center and so is not similar to the petitioner.

The director denied the petition, finding that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel again argues that the proffered duties come under the section in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2010-11 online edition, on

medical and health services managers and so, therefore, is a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

USCIS often looks to the *Handbook* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. In reviewing the duties provided for the proffered position as well as the organizational chart and other supporting documentation, the AAO agrees with counsel that the *Handbook's* description of Medical and Health Services Managers is a suitable approximation of the proffered position. The *Handbook* provides as follows:

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.

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.

Clinical managers have training or experience in a specific clinical area and, accordingly, have more specific responsibilities than do generalists. For example,

directors of physical therapy are experienced physical therapists, and most health information and medical record administrators have a bachelor's degree in health information or medical record administration. Clinical managers establish and implement policies, objectives, and procedures for their departments; evaluate personnel and work quality; develop reports and budgets; and coordinate activities with other managers.

Health information managers are responsible for the maintenance and security of all patient records. Recent regulations enacted by the Federal Government require that all healthcare providers maintain electronic patient records and that these records be secure. As a result, health information managers must keep up with current computer and software technology, as well as with legislative requirements. In addition, as patient data become more frequently used for quality management and in medical research, health information managers must ensure that databases are complete, accurate, and available only to authorized personnel.

In group medical practices, managers work closely with physicians. *Whereas an office manager might handle business affairs in small medical groups, leaving policy decisions to the physicians themselves,* larger groups usually employ a full-time administrator to help formulate business strategies and coordinate day-to-day business.

A small group of 10 to 15 physicians might employ 1 administrator to oversee personnel matters, billing and collection, budgeting, planning, equipment outlays, and patient flow. A large practice of 40 to 50 physicians might have a chief administrator and several assistants, each responsible for a different area of expertise.

Medical and health services managers in managed care settings perform functions similar to those of their counterparts in large group practices, except that they could have larger staffs to manage. *In addition, they might do more community outreach and preventive care than do managers of a group practice.*

Some medical and health services managers oversee the activities of a number of facilities in health systems. Such systems might contain both inpatient and outpatient facilities and offer a wide range of patient services.

(Emphasis added.)

With respect to education and training requirements for medical and health services managers, the *Handbook* states:

A master's degree in one of a number of fields is the standard credential for most generalist positions as a medical or healthcare manager. A bachelor's degree is sometimes adequate for entry-level positions in smaller facilities and departments. In physicians' offices and some other facilities, on-the-job experience may substitute for formal education.

Education and training. 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. . . .*

* * *

Licensure. All States and the District of Columbia require nursing care facility administrators to have a bachelor's degree, pass a licensing examination, complete a State-approved training program, and pursue continuing education. Some States also require licenses for administrators in assisted-living facilities. A license is not required in other areas of medical and health services management.

(Emphasis added.) In other words, according to the *Handbook*, although a bachelor's degree is often obtained by people in smaller facilities and departments, a bachelor's degree in a *specific specialty* is not normally required, and, moreover, physicians' offices (like the petitioner) "hire those with on-the-job experience instead of formal education." In light of this information, the proffered position's inclusion in the Health Services Managers occupational classification is not sufficient in itself to establish that it requires a minimum of a bachelor's degree, or the equivalent, in a specific specialty. So, to satisfy this criterion, the petitioner must submit sufficient evidence to establish that its particular health services manager position is such that its actual performance requirements necessitates a minimum of a bachelor's degree, or the equivalent, in a specific specialty. This the petitioner has failed to do.

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. *See generally 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.

As the *Handbook* indicates that on-the-job experience is usually acceptable for employment as medical and health services managers in physicians' offices, the AAO concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty.

Accordingly, the AAO finds that the petitioner has failed to establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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. As discussed previously, the petitioner failed to demonstrate that the advertisements submitted are from organizations similar to the petitioner. Moreover, the advertisements indicate that a wide variety of credentials are acceptable for medical office managers. As a result, the petitioner has not established a degree requirement in parallel positions.

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 refute the *Handbook's* information to the effect that a bachelor's degree in a specific specialty or its equivalent is not required. The record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than medical office manager positions that can be performed by persons without a specialty degree or its equivalent.

The petitioner did not indicate that anyone was previously employed in the proffered position. As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).¹

¹ 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

The fourth alternative 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree or its equivalent in a specific specialty.

The AAO finds that, to the extent that the petitioner has identified and described them, the duties of its particular position appear no more specialized and complex than a routine spectrum of duties common to a small medical office. As reflected in this decision's earlier discussion of the *Handbook's* information, attainment of a bachelor's or higher degree in a specific specialty is not usually associated with the knowledge required to perform such duties. Accordingly, the AAO finds that the petitioner has also failed to satisfy the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Additionally, the AAO notes that the petitioner stated that the bachelor's degree it allegedly requires for the proffered position could be in business administration. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary 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. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean 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).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The appeal will be dismissed and the petition denied. 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.

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.

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