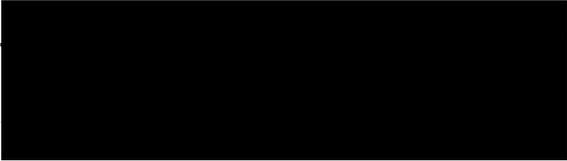


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and Immigration
Services

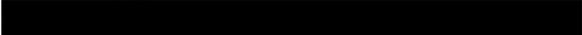
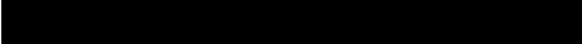
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MAR 21 2005

FILE: WAC 03 213 53083 Office: CALIFORNIA SERVICE CENTER 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.

[Handwritten signature of Robert P. Wiemann]

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 quality control administrator. 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 quality control administrator. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company 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 using knowledge of economics, tourism statistics, general tourism and international relations to analyze worldwide and American-Sino tourism markets, including political, economic, and cultural trends that may affect tourism markets; planning long-term and short-term in-bound and out-bound tourism programs and projects; advising management on acceptable hotel rates and the number of rooms needed before entering into contracts with hotels; analyzing and monitoring airline prices and route changes; planning and organizing exchange programs in business, finance, education, and sports with governmental agencies and educational institutions; and helping to develop procedures and rules relating to tourism in order to comply with governmental regulations and rules of trade organizations. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in the field of tourism or tourism management.

The director determined that the proffered position was not a specialty occupation. According to the director, the proffered position's duties closely reflected those of travel agents as illustrated in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*). The director narrated the educational and training requirements of travel agents as shown in the *Handbook*, and stated that it indicates that baccalaureate-level education is not a normal, industry-wide minimum requirement for entry into the occupation. The director found that the evidence did not indicate that the petitioner normally requires a bachelor's degree; that the proposed duties and stated level of responsibility do not indicate complexity or authority that is beyond what is normally encountered in the occupational field; and that the evidence did not show that the job could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the proposed position is a specialty occupation; that evidence from U.S. universities shows that they offer bachelor's and higher degrees in the field of tourism; that affidavits from two travel service companies evince that they require a bachelor's degree in tourism for similar positions; and that the California Service Center had previously approved an H-1B petition filed on behalf of the beneficiary for a similar position with another company. Counsel submits an expert opinion letter from Dr. [REDACTED] chair of the Management Department at Seattle University's Albers School of Business.

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.

The AAO finds that the beneficiary's duties are performed by travel agents and travel guides. The *Handbook* describes a travel guide as planning, organizing, and conducting long distance cruises, tours, and expeditions for individuals and groups. Similar to this, the beneficiary will plan tourism programs and projects and plan and organize exchange programs. A travel agent assesses the needs of tourists and business people and helps them make the best possible travel arrangements. They give advice on destinations, make arrangements for transportation, hotel accommodations, tours, car rentals, and recreation, and provide information on custom regulations, required papers, and currency exchange rates. Depending on the size of the travel agency, the *Handbook* conveys that a travel agent may specialize by type of travel or destination. Here, the beneficiary will analyze the worldwide market and specialize in American-Sino tourism; develop procedures and rules relating to governmental regulations and rules of trade organizations; and advise management on hotel rates and the number of rooms needed; and analyze and monitor airline prices and route changes.

Neither a travel guide nor a travel agent requires a bachelor's degree. The *Handbook* relays that the education or training of a travel guide is moderate-term on-the-job training; for a travel agent, a high school diploma or an equivalent. The *Handbook* contradicts the petitioner's assertion that the proffered position requires a bachelor's degree in the field of tourism or tourism management.

To substantiate the petitioner's degree requirement, counsel states that U.S. universities offer bachelor's and higher degrees in the field of tourism, and submits documentation from universities about their degree programs. This is not persuasive. Whether a university offers a degree program is irrelevant in determining the educational requirements of employers.

Counsel asserts that the proffered position is a specialty occupation since CIS had approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the California Service Center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, counsel's assertions are not sufficient to enable the AAO to determine whether the original H-1B petition was approved in error. Furthermore, 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, CIS 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 petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petition would have been erroneous. CIS 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 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).

The opinion letter from Dr. [REDACTED] chair of the Management Department at Seattle University's Albers School of Business, is relevant, though not convincing. In the letter, Dr. [REDACTED] opines that the beneficiary's duties are "specialized and complex, usually associated with the attainment of a bachelor's degree in tourism management or a related field," and references several publications and information from the American Marketing Association's website to support his opinion. None of the referenced publications are contained in the evidentiary record, however. In light of this, the AAO cannot assess the evidentiary value of these publications. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Furthermore, the *Handbook's* information about travel agents and travel guides contradicts Dr. [REDACTED] assertions that most of the beneficiary's duties are business analyst activities, such as analyzing international tourism markets; that planning and organizing tour programs for business, education, and sports involve operations management; and that the proposed position is more than a mere tour guide or travel agent.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the record contains affidavits from two travel agencies and Dr. [REDACTED] letter. We have already discussed the deficiencies in Dr. [REDACTED] letter, so they will not be repeated here. In the affidavits, the affiants, who are employed by the travel agencies, attest that their employer requires its quality control administrator to have a bachelor's degree in tourism. The affidavits are relevant in showing that two travel agencies, which are similar in nature to the petitioner, have a similar degree requirement as the petitioner. Nonetheless, more than two letters from travel agencies is needed to demonstrate an industry-wide degree requirement.

The evidence in the record is inadequate to show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. As we have discussed in this decision, the *Handbook* reveals that the beneficiary's duties resemble those of travel agents and travel guides, occupations that do not require a specific bachelor's degree.

There is no 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 regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) provides that the petitioner must 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. Neither Dr. [REDACTED] letter nor the travel agency letters are sufficient to establish this. Although Dr. [REDACTED] avers that the proffered position's duties are "specialized and complex," we have already pointed out in this decision that Dr. [REDACTED] fails to furnish documentary evidence to support his assertion. In addition, the *Handbook's* information about travel agents and travel guides is inconsistent with Dr. [REDACTED] assertions. With regard to the travel agency affidavits, neither affiant states that their quality control administrator requires a bachelor's degree because the nature of the duties of their position is "so specialized and complex." Consequently, the petitioner fails to satisfy the regulation at 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.