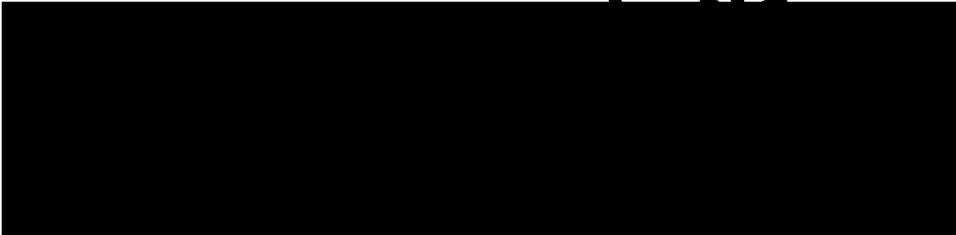




U.S. Citizenship
and Immigration
Services

102



PUBLIC COPY

FILE: WAC 01 092 54934 Office: CALIFORNIA SERVICE CENTER

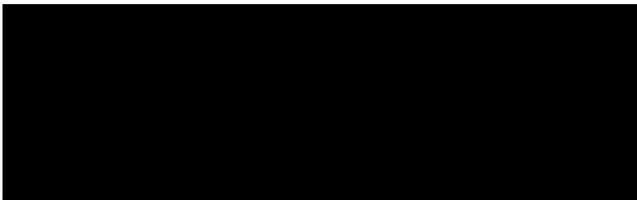
Date: **JAN 22 2004**

IN RE: Petitioner:
Beneficiary:



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

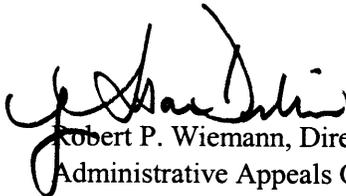
ON BEHALF OF PETITIONER:



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

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 service center acting director 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 and tourism agency that seeks to employ the beneficiary as a travel agent. 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 acting director denied the petition because she found that the petitioner had failed to establish that the proffered position 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.

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.

It is important to note that 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) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response, with documentation, to the director's request; (4) the director's denial letter; and (5) the matters submitted on appeal, including the Form I-290B, the June 4, 2002 letter from the petitioner's representative, and a 1997 copy of the "252.152-010 Travel Agent" section in the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*. The AAO reviewed the record in its entirety before issuing its decision.

The director found that the proffered position did not meet any of the qualifying criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner's representative appears to assert that the reason for the denial of the petition no longer exists. The representative asserts that the acting director denied the petition because she had considered an erroneous three-digit occupational designation code that had been mistakenly provided to CIS on an ETA Form 9035, Labor Condition Application. The representative asserts that the error has been corrected.

The petitioner's representative also reviews and emphasizes information from earlier submissions, and maintains that the duties establish that the proffered position requires someone who is experienced in the Middle Eastern travel industry, speaks Arabic and Chaldean, and holds at least a bachelor's degree in business or hospitality management.

Upon review of the record, the AAO has determined that 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.

Before proceeding to a discussion of the evidence, the AAO must first address the petitioner's representative's impression that the acting director denied the petition because a mistaken job code had been submitted. The AAO sees no indication in the record that a job code was a material factor in the acting director's decision. Moreover, in making its independent determination in this proceeding, the AAO accorded no material weight to any job code, including the one that appears on the ETA Form 9035. Whether the ETA Form 9035 cited "187" or "252" the three-digit occupational code is inconsequential to the AAO's deliberations, for the AAO focuses on the actual duties as they are depicted in the record, rather than on a general title or code number that may be ascribed to them.

Furthermore, none of the information that appears in the *DOT* page that is presented on appeal has any persuasive value. This submission's general description of travel agent duties adds no weight to the particularized descriptions of duties that appear in the records, and this submission does not indicate that a travel agent needs a bachelor's degree or higher, or the equivalent, to perform his or her duties.

The critical factor in the AAO's decision was the record's depiction of the proposed duties.

The Form I-129 listed the proffered position as "Travel Agent," and it provided a description of proposed duties that is consistent with the title, with an emphasis on dealing with international travel and tour arrangements. Additional information about the duties of the proffered position was included in two letters from the petitioner's president: the first was a letter of support that was among the documents submitted with the Form I-129; the second was part of the petitioner's reply to the request for additional evidence. The composite information from the I-129 and the letters convey the proffered position as a position with typical travel agent duties, such as coordinating with customers, hotels, travel providers, tour providers; calculating costs of travel and accommodations; booking travel and accommodations; and planning and arranging travel itineraries. These documents also convey the position's emphasis on international travel and the petitioner's requirement for a native of the Middle East who speaks Arabic and who would thus be able to enhance communication with and increase the comfort level of the customers from the Middle East.

On appeal, the letter from the petitioner's representative, in part, emphasizes the petitioner's need for someone fluent in not only Arabic but also Chaldean, "[d]ue to the high percentage of Customers being from the Middle East" and to enable the petitioner to arrange its own tours in areas where Arabic or Chaldean is the primary language. As earlier noted, the letter of the petitioner's representative also maintains that the proposed duties require at least a bachelor's degree in business or hospitality management.

In analyzing the evidence, the AAO first applies the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent that is the normal minimum requirement for entry into the particular position; a degree requirement that is common to the industry in parallel positions among similar organizations; or a particular position that is so complex or unique that it can be performed only by an individual with a degree.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. Here the AAO consulted the 2002-2003 edition of the *Handbook* in making the following findings. As described in the record, the duties substantially comport with the *Handbook's* description of the travel agent occupation, and the *Handbook* indicates that this occupation does not normally require a bachelor's or higher degree, or the equivalent, in any discipline.

Furthermore, individually and in the total aggregate, the duties as depicted in the record do not require the application of the highly specialized knowledge that is associated with a bachelor's degree or higher in a specific specialty.

As the evidence of record does not rebut the *Handbook's* information, the proffered position does not meet the 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) criterion that the proffered position be one that normally requires a bachelor's degree or higher, or the equivalent, in a specific specialty.

Next, the AAO weighed the evidence to see if the proffered position qualifies as a specialty occupation by way of the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) for a bachelor's or higher degree requirement that is common in the proffered position's industry in positions that are parallel to the proffered one in organizations similar to the petitioner.

Factors often considered by CIS when determining this criterion 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)).

As our earlier discussion indicated, the *Handbook* does not report that the travel agent industry requires a bachelor's degree or higher in a specific specialty. The record also does not include any evidence from professional associations regarding an industry standard. The petitioner itself does not assert that there is an industry-wide degree standard, and there is no documentary evidence in the record to support such an assertion if it had been made.

The AAO also found that the evidence of record does not qualify the proffered position under the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), that is, as one that is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. There is no documentation to support

the complexity or uniqueness of the proffered position. On the basis of the record, it appears that the proffered position is no more unique or complex than travel agent positions in general, which do not usually require a baccalaureate or higher degree in any specific specialty. In reaching this conclusion, the AAO has fully considered the petitioner's need for an Arabic/Chaldean speaker and the entire spectrum of the proposed duties, including the emphasis upon planning and arranging international travel, tours, and accommodations.

The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner presented no evidence on this issue.

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree in a specific specialty. Obviously, as the Chaldean and Arabic languages are naturally acquired without degrees, the petitioner's requirement for a Chaldean and Arabic speaker does not make the proffered position a specialty occupation. To the extent that they are depicted in the record, it appears that the duties of this particular position confirm the *Handbook's* information about travel agent duties being amenable to learning on-the-job by reservation clerks or receptionists at travel agencies, or by short-term vocational courses that do not lead to a college degree. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.