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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUL 05 2005

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:  
[Redacted]

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 Vermont 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 private country club providing year-round employment for 40 persons. It seeks to hire the beneficiary as a junior office manager. The director denied the petition based on his determination that the proffered position was not a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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 one 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:

An occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The petitioner states that it is seeking the beneficiary’s services as a junior office manager. Evidence of the beneficiary’s duties includes: the Form I-129; a May 17, 2002 letter from the petitioner in support of its petition; and counsel’s December 13, 2002 response to the director’s request for evidence, including a November 27, 2002 letter from the petitioner and the petitioner’s undated posting for the proffered position.

At the time of filing, the petitioner’s Form I-129 stated it was seeking a junior office manager to provide “high-level administrative support” by: conducting research; preparing statistical reports; handling information requests; and performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls, and scheduling meetings. The petitioner also indicated that the beneficiary would train and supervise lower-level clerical staff.

The petitioner’s May 17, 2002 letter of support, submitted with its Form I-129, expanded upon the above description by indicating that the beneficiary would also coordinate office activities, including estimating office supply costs and requisitioning or purchasing supplies. As indicated by the petitioner, the beneficiary would also direct comments and complaints to the club manager and ensure that office operations remained within budget limitations.

In response to the director’s October 8, 2002 request for evidence asking for additional information regarding the duties of the proffered position, the petitioner again described the duties of its employment. A November 27, 2002 letter stated the duties as including but not limited to:

- Accounting;
- Management of office functions;
- Marketing;
- Website development and maintenance;
- Analysis of accounts receivable and accounts payable;
- Preparation of analytical reports; and
- Research analysis regarding the profitability of various functions for presentation to the food and beverage director.

Counsel, in his own letter of response to the director's request for evidence, listed these same duties but added that the beneficiary would also be required to interface with "other managers of the corporate team of the petitioning organization to set policy."

The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). Therefore, when responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). As already noted by the director in his denial, the petitioner, in response to the director's request for evidence, materially changed the responsibilities of its position of junior office manager, adding accounting, marketing, website development and maintenance responsibilities not previously identified.

On appeal, counsel asserts that the employment description provided by the petitioner in response to the director's request for evidence has not changed from the time of filing, that its November 27, 2002 letter simply "sought to amplify, expand upon and further explain" the position's duties listed on the Form I-129. Counsel's statements in this regard are not persuasive. The petitioner's descriptions of its position on its Form I-129 and in its November 27, 2002 letter of intent offered no indication that the "high-level administrative support" to be provided by the beneficiary included accounting, marketing or website development and maintenance functions, nor that she would be a member of the corporate team involved in the setting of the petitioner's policies. Instead, the petitioner specifically detailed the type of administrative support to be provided as research, the preparation of statistical reports, the handling of information requests, the performance of clerical functions, and the training/supervision of lower-level staff. Accordingly, the AAO will discount the listing of duties offered in response to the director's request for evidence and will address only those duties initially described by the petitioner on its Form I-129 and in its November 27, 2002 letter of support.

To determine whether the duties described by the petitioner at the time of filing are those of a specialty occupation, the AAO first considers 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; and 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 considered by the AAO when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports 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. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Following its own review of the duties of the proffered position and the 2004-2005 edition of the DOL *Handbook*, the AAO finds the responsibilities associated with the proffered position to be closely aligned to the occupation of secretaries and administrative assistants. The *Handbook*, at pages 469-470, describes such employment as follows:

. . . [T]he role of the office professional has greatly evolved . . . . Many secretaries and administrative assistants now provide training and orientation for new staff, conduct research on the Internet, and operate and troubleshoot new office technologies. In the midst of these changes, however, their core responsibilities have remained much the same – performing and coordinating an office’s administrative activities, and storing, retrieving, and integrating information for dissemination to staff and clients.

Secretaries and administrative assistants are responsible for a variety of administrative and clerical duties necessary to run an organization efficiently. They serve as an information manager for an office, plan and schedule meetings and appointments, organize and maintain paper and electronic files, manage projects, conduct research, and provide information by using the telephone, postal mail, and e-mail. They also may handle travel arrangements.

. . . [S]ecretaries and administrative assistants use personal computers to create spreadsheets, compose correspondence, manage databases, and create presentations, reports, and documents . . . all tasks previously handled by managers and professionals . . . .

