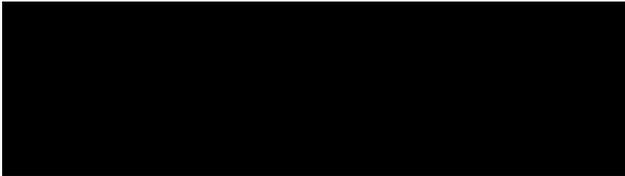




U.S. Citizenship  
and Immigration  
Services

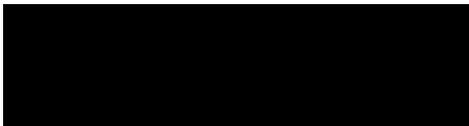


FILE: WAC 02 146 50106 Office: CALIFORNIA SERVICE CENTER Date: OCT 1 1 2001

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

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

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. 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 package tours/sightseeing travel agency that seeks to hire the beneficiary as a manager and director of overseas travel. 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 it is not a specialty occupation. Counsel states that it is a specialty occupation and resubmits documentation on the academic credentials of administrative services and facility managers.

Section 214(i)(1) of 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 petitioner's letter of support; (3) the director's request for additional evidence, dated October 29, 2002; (4) the

petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a manager/director of overseas travel. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letter of support; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary would direct and coordinate corporate and travel agencies accounts for incoming charter tours to the United States and outgoing charter tours, especially to Europe. The beneficiary would also create business and marketing strategies to expand clientele, sign overseas and local tour contracts and develop greater foreign tourism to the United States.

In its response to the director's request for further evidence, the petitioner stated that 50 per cent of the beneficiary's time would be spent directing and coordinating all specific and general programs concerning travel to and from the United States by corporations using the petitioner's specialized services and broad contacts in the travel world industry. Within this major duty, the beneficiary could develop departmental corporate travel plans; create operational standards to measure efficiencies and pay back ratios of charter and individual tours; set customer service standards and hold staff accountable; oversee deadlines and quality of services; devise strategies to expand charter/tour operations; draw up broad marketing strategies for packaging overseas travel tours to the United States; hire, train, and assign staff for corporate travel program responsibilities; conduct staff reviews; and set budgets, financial controls and reporting procedures for staff members working in the corporate travel department. The petitioner stated that the corporate travel staff would report to the beneficiary and the beneficiary would in turn report to the petitioner's president.

With regard to the other 50 per cent of the beneficiary's time, the petitioner stated that the beneficiary would be directly responsible for negotiating, signing and implementing all contracts pertaining to corporate travel programs and tariffs. Within this second major duty, the beneficiary would be responsible for securing the best terms from corporations in North America and Europe for the petitioner's services; negotiating the best terms from tour operators including airline charters; setting negotiating targets and the timing of any compromises offered in negotiations; keeping informed of changed IATA terms and conditions for contracts and ensure that contracts conformed to IATA compliance provisions; overseeing implementation of contracts and deadlines; determining other liability provisions expressed and implied in contract negotiations; and assuming full responsibility for all contracts signed and for any amendments to contracts with respect to the petitioner's corporate travel programs. The petitioner stated that a candidate for the position would minimally have a baccalaureate degree in travel industry management.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classifications of travel agent and managers. The director stated that the positions of general travel agency management or specialized travel agent do not require a baccalaureate degree in a specific specialty for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the director in his denial used generalized statements about the job not being specialized, but rather being managerial. Counsel further states that the director's decision did not address the petitioner's detailed response to the director's request for further evidence that carefully defined the job duties of the proffered position and the time spent in these duties. Finally, counsel asserts that the petitioner's previous response established that the proffered position is complex and specialized, and that the

baccalaureate degree held by the beneficiary exactly matches the courses needed to perform the proffered position. Counsel resubmits a page from the *Handbook's* classification of administrative services and facility managers.

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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As correctly stated by the director, the position appears to be a travel management position, or a specialized travel agent with managerial responsibilities. While counsel identifies the position as an administrative services manager based on the contract administration responsibilities of the position, the *Handbook's* classification does not appear analogous to the proffered position. For example, the *Handbook* refers to contract administrators who oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services. The individuals appear to be managing buildings, or large corporations with distinct departments for numerous services, rather than a distinct part of a travel agency. In addition, the 2004-2005 edition of the *Handbook* states the following with regard to the academic credentials of administrative services managers:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience. For managers of audiovisual, graphics, and other technical activities, postsecondary technical school training is preferred. Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. Regardless of major, the curriculum should include

courses in office technology, accounting, business mathematics, computer applications, human resources, and business law. Most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration, or facility management. Many have a background in real estate, construction, or interior design, in addition to managerial experience.

The remaining duties of the position, as explained in the petitioner's response to the director's request for further evidence, appear to be generic management responsibilities such as the hiring and oversight of personnel, and planning business strategies. With regard to general managers, the *Handbook*, in its description of top executives, states: "The formal education and experience of top executives varies as widely as the nature of their responsibilities." The *Handbook* also states that many top managers have been promoted from within the organization, and that in industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. The *Handbook* also notes that many companies prefer that their top executives have specialized backgrounds and, therefore, hire individuals who have been managers in other organizations. Thus, the *Handbook* does not establish that employers of either travel agents or managers of travel agencies necessarily require the minimum of a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, counsel submitted no further documentation. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. 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 record is devoid of any information on any previous directors of corporate travel programs that the petitioner may have employed and their academic credentials. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 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. In its response to the director's request for further evidence, the petitioner stated that the duties of the position are both complex and specialized. The petitioner drew attention to the contract administration duties of the position, and explained that it could lose thousands of dollars and/or endure lawsuits if the individual serving as manager of corporate travel did not make correct decisions in contract negotiations, or understand the business and legal issues involved in contract negotiations.

While these duties are important to the financial health of the petitioner's business, the petitioner provides no further information on the volume of its travel business and/or the number of contracts negotiated in support of a particular tour, or particular corporate travel program. There is also no information as to the actual complexity of the individual package tour contract, and the amount of work and time involved in the negotiation for the petitioner's specific contracts for package tours. Although the petition states that the petitioner has 30 employees, the record does not reflect how many staff members are involved in its corporate travel program, or the complexity of the supervision of any such staff members. Neither counsel nor the petitioner provided any further documentary evidence to substantiate their assertions with regard to contract negotiations. Simply going on record without supporting documentary evidence is not sufficient for the

purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. The petitioner submitted an educational evaluation report from the American Evaluation Institute, Long Beach, California. This document stated that the beneficiary's studies in Germany were equivalent to a U.S. baccalaureate degree from an accredited U.S. college or university in business administration with an emphasis on the travel industry.

However, upon review of the beneficiary's academic and training certificates, the beneficiary's primary studies appear to be at a vocational or technical school level. For example, the beneficiary received a certificate on May 31, 1995 for a program described as "trained commerce professional." The certificate was from the Chamber of Industry and Commerce for Augsburg and Swabia. The beneficiary also received a diploma for completed training as a "commercial retail trade specialist" in May 1993 from the Vocational School IV in Augsburg, Germany, and a diploma for earlier training in July 11, 1990. None of these certificates indicate the length or level of such training. Without further explanation as to the academic level of the beneficiary's studies, the petitioner has not met the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). The educational equivalency report provided by the petitioner is given no weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Accordingly, the petitioner has not established that the beneficiary possesses the equivalent of a U.S. baccalaureate degree in a specific specialty related to the proffered position. For this additional reason, the petition may not be approved.

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.