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FILE: EAC 02 207 54018 Office: CALIFORNIA SERVICE CENTER Date: JUN 23 2006

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

DISCUSSION: The director of the 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 travel agency that seeks to employ the beneficiary as a China tours program manager. 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) 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 China tour programs manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail working with customers one-on-one; interviewing clients to understand their needs, desires, and interests; researching transportation options, routes, schedules, and rates; dealing with agents for lodging, dining, and transportation; answering questions and ensuring client safety; maintaining communication with airlines, cruise-lines, and travel agents regarding traveling tour groups; exploring and developing new travel destinations; negotiating contracts; and coordinating with travel agencies, service companies, and local authorities in China. The petitioner stated that a candidate for the proffered position must have three years of experience; knowledge about computerized ticketing and information exchange; hold a bachelor's degree or its equivalent in recreational management, business administration, or a related field; and be fluent in the Chinese language.

The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that a person could enter a travel agent position with less than a baccalaureate degree in a specific discipline. The director found that the record did not establish that the nature of the beneficiary's duties and the petitioner's business activities are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. According to the director, the record did not support the petitioner's statement that it normally requires a person with a baccalaureate degree in recreational management, business administration, or a related field. The director also found the job postings did not persuasively establish that similar organizations require a person with a baccalaureate degree in a specific discipline as a minimum requirement for entry into the proffered position.

On appeal, counsel states that the director erroneously concluded that the proposed position is analogous to a travel agent because the duties are more similar to those of marketing, promotional, and sales managers. Referring to the *Handbook*, counsel states that it indicates that for these positions some employers prefer a bachelor's or master's degree in business administration, and that a bachelor's degree is not only preferred, but is required. Counsel refers to the previously submitted job postings to establish that the proposed position requires a baccalaureate degree in a specific specialty. Counsel points to the *Handbook's* information to establish that a degree or its equivalent is normally required for the proposed position. To accomplish the proposed duties, counsel maintains that a person must have specialized knowledge in Worldspan Systems, experience as a tour group manager in China, and certification as a tour guide in China. Counsel states that the petitioner offers 14 different tours to China and has high-end clientele. Counsel asserts that the beneficiary has not been employed by the petitioner.

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 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; 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

Counsel states that the proposed position is analogous to that of a marketing, promotional, and sales manager. However, a careful review of the *Handbook* discloses that the beneficiary's duties parallel those of a travel agent. The beneficiary is required to understand the needs, desires, and interests of clients; research transportation options, routes, schedules, and rates; deal with agents for lodging, dining, and transportation; maintain communication with airlines, cruise-lines, and travel agents regarding traveling tour groups; explore and develop new travel destination options; and negotiate contracts and coordinate with travel agencies, service companies, and local authorities in China. Similar to this, a travel agent promotes travel packages; assesses the needs of others to help make travel arrangements; gives advice on destinations; makes arrangements for transportation, hotel accommodations, tours, and recreation; and provides information on departure and arrival times, fares, and hotel ratings and accommodations.

The *Handbook* indicates that the minimum educational requirement for a travel agent position is a high school diploma or equivalent. Accordingly, based on the evidence in the record and the *Handbook's* information, the petitioner cannot establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to two job postings. The postings, however, fail to establish this criterion. The duties in The Mark Travel Corporation posting differ from the proposed position. For instance, the beneficiary will not develop and implement promotional strategies, identify sales trends, and develop preliminary pricing models. Franklin Templeton Investments, an investment management firm, accepts an associate's degree for a travel coordinator position, and is different in nature from the petitioner, a travel agency. Moreover, two postings are enough to demonstrate an industry-

wide bachelor's degree requirement. For these reasons, the postings are not sufficient to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence shows that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed in this decision, the beneficiary's responsibilities do not rise above those of a travel agent, which the *Handbook* reveals is an occupation that does not require a baccalaureate degree in a specific specialty.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that 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. Counsel states that a person must have specialized knowledge in Worldspan Systems, experience as a tour group manager in China, and certification as a tour guide in China to perform the proposed position.

Counsel's statement is not convincing in establishing the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner's requirement of certification as a tour guide in China is irrelevant in establishing a requirement of a baccalaureate degree for the proposed position. The American Society of Travel Agents and the Travel Institute offer courses in computer reservation systems, and the Travel Institute provides detailed knowledge of particular regions including the Pacific Rim. Thus, baccalaureate-level education is not necessary to obtain knowledge about computer reservation systems and the country of China. The *Handbook* conveys:

Technology and computerization are having a profound effect on the work of travel agents, however, and formal or specialized training is increasingly important.

The *Handbook* continues:

The American Society of Travel Agents (ASTA) offers a correspondence course that provides a basic understanding of the travel industry. Travel agencies also provide on-the-job training for their employees, a significant part of which consists of computer instruction. All employers require computer skills of workers whose jobs involve the operation of airline and centralized reservation systems.

Experienced travel agents can take advanced self-study or group-study courses from the Travel Institute that lead to the Certified Travel Counselor (CTC) designation. The Travel Institute also offers marketing and sales skills development programs and destination specialist programs, which provide a detailed knowledge of regions such as North America, Western Europe, the Caribbean, and the Pacific Rim.

For these reasons, the petitioner fails to establish that 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. 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.