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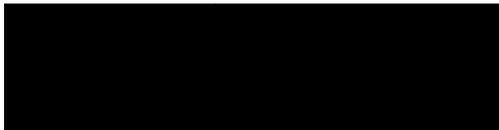
FILE: WAC 01 280 54499 Office: CALIFORNIA SERVICE CENTER

MAR 04 2004
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 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 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 operates a night club and seeks to employ the beneficiary as a business manager. The petitioner 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 and additional information.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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:

[A]n 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.

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 proceedings 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a business manager. Evidence of the beneficiary’s duties includes: the I-129 petition with attachment; and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: oversee daily business activities such as requisitions, schedules and personnel performance; study methods of improving work measurements and performance standards, then prepare reports setting forth conclusions and recommendations for solutions of administrative problems; analyze and organize office operations and procedures, including review of clerical and personnel records to ensure accuracy; and implement cost effective strategies, streamline procedures, and prepare budget and monthly financial reports. The petitioner stated the duties of the proffered position are of such complexity that a minimum of a bachelor’s degree is required to perform the duties. The petitioner requires a minimum of a bachelor’s degree in business for employment in the offered position.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief, copies of various job advertisements, and references to the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*. Counsel states that the duties of the offered position meet all requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A), and that CIS has approved similar H-1B petitions.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by counsel. Factors often considered by CIS when determining these criteria include: whether the Department of Labor’s *Occupational Outlook Handbook, (Handbook)*, reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for Administrative Services Managers in the *Handbook*. The *Handbook* notes that educational requirements for these managers vary widely, depending on the size and complexity of the organization. In smaller organizations, job

experience alone qualifies an applicant for entry into the position. In larger organizations, formal education and experience are required, with education requirements ranging from a high school diploma or associate degree to a baccalaureate level education. It is clear from the *Handbook*, however, that a degree requirement is not a minimum industry requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has also failed to establish that the proffered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of that assertion, counsel submitted copies of various job advertisements. Those advertisements, however, were not for positions significantly similar to the offered position. Nor were they from organizations similar in nature to the petitioner. The job description provided by the petitioner is general in nature and it is difficult to ascertain precisely what the beneficiary would do on a daily basis. The description provided, however, does not present duties that are so complex or unique that they could be performed only by an individual with a degree.

The petitioner further asserts that it normally requires a degree or its equivalent for the proffered position. In support of that assertion the petitioner presented documentation indicating that in 1999, it employed a degreed individual for a period of two months. This documentation is insufficient to establish the petitioner's normal hiring practices for the position offered. C.F.R. § 214.2(h)(4)(iii)(A)(3). Even if the petitioner did normally require a degree, the position would still not qualify as a specialty occupation as the position does not require the theoretical and practical application of a body of highly specialized knowledge.

The petitioner has not established that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Again, the duties described are vague and general in nature so that it is not possible to determine the complexity of the tasks to be performed. Counsel compares the duties described to those of an operations research analyst and/or accountant. The duties described, however, clearly do not fall within those occupational categories. The duties described are not, on their face, so specialized or complex that they satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, counsel asserts that this petition should be approved because unrelated petitions have been approved for similar positions. This record of proceeding does not, however, contain, the entire record of proceedings in the petitions referred to by counsel. In the absence of all of the corroborating evidence contained in those records of proceeding, the AAO is unable to determine whether the referenced approvals were approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in the record of proceeding now before the AAO, however, the approval of the prior petitions would have been erroneous. The AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church of Scientology International*, 19 I&N Dec. 593, 597 (Comm.1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. V. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.