

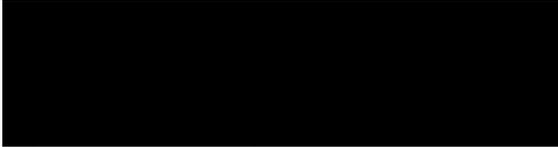
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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship
and Immigration
Services



FILE: WAC 02 180 50650 Office: CALIFORNIA SERVICE CENTER Date: FEB 25 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

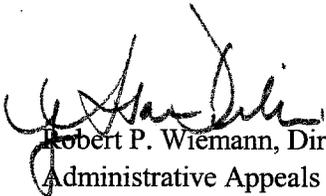
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 seeks to employ the beneficiary as a specialized tour coordinator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief statement on the Form I-129B.

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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a specialized tour coordinator. Evidence of the

beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: developing specialized cultural tour packages; developing and writing brochures and publications; discussing specialized tours with foreign officials and prospective clients; and gathering information about a foreign country's laws and regulations. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in intercultural studies or a related discipline.

The director found that the proffered position was not a specialty occupation. The director stated that, as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the duties of the proffered position resemble those of a travel agent. As such, a high school diploma or an equivalent is the minimum requirement for persons interested in becoming a travel agent.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel states that the petitioner seeks to employ a specialized tour coordinator, not a travel agent. Counsel claims that most of the beneficiary's time will be spent studying, analyzing, and surveying different cultures and societies to develop specialized tour packages. Counsel further claims that the remaining time will be spent as follows:

- developing and writing brochures and publications that explain different religions, economies, mythologies, traditions, and political structures – 30 percent
- conversing with clients to match their interests with tour packages – 10 percent
- contacting foreign governments about specialized tours and laws and regulations – 10 percent

Counsel maintains that the beneficiary will not spend most of her time giving advice to clients about transportation, hotel accommodations, and car rentals; instead, the beneficiary will create her own information about tour packages and will not consult published sources for information.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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." See *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 first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO finds that the proffered position is analogous to tour and travel guides. Tour and travel guides plan, organize, and conduct long distance cruises, tours, and expeditions for individuals or groups; and escort individuals or groups on sightseeing tours. Similar to the proffered position, tour and travel guides do not spend most of their time advising clients about transportation, hotel accommodations, and car rentals; instead, they plan, organize and conduct cruises, expeditions, and tours.

The *Handbook* reports that the training of tour and travel guides is mostly moderate-term on-the-job training. Consequently, the petitioner fails to establish the first criterion because a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into the occupation.

There is no evidence in the record to establish that a degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A).

Likewise, there is no evidence to establish that the employer normally requires a bachelor's degree or its equivalent for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Another of counsel's claims is that the petitioner established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because the nature of the specific duties requires theoretical, analytical, and practical applications of highly specialized knowledge usually associated with the attainment of a bachelor's degree. Counsel further claims the proffered position entails, in part, the study, analysis, and research of foreign cultures and customs to determine the feasibility of the tour.

The AAO finds that counsel's claim is not sufficient in establishing the fourth criterion. As previously discussed, the *Handbook* explains that tour and travel guides perform the duties of the proffered position and that tour and travel guide positions do not require the knowledge associated with the attainment of a bachelor's degree.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.