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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 MASS. 3/F  
Washington, D.C. 20536



AUG 28 2003



File: EAC 02 209 52987 Office: NEBRASKA SERVICE CENTER Date:

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:



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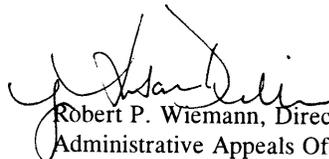
INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates a travel agency. It has three employees and a gross annual income of \$700,000. The petitioner seeks to employ the beneficiary as a tour supervisor for a period of three years. The director determined that the proffered position was not a specialty occupation. On appeal, the petitioner expands on the duties of the proffered position and asserts that the subject position is a specialty occupation.

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), provides in part for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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 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 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 petitioner provided the following job description with the filing of its I-129 petition:

Supervising and organizing tours to India, Pakistan, Bangladesh and other South Asian Countries. Responsible for planning, coordinating, organizing and even

conducting selected tours (if and when required); making tours [sic] arrangements for travel and accommodations for the Groups/FIT'S. Making presentations to organizations and corporations regarding tours. Negotiates contracts with Vendors of tour services. Train tour guides regarding company policies. Prepare cost efficient budgeting regarding tours. Establish analytical procedure for effective Internal Control. Answer queries when desired by Senior Accountant.

Fluent to [sic] speak[ing] and writ[ing] English, [and] any two of the Asian Languages. Ability to train the Interns in tourism. Experienced in business practices of Indian Sub-Continents [sic], ability to adapt the new environments of new regions of operations.

Subsequent to the filing of the initiating petition, the director requested additional evidence from the petitioner. Specifically, the petitioner was asked, in part, to provide evidence that the proffered position qualified as a specialty occupation. A more detailed description of the beneficiary's duties and responsibilities was requested. In response to that request, the petitioner stated as follows:

**SPECIALTY OCCUPATION AS A NEED**

Travel and tourism is an occupation which demands in-depth knowledge of art, culture, demography, geography, history, foreign and local languages, economies in the areas of operation, marketing skills, handling international as well as domestic tours and other related services. This also requires a sound knowledge of entire operation of international and domestic ticketing viz; fare construction, reservations, liaison, presentation and negotiations with various organizations, costing & budgeting, interaction with travelers to work out their itineraries, travel plans etc. All these key factors of the trade are expected of a holder of baccalaureate degree with at least 4 years of practical experience in the travel trade. . . .

The petitioner further noted that three of four company employees held baccalaureate degrees, and the non-degreed employee had over 32 years of experience in the travel industry. A review of employee credentials, however, indicates that three employees hold bachelor's degrees, and one holds an associate degree.

The position offered is essentially that of a travel agent. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 376, the duties of a travel agent are described as follows:

In general, travel agents give advice on destinations

and make arrangements for transportation, hotel accommodations, car rentals, tours, and recreation. They also may advise on weather conditions, restaurants, tourist attractions, and recreation. For international travel, agents also provide information on customs regulations, required papers (passports, visas, and certificates of vaccinations), and currency exchange rates.

Travel agents consult a variety of published and computer-based sources for information on departure and arrival times, fares and hotel ratings and accommodations. . . .

Travel agents also promote their services, using telemarketing, direct mail, and the Internet. They make presentations to social and special interest groups, arrange advertising displays, and suggest company-sponsored trips to business managers. . . .

A high school diploma, or its equivalent, is the minimum requirement for entry into the position. *Id.* at 377.

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 qualify the offered position as a specialty occupation. First, a baccalaureate or higher degree, or its equivalent, is not the minimum requirement for entry into the position. Second, a degree requirement is not common to the industry in parallel positions among similar organizations, and the petitioner has not established that the proffered position is so complex or unique that it can be

performed only by an individual with a degree. Third, the evidence does not indicate that the petitioner normally requires a degree, or its equivalent, for the position. Finally, the nature of the specific duties of the position are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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 and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed.