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**U.S. Department of Justice**

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

File: LIN 01 205 56088 Office: NEBRASKA SERVICE CENTER Date: JAN 22 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is an Idaho nonprofit corporation that employs 91 employees with a gross annual income of $10.5 million. It seeks to temporarily employ the beneficiary as a Community Resource Developer for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts the proffered position is a specialty occupation and that permitting the beneficiary to change non-immigrant status would be a proper exercise of Service discretion under 8 C.F.R. 218.1(b).

Section 214(i)(l) of the Act, 8 U.S.C. 1184 (i)(l), 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.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

The issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

1. A baccalaureate or higher degree or its equivalent

is normally the minimum requirement for entry into the particular position;

2. The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

3. The employer normally requires a degree or its equivalent for the position; or

4. The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In the original petition received by the Service Center on June 22, 2001, the petitioner stated that the beneficiary would work as a Community Resource Coordinator. The petitioner stated the following initial duties: "Program, screen, interview, supervise and assign duties. Organize a volunteer appreciation event." The petitioner expanded on these duties as follows:

> Will develop a Volunteer Program, recruiting, screening, interviewing, assigning duties and supervision. Will develop a policy and procedure manual for all volunteers. She will develop job descriptions for all volunteer positions. She will organize a volunteer appreciation event; publish a monthly volunteer newsletter, maintain a volunteer bulletin board; coordinate volunteer assignments and activities with staff to promote the goals of the resettlement program; develop a network of resources in the community that are necessary to the resettlement goals (furniture, household items, cars, cloths, food); arranges the pickup of donations and delivery to refuge home or storage unit; maintains storage unit; fundraising; give public presentations to inform, recruit and educate the community about refugees and the ANA program; will keep accurate and complete records of contacts made and results obtained.

The petitioner also submitted the beneficiary's INS entry form I-94 that indicated she entered the United States on September 15, 1999 as an F-1 student. Other documents submitted included the employment agreement between the petitioner and the beneficiary, the beneficiary's resume, a two page document with financial information on the petitioner and its nonprofit status, a twelve page document that outlined an agreement between Idaho State University and the petitioner for a federally-funded services program, the beneficiary's bachelor's diploma from Northwest Nazarene University, the beneficiary's biographical information page from her Georgian passport, and a copy of the United States

visa in her passport. Also submitted was a copy of the INS Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, that indicated the beneficiary had been accepted for studies at Northwest Nazarene College from March 25, 1996 to June 2000. The I-20 was stamped "F-1" and "D/S". On the second page of the I-20, a person identified as [redacted] wrote the following text dated September 7, 2000:

> [The beneficiary] has completed a Bachelor of Arts in Political Science, History, and International Studies. Her graduation date was May 27, 2000. She is approved optional practical training in an occupation directly related to her major studies. Her training will begin July 14, 2000 and will end July 14, 2001. Hours are 36-40 per week.

On September 18, 2001, the director requested further evidence noted that the beneficiary was eligible for optional practical training. The director requested a photocopy of the beneficiary's Employment Authorization Document (EAD) or other evidence that the beneficiary had maintained valid nonimmigrant status. The director also requested a complete copy of the beneficiary's college transcript to establish that the beneficiary had completed a specific course of education that had a direct correlation to the duties of the proffered position. Finally the director asked for evidence that the proffered position met any of the criteria outlined in 8 C.F.R. 214.2 (h)(4)(iii)(A).

On December 10, 2001, counsel submitted the following information items:

Form I-538 Certification by Designated School Official, and Form I-765 Application for Employment Authorization, which were both dated September 7, 2000.

A completed copy of the beneficiary's college transcript

A letter from Christina Bruce-Bennison, Director, Agency For New Americans, (ANA) that stated the beneficiary's position required a bachelor's degree.

Two resumes were enclosed with the ANA letter. One resume was for the present director who performed the duties of Community Resource Coordinator for two years. She had a bachelor's degree in Political Science received in 1991, and a masters in International Educational Development received in 1998. The second resume was for [redacted] who received a bachelor's degree in Sociology/Anthropology in the spring of 1998. Written on the resume is the comment that [redacted] had worked with the ANA from October 1999 to June of 2000. [redacted] position with the ANA was not identified.

On January 17, 2002, the director denied the petition and stated that the petitioner had not provided sufficient information to establish that the ANA is a firm similar to the petitioner, or that the positions mentioned in the letter were parallel positions to the proffered position. The director determined that the petitioner had not established any of the criteria outlined in 8 C.F.R. 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position is with the Mountain States refugee resettlement program known as "Agency for New Americans". (ANA) Counsel clarifies that the ANA is an activity of Mountain States Group, rather than a separate limited liability entity. Counsel states that "ANA provides the initial reception and placement services to newly arrived refugees in the Boise area, including the provision of food and clothing, furnishings, making transportation arrangements and monitoring job searches for all employable adult refugees." Counsel further submits that the submitted letter from the ANA is evidence that a bachelor's degree is the normal requirement for the proffered position and that the copies of the resume and of the one degree of a previous Resource Coordinator are evidence that the position qualifies as a specialty occupation.

