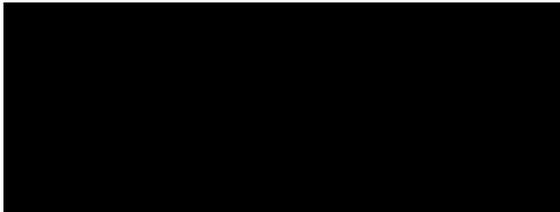


**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



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

PUBLIC COPY



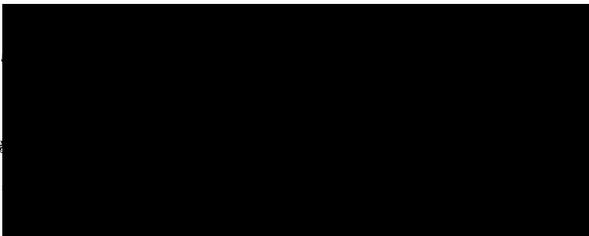
Dr

FILE: EAC 03 163 51868 Office: VERMONT SERVICE CENTER Date: NOV 01 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:



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

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 and ticket consolidator that seeks to employ the beneficiary as a business analyst. 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 states that the proposed position qualifies as a specialty occupation.

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 business analyst. 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 reviewing and analyzing sales and income in order to develop an overview of where revenue is generated, and determine a strategy to expand those markets; implementing and fine-tuning the strategy in response to market conditions; investigating the cost and yield from a web presence; monitoring sales and income to identify the impact of changes in marketing, and developing updates on the scheme's successes; creating promotional material to be used by corporate travel representatives; meeting with representatives to support the strategic initiative; investigating whether to place funds overseas and use the Euro or other currencies for purchases; and based on sales projections, preparing an analysis of the petitioner's financial condition. Counsel's September 25, 2003 letter elaborated on the proposed duties. The petitioner seeks to employ the beneficiary, who possesses a bachelor's degree in design (textile) from an institution in Pakistan, and has experience in Pakistan's travel industry.

In denying the petition, the director found that the proposed duties did not have the complexity, uniqueness, or specialization to require a baccalaureate degree in a specific specialty; and that the beneficiary did not qualify to perform the duties of a specialty occupation.

On appeal, counsel states that in denying the petition, the director was influenced by the petitioner's size and the newness of the proposed position. Counsel cites to *Young China Daily vs. Chappell*, 742 F. Supp. 552 (N.D. California 1989) to show that those are not relevant factors when determining whether a position qualifies as a specialty occupation. Counsel states that the petitioner seeks to expand its ticket consolidation business and increase its market share in corporate travel. According to counsel, the beneficiary possesses at least a baccalaureate degree and has taken coursework related to business such as marketing and sales. Counsel states that the beneficiary's "course of study was extremely wide-ranging and that post graduate experience in related fields clearly prepared the beneficiary for a career in this field." According to counsel, the petitioner had a prior H-1B petition approved for a marketing analyst position involving marketing duties for the resale of consolidated tickets. Counsel states that *Unico American Corp. v. Watson*, 1991 WL 11002594 (C.D. Cal., Mar 1991) indicates that CIS should defer to the opinion of employers, and should not rely simply on "standardized government classification systems" when determining whether a position is a specialty occupation. Counsel states that another case indicates that a position can be a "transitional occupation," which is an exception to the "industry standard," and would permit a finding that a position is professional in nature.

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.

In the request for evidence, the director sought an explanation for the petitioner's requirement of a baccalaureate degree in a specific field for the proposed position. In response, counsel's September 23, 2003 letter stated that the beneficiary possesses the U.S. equivalent to a bachelor's degree in fashion design, and that the petitioner "feels that there is a sufficient relationship between the position offered and this educational background to find that the position is a "specialty occupation."" On appeal, counsel states that the beneficiary's "course of study was extremely wide-ranging and that post graduate experience in related fields clearly prepared the beneficiary for a career in this field."

As previously stated, the Act defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 AAO does not find a sufficient connection between the coursework involved in a baccalaureate degree in fashion design and the proposed position of business analyst for a travel agency and ticket consolidator. Moreover, counsel's assertion that the beneficiary's "course of study was extremely wide-ranging" does little to suggest that the petitioner requires a baccalaureate degree in a specific specialty that is directly related to the proposed position, a business analyst. The AAO notes that 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. For this reason, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As previously discussed, the record reveals that the

petitioner does not require a baccalaureate degree in a specific specialty that relates directly to the proposed position. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must 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 in a specific specialty. The AAO has already conveyed that the petitioner does not a baccalaureate degree in a specific specialty that is directly related to the proposed position. As such, the petitioner fails to establish this last criterion at 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 on this ground.

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.