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Citizenship and Immigration Services

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DA

ADMINISTRATIVE APPEALS OFFICE
IS, 20, 20th SS, 3/F
425 I Street, N.W.
Washington, DC 20536



OCT 20 2003

File: WAC 01 065 51278 Office: CALIFORNIA SERVICE CENTER Date:

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:



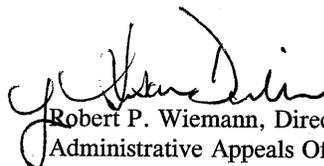
INSTRUCTIONS:

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 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, California Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a San Francisco events management company. It has 118 employees and a gross annual income of \$65,000,000. It seeks to temporarily employ the beneficiary as a contract specialist/events planner for a period of three years. The director determined that: (1) the proffered position was not a specialty occupation, and (2) the beneficiary was not qualified to perform the duties of the proffered position.

On appeal, counsel asserts that the position of contract specialist in the context of the petitioner's business is a specialty occupation. Counsel also provides additional documentation with regard to the beneficiary's qualifications to perform the duties of the position.

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 first 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 California Service Center on December 15, 2000, the petitioner described the duties of the proffered position as follows:

Act as a liaison between company and suppliers to ensure fulfillment of obligations by the contractors. Negotiate, [and] administrate [sic] contracts with suppliers, draw the procurement contract proposals and bids, evaluate and monitor contract performance in order to determine necessity for amendment or extensions [of contracts], and [for] compliance to contractual obligations. Liaison w[ith] internal EEG[.]

The petitioner also provided the following additional information with regard to the position in its cover letter: "[The beneficiary will act as] liaison with internal EEG [Enterprise Events Group] departments ([r]esearch & [d]evelopment, [r]egistration, [i]nformation [s]ystems, and [a]ccounting). [The beneficiary will] coordinate internal team and communication process in conjunction with [the r]egistration [p]roject [m]anager and [the a]ir [p]roject [m]anager."

On May 19, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested a detailed statement on the beneficiary's proposed duties and responsibilities and the percentage of time that the beneficiary would spend performing the specific duties each day. The director also requested more evidence with regard to whether the petitioner and other companies within the petitioner's industry required a bachelor degree in a specific field of study for entry into closely related positions. The director also requested the employment history of former employees, who had held the same position and who had baccalaureate degrees, including their names and dates of employment.

In response, the petitioner stated that the beneficiary would be consulting with corporations at the highest level of the

technology industry as she developed event contracts for sales conferences, software product launches, and annual meetings. The petitioner expanded on the job duties of the proffered position as follows:

[The beneficiary] will be required to analyze the price proposals and determine [their] reasonableness and evaluate, negotiate[,] and enter into contracts with corporate clients. In order to properly negotiate these contracts, the individual should be familiar with the product the client is promoting. Everything from site selection [and] hotel negotiations, to theme development will need to be organized. The client will need someone with in-depth experience in these areas to organize the contract and the fulfillment service, and to ensure that the system runs smoothly. The [c]ontract specialist must be able to market each individual client through understanding of the product. Moreover, the individual must be able to understand the requirements of the clients in order to successfully plan the promotion. Only with this knowledge can the product be effectively promoted and the outcome of the event successful.

It is imperative that we have someone who can provide this company with a full report on each contract and also guide us through the complex procedures of negotiating contracts within the [t]echnology industry.

As the individual will be negotiating complex contracts and dealing with corporate heads of these technology companies, it is imperative that we have someone who has acquired the necessary education to be able to deal directly with these individuals. [The beneficiary] has obtained the equivalent to [sic] a [b]achelor [d]egree in [b]usiness [a]dministration.

On January 1, 2002, the director denied the petition. The director stated that the duties of the position appeared to be managerial in nature, and did not meet any of the four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). The director categorized the proffered position as analogous to a contract specialist as described in the *Handbook* classification of purchasing managers, buyers and purchasing agents.

On appeal, counsel states that the *Handbook* classification used by the director was not an accurate assessment of the job duties and necessary qualifications for the proffered position. The petitioner presents the following additional clarification of the duties of the proffered position:

The position of [c]ontract [s]pecialist] with an emphasis on project management is an integral position within not only our company, but also the event

management field itself. The primary responsibility of this position is the ownership and management of specific target accounts within the company. This individual is highly regarded by tour companies, destination management companies, hotel properties, and vendors. This person specializes in the planning of corporate events and meetings which includes:

Handling all negotiations with the client and [with] all third party vendors, which include, but are not limited to, hotels, destination management companies, tour companies, transportation companies, airlines, and other service providers.

Cultivating and maintaining relationships with clients[.]

Generating sales for new business[.]

Creating program costing, planning, and development[.]

Manag[ing] program budget, invoicing, and schedul[ing] of payments to client[.]

[Administering] [c]ontract for programs with client and also third party vendors[.]

[Reconciling] [f]inanc[es] of program upon completion[.]

Account[ing] for profitability of programs[.]

[Being] main point of contact for all internal and external individuals involved with program[.]

Counsel submits five letters of recommendation from the beneficiary's previous employers and clients. Counsel states that these letters exhibit the beneficiary's progressively responsible experience in the field of event management. In addition, counsel states that the beneficiary's specific knowledge of Australia is of extreme importance to the petitioner since half of the petitioner's yearly programs are in Australia. Finally, counsel submits thirteen vacancy announcements for contract specialist positions. These vacancy announcements range from positions with the General Services Administration, a federal government agency, to GPU Energy, a company identified as a provider of energy-related infrastructure services in Reading, Pennsylvania.

