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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

[REDACTED]

JUN 13, 2003

File: EAC-02-086-52980 Office: VERMONT 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:

[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 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a motel with four employees and an approximate gross annual income of \$220,000. It seeks to employ the beneficiary as a business development 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.

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 nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that she is submitting more recent Internet job advertisements to demonstrate that a baccalaureate degree or its equivalent is normally the minimum requirement for positions similar to the proffered one. Counsel also submits evidence to show that the Bureau has previously granted H-1B status for new positions within the petitioning organization. Counsel additionally states that the proposed duties are so complex that specialized knowledge in marketing and management is required. Counsel asserts that if the Bureau does not consider the proffered position to be a specialty occupation, the petition still should

be approved because the proffered position clearly qualifies as a transition occupation. Counsel further states that the Bureau has approved petitions for business development managers and analysts in the past.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- Establish and maintain contact with clients for long-term association; Ensure client's on-going satisfaction of [sic] our services;
- Drive business development analysis and financial and operational reporting; Design and develop business models and sales plans to meet specified goals and budgets;
- Implement marketing policy and maintain sales; Prepare budgets for advertising, new service kickoff, and expansion plans with General Manager;
- Research market trends and perform competitive analysis in the Service Industry; Research new services to offer and handle kickoff of new services;
- Responsible for daily routine business, including bank reconciliation, budgeting, forecasting, inventory, billing, accounts payable/receivable, payroll;
- Develop new business channels for the company to acquire and establish new motels;
- Create new and cost-effective methods of evaluating business procedures and systems, through the use of online technology.

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.

First, the Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in business administration or a related field. The proffered position is primarily that of a marketing manager or market research manager. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate degree in a specific specialty for employment as a marketing manager or market research manager. Rather, most employers prefer a wide range of educational backgrounds or promote individuals from within companies.

Counsel's assertion that the proffered position "clearly qualifies as a transition occupation," and, therefore, should be approved is not supported by any evidence. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In view of the foregoing, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as business administration, for the offered position. Third, the Internet job advertisements submitted by counsel on appeal, are noted. None of these job advertisements, however, is for a position in a motel such as the petitioner. Rather, five of the advertisements are for luxury hotels, including one resort. Although these advertisements designate that a baccalaureate degree is required

for the advertised positions, they do not specify a specific field of study. The remaining advertisements are for businesses that are not similar to the petitioner. As such, the petitioner has not presented any persuasive documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. Finally, the petitioner did not demonstrate 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.

Counsel has also submitted letters from the general managers of two hospitality businesses, both of whom state that they have employed individuals for positions similar to the proffered position, and have required such individuals to hold a baccalaureate degree in business administration or an equivalent thereof. The comments of the writers are noted. The writers, however, have not provided evidence in support of their assertions. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings.

Counsel has also submitted evidence of petitions approved by the Bureau for a variety of businesses, only one of which may be similar to the petitioner's business (although information in the record indicates that it had 35 employees compared to the petitioner's four employees). Even if the AAO were to conclude that any of these petitions were similar to the instant petition, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 appeal is dismissed.