Specific job duties vary with experience and titles. Executive secretaries and administrative assistants . . . perform fewer clerical tasks than do other secretaries. In addition . . . they may handle more complex responsibilities such as conducting research, preparing statistical reports, training employees, and supervising other clerical staff.

Based on the petitioner’s description of the duties to be carried out by the beneficiary, the AAO concludes that the proffered position is that of an executive secretary or administrative assistant. A discussion of the education and training that may prepare individuals for this type of employment is found in the *Handbook* at pages 470-471:

High-school graduates who have basic office skills may qualify for entry-level secretarial positions . . . . Secretaries and administrative assistants should be proficient in keyboarding and good at spelling, punctuation, grammar, and oral communication. Because secretaries and administrative assistants must be tactful in their dealings with people, employers also look for good customer service and interpersonal skills.

Secretaries and administrative assistants acquire skills in various ways. Training ranges from high school vocational education programs that teach office skills and keyboarding to 1- and 2-year programs in office administration offered by business schools, vocational-technical institutes, and community colleges . . . . However, many skills tend to be acquired through on-the-job instruction by other employees . . . . Bachelor’s degrees and professional certifications are becoming increasingly important as business continues to become more global.

Although the *Handbook* indicates that a college degree may assist individuals in obtaining employment as a secretary or administrative assistant, it also clearly states that neither occupation requires those seeking entry-level employment to have a baccalaureate or higher degree, or its equivalent. Accordingly, the AAO concludes that the petitioner cannot establish its proffered position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the duties of the proffered position are professional in nature. In support of his statement, he references a range of CIS administrative decisions and a federal court case relating to the employment of accountants, computer programmers, general managers and hotel managers. However, as the proffered position has been found to be that of an executive secretary or administrative assistant, the findings in the various cases cited by counsel are not probative for the purposes of this proceeding.

To determine whether the petitioner's position meets the second criterion – a specific degree requirement is common to the industry in parallel positions among similar organizations or the proffered position is so complex or unique that it can be performed only by an individual with a degree in the specific specialty – the AAO has reviewed the letter submitted by the general manager of another country club located in Rye, New York. The general manager's letter indicates that she has reviewed a job description entitled "junior office manager" and has concluded that it requires experience in "accounting, marketing, computers and public relations." She states "it is standard in the Westchester County area to hire a worker with professional level background to perform the aforementioned services." However, the letter does not address whether country clubs in the Rye, New York area commonly require those who perform as junior office managers to hold the minimum of a baccalaureate degree or its equivalent. Further, the duties of the junior office manager position reviewed by the general manager are not parallel to those of the proffered position, as described by the petitioner at the time of filing. Therefore, the letter cannot establish that the petitioner's degree requirement for the proffered position is common in its industry. Moreover, even if the letter submitted by the petitioner had established that the position was the same and the organization was similar, the opinions expressed by a single manager of a country club would be insufficient proof of an industry standard.

With regard to the requirements of the criterion's second prong – the position is so complex or unique that it can be performed only by an individual with a degree – the AAO finds nothing in the record to establish that the position is either so complex or unique that it can be performed only by a degreed individual. Accordingly, the petitioner is unable to establish its position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3) and (4): the employer normally requires a degree or its equivalent for the position; and the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

To determine a petitioner's ability to meet the third criterion, CIS normally reviews the position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. The record contains an undated job posting for the position of junior office manager that states a "management degree" is required, but the record is silent as to whether the petitioner has previously employed junior office managers and, if so, required them to hold baccalaureate degrees. Accordingly, the AAO finds the petitioner to be unable to establish its proffered position as a specialty occupation based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that a petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually

associated with the attainment of a baccalaureate or higher degree. In making its determination, the AAO has again reviewed the duties of the proffered position, as described by the petitioner at the time of filing, to determine whether the position's responsibilities reflect a higher degree of knowledge and skill than would normally be required of a secretary or administrative assistant. It finds the record to provide no basis for concluding that the beneficiary would need to possess a unique set of skills to perform the duties of the proffered position, nor that the position itself represents an amalgam of jobs requiring the beneficiary to possess unusual qualifications. The proffered position cannot, therefore, be established as a specialty occupation under the fourth criterion.

For reasons related in the preceding discussion, the petitioner has failed to establish its proffered position as 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.