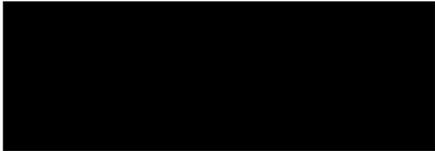


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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

**PUBLIC COPY**

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



**MAR 12 2003**

File: EAC-01-218-53611 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:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a travel agency with six employees and a stated gross annual income of \$200,000. It seeks to employ the beneficiary as a travel agency manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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 term "specialty occupation" is defined at 8 C.F.R. § 214.2(h)(4)(ii), as follows:

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 was a normal requirement for employment in the proffered position. On appeal, counsel argues that the offered position is similar in nature to the position of an administrative services manager. Counsel asserts that the duties of the offered job are so complex and specialized that a bachelor's degree is needed to perform such duties. Counsel contends that all of the petitioner's current employees possess bachelor's degrees.

Counsel's statements on appeal are 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 a letter that accompanied the initial I-129 petition, the petitioner's president described the duties of the beneficiary in the offered position as follows:

Your duties will involve participating in merchandising our company's services, such as sale of airline tickets or packages to the general public, especially to the Korean community in Metro Washington, DC and Maryland Area; planning work schedules for the employees, and some training of new employees in advising customers. You will also be responsible, to a limited extent, for selling travel tickets, packaged and specialized tours, and to advise customers on travel plans.

In response to a subsequent Service (now the Bureau) request for additional information regarding the initial petition, counsel provided the following description of the duties of the proffered position:

...1) weekly meeting with the president to report the last week's figures and results and next week's proposed plan of action, respectively; 2) daily supervision of the three employees - solving customer service problems as they arise; 3) draw up work schedule for 3 employees at the start of the week; 4) coordinate the content, frequency and rate for 8 advertisements in various media ... that is, to negotiate advertising fees and control the content which often changes due to new tour packages; 5) handle ticket price negotiation with Korean Air, the main airline used by the petitioner using the alien's prior work experience at Korean Air; 6) advise customers when needed; 7) may participate in direct selling of tickets and packages when customer traffic is unusually high; and 8) oversee procedures and quality of paperwork in the office and draft weekly report for the president's review.

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 an administrative services 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 24-26, finds no requirement of a baccalaureate degree in a specific specialty 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 specific specialty 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.

The petitioner has failed to submit any evidence demonstrating that businesses similar to it in their type of operations, number of employees, and amount of gross annual income require the services of individuals with bachelor's degrees in a specific specialty in parallel positions.

The petitioner contends that all of its current employees possess bachelor's degrees. However, the petitioner has failed to submit any evidence, such as diplomas or transcripts, that would tend to support such a claim. Even if these individuals held the degrees claimed, these degrees are in a diverse range of subjects including engineering, business management, tourism administration, physical education, Korean history, and home management. Therefore, the petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty for the offered position.

Counsel's assertion that the duties of the offered job are so complex and specialized that a bachelor's degree is needed to perform such duties 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 an administrative services manager with those of a travel agent. The *Handbook* does not provide any indication that a baccalaureate degree in a specific specialty is required for employment in either of these positions. The petitioner appears to place as much if not more value and emphasis on the beneficiary's ability to communicate fluently in Korean and business contacts arising from her prior employment with Korean Air as it places on her degree in performing the duties of the offered job. 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 proffered position of travel agency manager as described by the petitioner is not considered to be a specialty occupation within the meaning of the pertinent regulations. Therefore, the issue of whether the beneficiary is qualified to perform the duties of the offered position has been rendered moot, and need not be discussed 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.