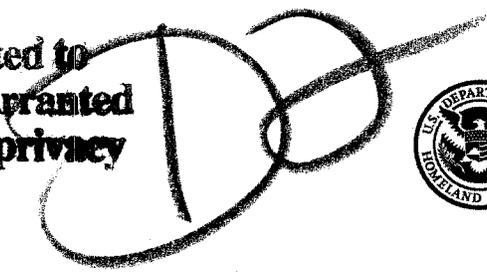


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



**U.S. Citizenship  
and Immigration  
Services**

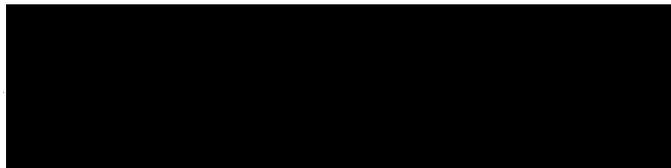


FILE: LIN 02 190 55528 Office: NEBRASKA SERVICE CENTER Date: **MAR 15 2004**

IN RE: Petitioner:   
Beneficiary: 

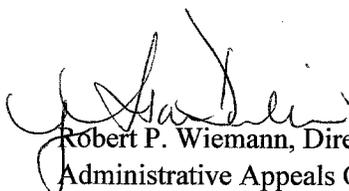
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 is a wholesale tour operator, and seeks to employ the beneficiary as a business consultant. 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 on the basis that the proffered position was 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 counsel's brief and attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a business consultant. 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: review/analyze company financial data and propose strategies to enhance growth, maximize profits and minimize costs; propose distribution of financial resources within the organization; advise on budget preparation; negotiate contracts with various companies for tour packages; set prices for tours and services; gather information and evaluate markets based on feasibility studies and market surveys; create and conduct feasibility studies and surveys to develop new products; determine sales and marketing strategies; promote and manage sales of company products; set sales goals and establish programs for sales staff; create and plan travel shows in the United States; attend travel shows; establish and maintain relationships with vendors in the Scandinavian and Nordic market; and promote company image. It is the petitioner's position that the minimum education required for the offered position is a bachelor's degree in business administration, or a related field.

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, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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. 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 responsibilities of the proffered position are varied and include duties in the areas of business/financial analysis, marketing research, and sales/marketing management. The performance of these duties does not, however, require a minimum of a baccalaureate degree in any particular field of study. For example, counsel asserts that the duties of the offered position are performed by: budget analysts; advertising,

marketing, promotions, public relations and sales managers; and market research analysts. A budget analyst normally requires a bachelor's degree, but a degree in virtually any field will suffice. Acceptable degrees include accounting, finance, business or public administration, economics, political science, statistics or a social science such as sociology. Marketing managers qualify for employment with degrees in a wide range of academic fields including: sociology, psychology, literature, journalism, philosophy, marketing, or business administration. The proffered position is not a true market research analyst position, but the position does have some responsibilities performed by market research analysts. To qualify as a market research analyst, an applicant normally requires graduate level education in economics, business administration, marketing, statistics or a closely related discipline. A bachelor's level education may suffice in this area for entry level positions as a research assistant, administrative or management trainee, but the position offered herein is not an assistant or trainee position. The petitioner has failed to establish that a baccalaureate degree in a **specific specialty** is normally the minimum requirement for entry into the offered position, as any number of degrees will qualify the beneficiary. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). (Emphasis added.)

The petitioner submits job advertisements in support of its assertion that the proffered position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The advertisements submitted are for such positions as: marketing analyst requiring a masters degree in business or information systems; travel consultant – requires a four-year college degree in an unspecified discipline; specialist travel consultant – requires a four year college degree in an unspecified discipline; client relationship manager – requires a bachelor's degree in an unspecified discipline; and buyer – requires a bachelor's degree in finance, accounting, or business administration. The advertisements are not, however, for positions sufficiently similar to the offered position to establish that a bachelor's degree is common to the industry in parallel positions. Even if the advertised positions were deemed to be parallel positions, they do not indicate that a degree in any specific specialty is required, with the exception of the buyer position, and the advertisements are insufficient in scope to establish a standard in the industry. It must also be noted that the duties of the offered position are not so complex or unique that they can be performed only by an individual with a degree in a specific specialty, but are in fact rather standard duties in the industry.

The petitioner does not assert that it normally requires a degree or its equivalent for the offered position as the position is newly created. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Finally, the duties of the proffered position are not so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Again, to qualify as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the duties of the offered position must be so specialized and complex that they require the attainment of a baccalaureate or higher degree in a specific specialty. The duties of this position do not require specialized education, but can be performed by individuals with a wide range of education and/or experience.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.