

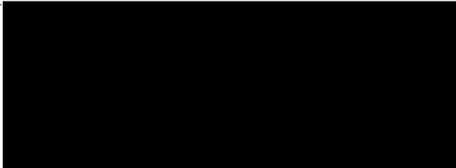
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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



File: LIN 02 119 53079

Office: NEBRASKA SERVICE CENTER Date:

JUN 03 2003

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:



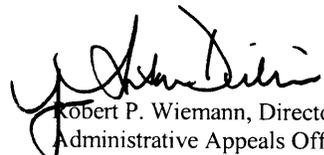
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a travel agency with four employees and a stated gross annual income of \$1,778,080. It seeks to employ the beneficiary as a marketing and travel sales manager 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 brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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 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 found that the position is that of a travel agent, an occupation that does not normally require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the proffered position qualifies as a specialty occupation because it is a professional, managerial

job requiring at least a bachelor's degree with a "management concentration." Counsel claims that the petitioner requires a baccalaureate degree in a specific specialty for the position.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Making and managing travel reservations (air, car and hotel); issuance of airline tickets; prepare arrangements for tour and cruise packages, including package tours and group tours; sale of flight insurance; promotions including on sale/discount airfare and advertising package; media/promotional management of company; advertising in the Thai market and management of company web page;

Supervises and coordinates activities of personnel engaged in selling tickets for scheduled airline flights. Instructs and trains agents. Managing sales and marketing; Includes market research and analysis; Examines and analyzes statistical data to forecast future marketing trends. Gathers data on competitors and analyzes prices, sales, and methods of marketing and distribution. Collects data on customer preferences and buying habits. Prepares reports and graphic illustrations of findings.

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 failed to establish that any of the four factors enumerated above are present in this proceeding.

The proffered position appears to combine the duties of a marketing manager with those of a travel agent. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at pages 26-29 finds no requirement of a baccalaureate degree in a specific specialty for employment as a marketing manager. A wide range of educational backgrounds are considered suitable for entry into marketing manager positions. Although some employers seek individuals with a bachelor's or master's degree in business administration with emphasis on marketing, many employers prefer those with experience in related occupations plus a broad liberal arts background.

Similarly, a review of the *Handbook* at pages 376-368 finds no requirement of a baccalaureate degree in a specific specialty for employment as a travel agent. The normal minimum requirement for this job is a high school diploma or the equivalent. 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. Additionally, 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 baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

The petitioner has not submitted any evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

Additionally, the petitioner has not shown that it required a baccalaureate degree in a specific specialty as part of the hiring process for the proffered position. In a letter that accompanied

the initial I-129 petition, Vicki Sanpitak, the owner and manager of Angel Tours, specifically stated:

Since this position is highly specialized and pivotal to the success of Angel Tours, the Marketing and Travel Sales Manager candidate should, at the very least, possess a Bachelor's Degree **in any liberal arts field.** (Emphasis added.)

While counsel explains on appeal that Ms. [REDACTED] made this statement with the assumption that the degree would "have a focus on "management," neither counsel nor the petitioner has submitted any evidence to corroborate this statement. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, it was held in *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988) and *Matter of Ramirez-Sanchez*, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

Finally, the petitioner has not demonstrated that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

Although the petitioner indicates that the holder of this position must speak Thai and understand Thai culture, no evidence has been submitted to show that a baccalaureate degree in a specific specialty is necessary for this aspect of the job's duties. While the beneficiary may very well be fluent in Thai and familiar with Thai culture, she does not possess a formal degree in these subjects. Her familiarity with the Thai language and culture derives from the fact that she is a native and citizen of that country.

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 decision of the director will not be disturbed.

ORDER: The appeal is dismissed.