

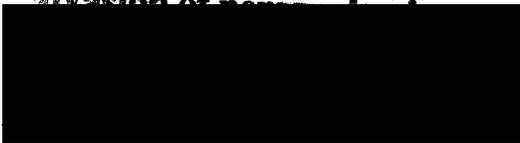
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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
CIS, AAO, 20 MASS, 3/F
Washington, DC 20536

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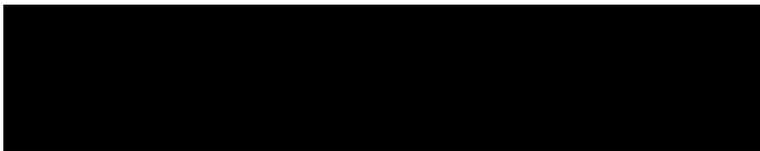
File: LIN 01 225 52733 Office: NEBRASKA SERVICE CENTER Date: OCT 14 2003

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:



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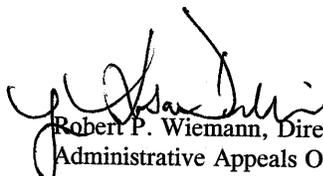
INSTRUCTIONS:

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

The petitioner is a Chicago travel agency with eighteen employees and a gross annual income of \$8,000,000. It seeks to employ the beneficiary as an operations manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel submits a brief in which it asserts that a travel agency operations manager is 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In the original petition received by the Nebraska Service Center on July 20, 2001, the petitioner described the duties of the proffered position as follows:

- Formulate and implement appropriate policies in providing travel services;
- Coordinate with accounting, tours and travel departments to carry out management responsibilities in accordance with the regulations operations and procedures established by the company; [and]
- Motivate, enthuse and guide customer service personnel as they assist clients with their travel needs.

On January 25, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In response, the petitioner submitted a detailed breakdown of the job duties, several job announcements, an informational article, and the Dictionary of Occupational Titles description of the position of a travel agency manager.

On May 22, 2002, the director denied the petition. The director noted that, although the petitioner's position opening notice states that a degree in tourism or management is required, it did not show that the duties are so specialized or complex that only an individual with a bachelor's degree may perform them. The director also found that there was no evidence that the petitioner had previously hired other individuals in the position of operations manager, nor did the documents submitted establish an industry standard requiring a four-year degree in a specialized area for travel agency managers. Finally, regarding the "professional and kindred" DOT classification of the travel agency manager, it was pointed out that the DOT is not considered a persuasive source of information regarding whether a particular job 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.

On appeal, counsel asserts that the proffered position is akin to that of a business analyst and states [the position] "traditionally requires one to have a degree in management." Counsel further states that the position requires travel and tourism knowledge coupled with management and analytical abilities.

Upon review of the record, the petitioner has not articulated a sufficient basis for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

Citizenship and Immigration Services (CIS) often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

A portion of the duties expected of the incumbent are those of a travel agent or supervisory travel agent. The 2002-2003 edition of the *Handbook* indicates that a wide variety of training and educational backgrounds are suitable for entry into this field. The rest of the listed duties appear similar to those of an administrative services manager, as described in the *Handbook*:

These workers manage the many services that allow organizations to operate efficiently, such as . . . administration, payroll, conference planning and travel, information and data processing . . . [and] records management. . . . Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers.

Regarding the training and educational background necessary to enter into the administrative services management field, the *Handbook* states:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. . . . Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience. For managers of audiovisual, graphics, and other technical activities, postsecondary technical school training is preferred. Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance.

To the extent that the *Handbook* does not indicate that employers of administrative services managers or travel agents require a bachelor's degree in a specific specialty for entry into these fields, it does not appear that a bachelor's degree is the minimum requirement for entry into the offered position. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

II. 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

A. Degree Requirement is Common to the Industry

Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree, whether the industry's professional association has made a degree a minimum entry requirement, and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F.Supp.2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F.Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook's* conclusions about a degree requirement for this position were discussed above, and shall not be repeated here. In the instant petition, to establish the industry standard, the petitioner submitted several job announcements as well as an informational article on travel careers. As the director noted in the denial of this petition, only one job announcement was for a position apparently similar to the proffered position, and this required a bachelor's degree, although not in a specific specialty. The director also found the submitted article to be unpersuasive, as it relates to corporate travel managers in medium and large companies, which do not appear to be similar to the petitioner's agency. Accordingly the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the position of an operations manager would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

It appears that the petitioner has not hired anyone previously for the proffered position. Without more persuasive evidence, the petitioner has not established this criterion.

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has placed no information on the record with regard to the specialized and complex nature of the proffered position at its travel agency. Without more persuasive evidence as to the specialized or complex nature of the operations manager position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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 appeal will be dismissed.

ORDER: The appeal is dismissed.