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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: EAC-00-121-53136 Office: Vermont Service Center

Date: SEP 25 2002

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)

**PUBLIC COPY**

IN BEHALF OF PETITIONER:



**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 and a subsequent motion to reopen and reconsider were both denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wholesale and retail travel agent providing airline consolidation services with eight employees and a stated gross annual income of \$3 million. It seeks to employ the beneficiary as an operations manager-customer service for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement, a statement from the petitioner's president, and additional documentation.

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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate or higher degree in a specialized area was a normal requirement for employment in the proffered position. On appeal, counsel argues that the offered position is similar in nature to the positions of an administrative services manager and a marketing manager. The petitioner provides a revised description of position's duties and argues that the offered job is generally considered to be professional in nature. The petitioner asserts that all of its current employees possess bachelor's degrees.

The petitioner's argument that positions similar to the proffered position are considered professional in nature is not persuasive. The Service does not use either the characterization of a position as a profession or the title of a position to determine 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 that accompanied the initial I-129 petition, the petitioner's president described the duties of the offered position as follows:

The duties of the job offered are to establish procedures, systems and forms with reference to the Customer Service Department of the travel agency to ensure that customers receive the best possible service. The operations manager-customer service reviews the work of employees who process orders and have a direct contact with retail customers and wholesale ticket providers. The operations manager-customer service department prepares general correspondence with retail customers and wholesale providers to maintain proper customer relationships. He maintains a continuous liaison with top airline executives to obtain the best value in tickets and at the same time seek more accounts from airlines. The operations manager-customer service department maintains contact with executives in the hospitality industry including hotels, motels, car rental, cruise lines and tour site operators to obtain the best ticket pricing for customers of the agency. The operations manager-customer service department holds weekly meetings and travel seminars with staff of the travel agency to advise them of customer service contact procedures and new pricing packages available for customer benefit and will coordinate the duties of customer contact representatives regarding pricing and scheduling. Also, the operations manager-customer service department meets with executives of corporations to obtain new accounts for travel agency and interacts with the South Asian ethnic community in the U.S. to obtain additional business. The operations manager-customer service will be required to analyze existing forms and methods to promote effective operations through standardization, improvement simplification, discontinuance or other methods of current procedures.

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 marketing manager, with those of an administrative services manager and a travel agent. A review of the Department of Labor's Occupational Outlook Handbook (Handbook), 2002-2003 edition, at pages 26-29 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing manager positions. Some employers prefer a bachelor's or master's degree in public relations or journalism, but bachelor's degrees in various liberal arts fields are also acceptable. In addition, certain personal qualities and participation in in-house training programs are often considered as significant as the beneficiary's specific educational background.

Similarly, a review of the Handbook at pages 24-26, also finds no requirement of a baccalaureate degree in a specialized area for employment as an administrative services manager. Some administrative services managers hold baccalaureate degrees in a variety of fields of study while others hold an associate degree or high school diploma. Moreover, it appears experience is as valued as education by employers regardless of the enterprise's size as the Handbook states:

In small organizations, experience may be the only requirement needed to enter a position as an office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative service managers normally are hired from outside, and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

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 degree requirement is common to the industry in parallel positions among similar organizations. In an attempt to provide evidence of an industry standard, the petitioner submits a letter signed by Anu Kapoor, president of Jwala Travel, Inc., in Jackson Heights, New York. However, the writer of this letter states only that a bachelor's degree is required for employment in positions such as the offered job, without specifying that such degree be in any particular discipline. Furthermore, one letter cannot be considered to sufficient evidence of an industry standard. 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 contends that all of its current employees possess bachelor's degrees. However, the petitioner has failed to submit any evidence which would tend to support such a claim. Therefore, 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.

The assertion by the petitioner 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 in tourism administration or a related field is not persuasive. 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 marketing manager with those of an administrative services manager and 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.

Beyond the decision of the director, the labor condition application submitted by the petitioner was certified on March 16,

2000, a date subsequent to March 14, 2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.