Counsel also submits further information on the beneficiary's present legal status, and the prior attempts to get her work permit. Counsel states that when the designation student officer annotated the beneficiary's INS Form I-20 with regard to optional practical training, the beneficiary thought her employment authorization document had been approved. Counsel also asserts that the school authority informed her that there was nothing further the beneficiary needed to do in order for the work permit to be approved. Counsel maintains the beneficiary submitted a change of address form to the Service after her move to another residence, but heard nothing from the Service with regard to her application for an employment authorization document. Counsel further states that the beneficiary did not know that her application for employment authorization had been denied until the Service denied the petitioner's H-1B petition on January 17, 2002. This denial notice stated that the beneficiary's application of employment authorization had been denied on January 16, 2001.

Upon review of the record, a basic distinction can be made between the reasoning underlying the director's decision and the petitioner's assertions and documentation of prior or present ANA employee educational backgrounds. 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. [1]

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[1] The court in Defensor v. Meissner observed that the four criteria at 8 C.F.R. 214.2 (h)(4)(iii)(A) present certain

As stated previously, the statute establishes that the petitioner must show that the proffered position requires a baccalaureate degree or higher, or the equivalent, in a specific specialty. (Emphasis added.) To interpret the criteria in 8 C.F.R. 214.2(h)(4)(iii) (A) as solely requiring a bachelor's degree is an incorrect interpretation.

Factors often considered by the Service when determining the industry standard include: whether Department of Labor's (DOL) Occupation Outlook Handbook (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." Shanti, Inc. v. Reno, 36 F.Supp.2d 1151, 1165 (D.Min. 1999)(quoting Hird/Blaker Corp. v. Slattery, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

Based on the petitioner's description of the proffered position, which does not indicate that the beneficiary will provide direct social services to refugees, but rather will direct volunteers in program activities, the Handbook classification of Social and Community Service Manager appears to be most analogous to the proffered position. Limited information is given in the Handbook on this classification. Another related classification is Social and Human Service Assistants. Persons in this classification appear to provide both direct and indirect social services. Neither classification mirrors precisely the duties of the proffered position, but rather contains some elements of the job.

The Department of Labor's Occupational Outlook Handbook, (Handbook) 2002-2003 Edition, on page 595 states the following for the duties of social and community service managers:

> Plan, organize, or coordinate the activities of a social service program or community outreach organization. Oversee the program or organization's budget and policies regarding participant involvement, program requirements, and benefits. Work may involve directing social workers, counselors, or probation officers.

With regard to training in this classification, the Handbook notes that the most significant source of training is a bachelor's degree.

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ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See Defensor v. Meissner 201 F.3d 388 (5th Cir. 2000)

The Handbook on page 158-159 states the following about Social and Human Service Assistants:

> Social and human service assistant is a generic term for people with various job titles, including human service worker, case management aide, social work assistant, community support worker, mental health aide, community outreach worker, life skills counselor, or gerontology aide. . . . Social and human service assistants provide direct and indirect client services. They assess client's needs, establish their eligibility for benefits and services, and help clients obtain them. . . . Social and human service assistants play a variety of roles in a community. They may organize and lead group activities. . . or administer a food back or emergency fuel program.

With regard to training, other qualifications and advancement, on page, 159, the Handbook states:

> While a bachelor's degree usually is not required for entry into this occupation, employers increasingly seek individuals with relevant work experience or education beyond high school. . . .Educational attainment often influences the kind of work employees may be assigned and the degree of responsibility that may be entrusted to them. For example, workers with no more than a high school education are likely to receive on-the-job training to work in direct-care services, while employees with a college degree might be assigned to do supportive counseling, coordinate program activities, or manage a group home.

The employment trends as suggested by these two Handbook classifications appear to be that employers require a bachelor's degree to manage a social services organization, while employers of social sciences services employees providing direct services would use a range of employees and base the job duties of individuals on their respective educational level. Neither classification supports the statutory requirement that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the Community Resource Coordinator position. (Emphasis added.) Without more compelling evidence, the petitioner has not established the first criterion of 8 C.F.R. §214.2(h)(4)(iii)(A)

With regard to the second criterion, namely, that the degree requirement is common to the industry in parallel positions, the petitioner submitted no documentation. As clarified by counsel, the letter from the ANA was not documentation on parallel positions, but rather a letter from the beneficiary's employer while she performed optional practical training.

With regard to the third criterion, namely, that the employer normally requires a degree or its equivalent for the proffered position, to date, the petitioner has submitted information on former and present ANA employees. Nevertheless, this evidence is not persuasive that the petitioner requires a bachelor's degree in a specific specialty. The bachelor's degree for one former ANA employee is in Anthropology, while the bachelor's degree for the former Resource Coordinator is Political Science. To date no evidence is on the record that the petitioner requires a degree or its equivalent in a specific specialty. The petitioner has not established the third criterion.

With regard to the final criterion, namely 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 proffered position does not appear to have the managerial elements outlined in the Handbook classification for social and community service managers. In other words, the beneficiary is not managing the entire organization, but rather coordinating activities with regard to refugee resettlement. Although the proffered position has numerous duties of a fundamentally worthwhile nature, the number of duties or the detailed nature of them would not establish that they are either specialized or complex. Without more compelling testimony, the petitioner has not established the specialized and complex nature of the duties to be performed by the beneficiary.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.