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

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ADMINISTRATIVE APPEALS OFFICE
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Washington, DC 20536



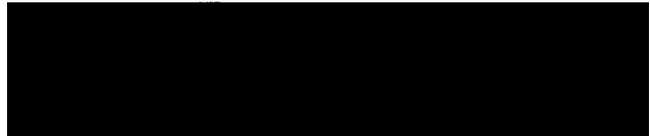
FILE: WAC 01 277 54893 OFFICE: CALIFORNIA SERVICE CENTER

DATE: **NOV 19 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)

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 Citizenship and Immigration Services (CIS) 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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a travel agency that employs one person and has a gross annual income of \$400,000. It seeks to employ the beneficiary as a travel manager. The director denied the petition because he found that the offered position was most similar to that of a travel agent, and thus, did not qualify as a specialty occupation.

On appeal, counsel submits a brief along with copies of previously submitted documents. Counsel states, in part, that the position is not that of travel agent, but is more complex and entails greater responsibility. Counsel asserts that the offered 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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

Section 214(i)(1) of 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 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.

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.

In the original filing of the petition, the petitioner described the proposed duties of the travel manager as follows:

[The beneficiary] will design and plan programs and arrange tours for our clients which include universities, professional organizations, societies and businesses. [The beneficiary] will design wholesale package tours by providing the necessary research of highly specialized source material. This data is not readily available and requires knowledge of research methods. She will meet with client management to assess their requirements and assist them in refining their requirements, and she will, as required, provide the necessary orientation.

[The beneficiary] will provide to the client the necessary information on the particular business practices in the locale to which travel is intended. This includes training not only in business practices

but in cultural and personal relations. [The beneficiary] will also package tours for specific groups that will provide a cultural, educational and professional experience. This at time [sic] includes locating experts and personalities in the foreign country as well as translators. [The beneficiary] will analyze current tour management operations and personnel policy to provide improved methods of managing existing business and with the goal of reducing waste, improving communications, marketing and sales and consolidating overhead expenses.

The director requested further evidence that the offered position of travel manager required the services of an individual with a bachelor's degree or its equivalent in a specific specialty. In response, counsel submitted a letter which includes a breakdown of the time the beneficiary would spend on various duties. The letter otherwise reiterated the information about the position provided with the original petition. Counsel's response also included three Internet job postings for travel manager positions for other companies.

The director found that the job duties listed constitute duties that attach to the position of a travel agent, which is not a specialty occupation. The director noted that the Internet job postings are not shown to be for parallel positions in companies similar to that of the petitioner.

On appeal, counsel asserts that the proffered position meets three of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A), thus qualifying as a specialty occupation.

The AAO turns to an analysis of the evidence under each of the four criteria set forth in the above-mentioned regulatory section.

1. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

Citizenship and Immigration Services (CIS) often consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for definitive guidance in determining educational requirements. The 2002-2003 edition of the *Handbook*, on page 376, provides a description of the duties of a travel agent. The duties of the proffered position are not different from those of a travel agent; they are simply presented in greater detail than in the

Handbook. The proffered position is, thus, that of a travel agent. According to the *Handbook*, the minimum educational requirement to become a travel agent is a high school diploma. The record does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into this 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.

There is no evidence on the record to indicate that the Internet job postings submitted represent parallel positions in organizations similar in size and nature to that of the petitioner. The record does not establish that the proffered position is more complex or unique than other travel agent positions. Duties listed such as, advising clients on local customs and procuring the most cost-efficient arrangements, can be expected of any conscientious travel agent. The evidence does not establish these two alternative criteria.

3. The employer normally requires a degree or its equivalent for the position.

The record contains no evidence to establish this criterion.

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 evidence on record does not establish that the proposed duties are more specialized and complex than those of other travel agents. The record indicates that the proffered position includes supervisory duties; however, there is no evidence regarding what positions and how many employees the beneficiary would supervise. In fact, the petitioner stated that it employs one individual. Although the proffered position may be considered beyond entry level in the travel industry, there is no documentation to show that it cannot be performed by an individual with less than a bachelor's degree. The record does not establish this criterion.

The evidence on record fails to establish that the proffered position qualifies as a specialty occupation.

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. The petition is denied.