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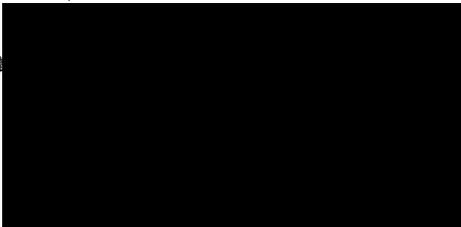
Date: OCT 04 2005

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.

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 specialist for music and performing groups. It seeks to employ the beneficiary as an operations 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, the petitioner 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 an operations 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 planning comprehensive travel arrangements for orchestras and other musical performers; negotiating contracts in English, Italian, and French with airlines, ground transport companies, tour guides, and hotels to procure transportation, accommodations, and meals, and sightseeing agendas; coordinating performance connections at worldwide concerts and festivals to assure that arrangements meet orchestra/performing group management and union contract regulations; ensuring that orchestra and performing group members have appropriate legal documents such as passports and visas. In response to the request for evidence the petitioner described the proposed duties as: dealing with airlines to find the best routing for group destinations at the most convenient airfare; discussing contractual terms and conditions and changing them when necessary; dealing with incoming services such as hotels, land transportation companies, and international land operators; creating services for travel packages and assigning the appropriate travel period for activities; formulating customized contracts for submission to clients upon approval of travel programs; remaining competitive by researching competitor's products and monitoring their performance; writing detailed travel proposals to attract customers; creating new contacts with land and air operators to obtain new business; improving contracts to decrease over-all costs and reduce business risks; devising price skimming techniques to ascertain the highest price that a client will pay; devising direct marketing techniques; constructing surveys to obtain client feed-back on travel packages; and tracking cash, accounts payable, accounts receivable, and other accounts. For the proposed position the petitioner requires a bachelor's degree in business administration and three or more years of experience in the travel industry.

The director stated that the evidence reflects that the petitioner is a travel agency, and that the proposed duties are a combination of those of a travel agent and an accounting clerk or bookkeeper as those occupations are depicted in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that these occupations do not require a bachelor's degree. The director stated that the petitioner failed to submit independent evidence corroborating the assertion that all employees are required to possess at least a baccalaureate degree in a specific specialty; or show that the industry requires a bachelor's degree in a specific specialty for the proposed position;

On appeal, counsel states that CIS approved an H-1B petition filed on behalf of the beneficiary by another employer for a similar position. Counsel states that the description of a travel agent in the *Handbook* does not include some of the beneficiary's special duties; and observes that the *Handbook* conveys that the requirement of a bachelor's degree is quickly becoming the norm for travel agency positions as college is increasingly important for getting a job, and that a college education is sometimes desired by employers. Counsel refers to an HRA Compensation Survey, which indicates that a similar position, a conference/meeting coordinator, "[n]ormally requires relevant college courses and 2-4 years related experience." Counsel references the petitioner's website to show that the petitioner requires employees to hold a bachelor's degree. Referring to an unpublished case, counsel states that the case indicates that the government should give deference to an

employer's view, consider fully the employer's evidence, and not rely simply on "standardized government classification systems" such as the *Handbook*. Counsel discusses a November 23, 2003 statement from CIS which states that previously adjudicated matters should not be re-adjudicated absent the indication of fraud or gross error.

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.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. This record of proceeding does not, however, contain the supporting evidence submitted to the 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 prior H-1B petition and the instant petition are parallel. 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).

Counsel's reference to an unpublished case to establish that CIS should rely on "standardized government classification systems," such as the *Handbook*, in determining whether a position qualifies as a specialty occupation is not persuasive. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

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 director properly concluded that many of the proposed duties are encompassed within those of a travel agent as that occupation is depicted in the *Handbook*. The *Handbook* reports:

In general, travel agents give advice on destinations and make arrangements for transportation, hotel accommodations, car rentals, tours, and recreation. They also may advise on weather conditions, restaurants, tourist attractions, and recreation. For international travel, agents also provide information on customs regulations, required papers (passports, visas, and certificates of vaccination), and currency exchange rates.