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.

Upon review of the record, the proffered position appears to be that of events planner, with major responsibilities in contract negotiation and monitoring. As such it is an amalgam position containing elements of a short-term contract specialist, a hotel or travel manager, and an events planner. While the director made reference to the *Handbook's* classification of purchasing managers, buyers and purchasing agents with regard to the duties and training requirements for the proffered position, this classification is seen as only peripherally relevant to the proffered position. In fact, the *Handbook* does not contain a classification that is analogous to the proffered position.

In addition, none of the elements of the proffered position appear to require a minimum of a baccalaureate degree in a specific specialty for entry into the position. For example, if the *Handbook's* lodging manager classification is viewed as related to the proffered position, this classification does not require a baccalaureate degree in a specific specialty. On page 71, the *Handbook* states: "Hotels increasingly emphasize specialized training. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, although a college liberal arts degree may be sufficient when coupled with related hotel experience." Even the petitioner acknowledges in its appeal that experience in the field of events planning and contract negotiation can be just as important as a baccalaureate degree in business administration. Without more persuasive testimony, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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)).

As stated previously, the *Handbook* contains no analogous classification with regard to the proffered position. In the instant petition, to establish the industry standard, the petitioner submitted thirteen vacancy announcements for contract specialists. These vacancy announcements are for companies and federal agencies that do not appear similar to the petitioner's business particularly in the nature of their businesses. The petitioner provided no vacancy announcements for positions within the events planning industry. In addition, the petitioner submitted no documentation that any professional events planning association has made a bachelor's degree in a specific specialty a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." 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, counsel asserts that the position is complex and unique; however, no documentary evidence is provided to support this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 534 (BIA 1988). Without more persuasive testimony, the petitioner has not established this criterion.

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

There is no evidence on the record with regard to the petitioner's educational requirements for former or new events planning or contract specialist hires. 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).**

On appeal, the petitioner clarifies the original duties of the proffered position. While this clarification of duties does indicate that the proffered position is detail-oriented, they do not necessarily establish that the proffered position is any more specialized or complex than any other events planning job. Without

more persuasive evidence as to the specialized or complex nature of the proffered 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 second issue in this proceeding is whether the beneficiary is qualified to perform the duties of the proffered position.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

With regard to judging whether practical experience or specialized training is equivalent to the completion of a college degree, 8 C.F.R. § 214.2(h)(4)(iii)(D) states:

[E]quivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or

experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association of society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by [CIS] that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In the initial petition, the petitioner submitted copies of the beneficiary's high school diploma and certificates for training courses that she attended in Australia in travel consultants, hotel/motel reception, and front office procedures. The petitioner also submitted an educational equivalency document from American Evaluation Institute, Long Beach, California. Dr. Mathew Clark, directing evaluator, stated that, based upon her transcripts and certificates, the beneficiary had attained the equivalent of a bachelor of science degree in business administration from an accredited U.S. university.

In her request for further evidence, the director asked the petitioner to establish how the beneficiary had acquired experience equivalent to a baccalaureate degree in the specific duties of the proffered position. In response the petitioner asserted that the beneficiary had obtained the equivalent of a bachelor of science degree in business administration, but provided no further documentation of this assertion. When the director denied the petition, she stated that that the petitioner had not established that the beneficiary had training and employment experience equivalent to a bachelor's degree in a specific specialty. In addition, the director determined that the educational equivalency document submitted by American Evaluation Institute, Long Beach, California, was unacceptable since the evaluator had not shown that he had the authority to issue college credits for the beneficiary's training and experience. On appeal, counsel asserts that she is submitting an educational equivalency document by a university professor; however, to date, no such document has been received by CIS.

Upon review of the record, the educational equivalency document from American Evaluation Institute is viewed as insufficient documentary evidence on two grounds. First, the record is devoid of any transcripts of courses or any supplemental information with regard to the beneficiary's training courses, such as the

duration of such courses and the academic level of the same courses. Without such supplemental information, it is not possible to determine how the evaluator reached his conclusion that the beneficiary had the equivalent of a United States university degree in business administration.

Second, as pointed out by the director in her decision, there is no evidence presently on the record that the evaluator from American Evaluation Institute has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988). Accordingly the educational equivalency document from American Evaluation Institute that was submitted by the petitioner with the original petition is given no weight in this proceeding. Without such an evaluation, the petitioner has not satisfied the regulatory criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The remaining criteria are not applicable to the instant petition.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS can evaluate whether the beneficiary has acquired the equivalent of a baccalaureate degree through a combination of education, specialized training, and/or work experience in areas related to the specialty and whether the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. Since the beneficiary does not appear to have any university studies, she would need to possess twelve years of work experience to meet the equivalency ratio outlined in this regulation. In addition, the petitioner would have to establish that the beneficiary's work experience also fulfills the criteria outlined in the regulations as to progressively responsible work.

The letter from ID Tours, the beneficiary's former employer, only documents four years and eight months of work experience. In addition, while the ID Tours letter details the beneficiary's two promotions within the company, and the additional letters submitted by the petitioner on appeal speak to the quality of the beneficiary's work, the beneficiary's work experience does not appear sufficient to adequately meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Without more persuasive testimony, the petitioner has not established that the beneficiary is qualified to perform the duties of 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.