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U.S. Department of Justice

Immigration and Naturalization Service

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

File: LIN-00-076-50882 Office: Nebraska Service Center

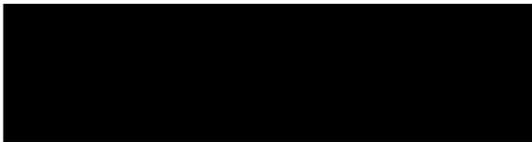
Date: OCT 07 2002

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)

IN BEHALF OF PETITIONER:



PUBLIC COPY

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. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner for Examinations on motion to reopen and reconsider. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed.

The petitioner is a travel agency that also provides freight forwarding and foreign exchange trading services. It employs four individuals and has a stated gross annual income of \$352,587. It seeks to employ the beneficiary as a travel manager (project director) for a period of three years. The director determined that the petitioner had not established that the offered position qualifies as a specialty occupation.

On appeal, counsel indicated that a brief and/or evidence would be forthcoming within thirty days.

The Associate Commissioner determined that neither counsel nor the petitioner had submitted any material addressing the basis of the director's denial and summarily dismissed the appeal reasoning that the petitioner had failed to identify any erroneous conclusion or statement of fact for the appeal.

On motion, counsel submits a brief and sufficient documentation to establish that a good faith effort was made to provide the brief to the Service within the thirty day period noted above. Within the brief, counsel argues that job advertisements for similar positions with other travel agencies clearly establish that a baccalaureate degree is required for employment in the offered job. Counsel asserts that the job advertisements provide evidence that the degree requirement is an industry standard. Counsel contends that 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. Counsel cites several court decisions in support of the arguments put forth on motion.

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 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.

Counsel's statements on motion are not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a letter which accompanied the initial I-129 petition, the petitioner described the duties of the beneficiary in the offered position as follows:

[The beneficiary] will design and plan programs and arrange tours for our clients which include universities, professional organizations, societies and businesses. [The beneficiary] will design wholesale tour packages by providing the necessary research of highly specialized source material. This data is not readily available and requires knowledge of research methods. She will meet with the client management to assess their requirements and assist them in refining their requirements, and she will, as required, provide the necessary information on particular business practices in the locale to which travel is intended. This includes training not only in business practices but in cultural and personal relations. [The beneficiary] will also package tours for specific groups that will provide cultural, educational and professional experience. This at times includes locating experts and personalities in the foreign [sic] country as well as translators. [The beneficiary] will analyze current tour management operations and personnel policy to provide improved methods of managing existing business and with the goal of reducing waste, improving communications, marketing and sales and consolidating overhead expenses.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The proffered position appears to combine the duties of a top executive such as a general or operations manager, with those of a travel agent. The Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, at page 87, describes the duties of a general managers and operations managers as follows;

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified as one area of management or administration such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers overlap the duties of chief executive officers.

The Handbook finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a top executive such as a general or operations manager. Degrees in business and in liberal arts fields appear equally welcome. In addition, certain personal qualities and participation in in-house training programs are often considered as important as a specific formal academic background.

Additionally, the Handbook at pages 376-378, does not list any requirement of a baccalaureate degree in a specialized area for employment as a travel agent. The minimum requirement is a high school diploma or its equivalent for entry into travel agent positions. As technology and computerization are having a profound effect on the work of travel agents, some form of specialized training, such as that offered in many vocational schools and adult public education programs, is becoming increasingly important. Here again, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background. In view of the foregoing, it is concluded that the petitioner has not demonstrated that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

Counsel argues that the proffered position is similar to the position of a project director, and that this position has a

specific vocational preparation (SVP) code of 8 in the DOL's Dictionary of Occupational Titles (DOT). Counsel asserts that an SVP level of 8 reflects a requirement of at least a baccalaureate degree in a specialized field for employment in the position of art appraiser. However, the primary duties of the proffered position are essentially a combination of those of a general or operations manager and those of a travel agent. Furthermore, neither counsel nor the petitioner has provided any evidence to establish either what constitutes the specific duties of a project director or that any uniform standard exists to define the position. Even if the duties of the position of a project director were to be clearly established, a reference in the DOT, standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations.

Counsel argues that the degree requirement is common to the industry in parallel positions among similar organizations. In an attempt to provide evidence of an industry standard, counsel has submitted photocopies of eleven job listings for travel manager and project director positions from various internet web-sites. However, a review of these job listings shows that the five job listings for the position of project director are for companies performing services completely unrelated to the travel, freight forwarding, and foreign exchange services provided by the petitioner. Furthermore, two of the six job listings for travel manager positions state that a college degree is preferred, while the remainder list a requirement for a bachelor's degree without indicating that such degree be in a particular discipline. Therefore, these job listings cannot be considered as sufficient to demonstrate the existence of an industry standard requiring a baccalaureate or higher degree in a specialized area of study for employment as a travel manager (project director). Accordingly, it cannot be concluded that the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees for the offered position.

Counsel contends that 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. Counsel further argues that the proffered position is a specialty occupation because it can be considered professional based on the complexity of its duties alone. To support these arguments, counsel cites the holdings reached in the following decisions: American Biotech, Inc. v. INS, CIV-2-88-262 (E.D. Tenn. March 27, 1989); Matter of Caron International, 19 I. & N. Dec. 791 (Comm. 1988); Young China Daily v. Chappell, 742 F. Supp. 522 (N.D. Cal. 1989); Matter of Sun, 12 I. & N. Dec. 535 (Reg. Comm. 1967); Matter of Asuncion, 11 I. & N. Dec. 660 at 663 (Reg. Comm. 1966); Matter of Shin, 11 I. & N. Dec. 686 (D.D. 1966); Matter of Saini, 12 I. & N. Dec. 20 (D.D. 1966); Hong Kong T.V. Video Program, Inc. v. Ilchert, 685 F. Supp. 712 (N.D. Cal. 1988); and, Matter of International, Inc., 19 I. & N. Dec. 791 (Comm. 1988). However, all of these decisions dealt with membership in the professions, not membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes the cited decisions.

Counsel's contention that the nature of the proposed duties is so specialized and complex that the knowledge required to perform such duties is usually associated with the attainment of at least a baccalaureate degree is not relevant. As noted above, an analysis of the specific duties of the offered position in conjunction with the petitioner's business operations demonstrates that the proffered position combines the duties of a general or operations manager with those of a travel agent. The Handbook does not provide any indication that a baccalaureate degree in a specialized area is required for employment in any of these positions. Consequently, the petitioner has failed to establish that the nature of the beneficiary's proposed 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 in a specific specialty.

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.

ORDER: The previous decision dated August 8, 2001, by the Associate Commissioner dismissing the appeal is affirmed.