The *Handbook* continues:

Travel agents also promote their services, using telemarketing, direct mail, and the Internet. They make presentations to social and special-interest groups, arrange advertising displays, and suggest company-sponsored trips to business managers. Depending on the size of the travel agency, an agent may specialize by type of travel, such as leisure or business, or destination, such as Europe or Africa.

The beneficiary will make flight arrangements; discuss, modify, and enter into contracts; deal with hotels, land transportation companies, and international land operators; create services for travel packages; draft contracts for clients; keep abreast with competitors by researching their products and monitoring their performance; write detailed travel proposals to attract customers and create new contacts with land and air operators to draw in business; improve contracts to decrease over-all costs and reduce business risks; devise price skimming techniques to ascertain the highest price that a client will pay; devise direct marketing techniques; and construct surveys to obtain client feed-back on travel packages. These duties are encompassed within those of a travel agent as they give advice on destinations and make arrangements for transportation, hotel accommodations, car rentals, tours, and recreation; advise on restaurants, tourist attractions, and recreation; promote services, using telemarketing, direct mail, and the Internet; make presentations to social and special-interest groups, arrange advertising displays, and suggest company-sponsored trips to business managers; and provide information on customs regulations and required papers such as visas. The proposed duty to draft contracts would be encompassed within a managerial position in a travel agency.

Counsel claims that the *Handbook* conveys that the requirement of a bachelor's degree is quickly becoming the norm for travel agency positions as college is increasingly important for getting a job, and that employers sometimes desire a college education. The AAO finds that the *Handbook* conveys that a bachelor's degree is not required for a travel agent or a managerial position in a travel agency. The *Handbook* states "[t]he minimum requirement for those interested in becoming a travel agent is a high school diploma or equivalent," and the *Handbook* reports:

Some employees start as reservation clerks or receptionists in travel agencies. With experience and some formal training, they can take on greater responsibilities and eventually assume travel agent duties. In agencies with many offices, travel agents may advance to office manager or to other managerial positions.

The *Handbook* conveys that bookkeeping, accounting, and auditing clerks "update and maintain one or more accounting records, including those which tabulate expenditures, receipts, accounts payable and receivable, and profit and loss." According to the *Handbook*, these occupations do not require a bachelor's degree. The beneficiary's duties relating to accounts payable and accounts receivables fall within the duties of financial clerks, which are occupations that do not require a bachelor's degree.

The reference to the HRA Compensation Survey is not persuasive in establishing that the proposed position is a specialty occupation in that the requirement of "relevant college courses and 2-4 years related experience" differs from the requirement of possessing a baccalaureate degree. Further, a study of compensation paid by employers does not focus on the educational requirements of the position. Counsel does not attach the survey or its methodology. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, as the *Handbook* indicates that a bachelor's degree in a specific specialty is not required of travel agents and financial clerks, which are similar occupations to the proposed position.

No evidence establishes 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. The *Handbook* reveals that the proposed duties are not complex or unique as they are a combination of those of travel agents and financial clerks, which are occupations that do not require a baccalaureate degree in a specific specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires that the petitioner establish that it normally requires a degree or its equivalent for the position. The petitioner claims that it requires its employees to possess a bachelor's degree. The record contains a document entitled "Staff Contact, Exhibit 3." This document shows that the petitioner employs three persons as operations managers, and that these employees hold a master's degree in international affairs, a baccalaureate degree in communications, and a baccalaureate degree in Hispanic Studies with a minor in sociology. This evidence shows that the petitioner does not require a bachelor's degree *in a specific specialty* as it accepts a broad range of baccalaureate degrees for the proposed position. As such, the petitioner fails to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 this decision the AAO has already conveyed that the proposed duties resemble those of travel agents and financial clerks, and that the *Handbook* reveals that these occupations do not require a bachelor's degree in a specific specialty. No additional complexities have been described which would require a baccalaureate degree in a specialty. Thus, the petitioner fails to establish this last criterion.

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.