

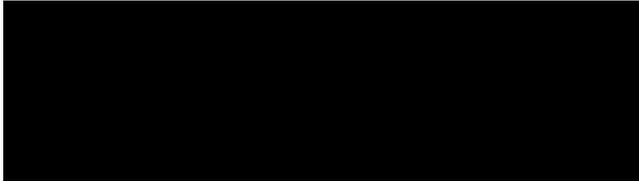
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

D2

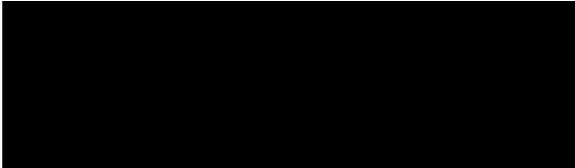


FILE: WAC 04 800 61842 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The director of the California 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 an international tour operator with 7 employees, three offices, and a gross annual income of \$3 million. It was established in 1998. It seeks to employ the beneficiary as a contract administrator 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 based on his determination that the proffered position was not a specialty occupation. The director further determined that the beneficiary is not qualified to perform the duties of 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) the petitioner's response to the director's request for evidence, dated December 22, 2004; (4) the director's denial letter; and (5) Form I-290B, with the counsel's brief and new and additional evidence.

The first issue before the AAO is whether the 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 (5th 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 contracts administrator for its business to work under the direct supervision of its president.

At the time of filing, and in response to the RFE, the petitioner stated the duties of the proffered position as follows:

- Direct all activities concerning the administration of local and international travel related contracts to ensure contract compliance of US and Japanese business associates;
- Utilize specialized knowledge of travel and tourism business in order to maximize operational efficiency in contracts administration;
- Exercise independent judgment regarding legal and financial matters related to travel related international business agreements;
- Draft pre-contract field orders binding customers to distribution agreements and amend agreements as required;
- Ensure contracts are in compliance with national and international laws and regulations;
- Produce and monitor field order reports documenting agreement terms with each business associate company;
- Analyze contracts to ensure that third parties’ rights are not infringed upon and produce reports documenting such findings;

- Review travel related contractual agreements for finance issues to be resolved; and
- Ensure the ongoing adherence, validity and enforceability of contractual provisions.

The petitioner stated that it required a bachelor's degree in Business Management, Business Administration or Travel and Tourism, and that in the past the duties of the position were performed by the company's president.

The director found that the proffered position was not a specialty occupation because the duties are not so specialized and complex as to require a bachelor's degree in a specific field of study. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the duties of the position are similar to that of a contracts administrator and purchasing manager, buyer, or purchasing agent, a position that is not listed as a specialty occupation. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the contracts administrator position has a combination of duties similar to those of an administrative services manager and contract specialist, requires a bachelor's degree and points to the *Handbook's* section on education and training for administrative services manager and contract specialist, and the specific vocational preparation (SVP) code in the Department of Labor's *Dictionary of Occupational Titles (DOT)* for both administrative services managers and contract specialists.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

To determine whether the duties just described 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 *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, 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)).

The AAO first turns to a consideration of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO finds that the duties of the proffered position are similar to an administrative services manager (contracts manager).

The 2006-2007 *Handbook's* description of administrative services managers, at <http://www.bls.gov/oco/ocos002.htm>, states:

Administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services to organizations as diverse as insurance companies, computer manufacturers, and government offices. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, and personal property procurement, supply, and disposal.

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers. Some mid-level administrative services managers oversee first-line supervisors from various departments, including the clerical staff. ...

....

The nature of managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services. In addition, some administrative services managers acquire, distribute, and store supplies, while others dispose of surplus property or oversee the disposal of unclaimed property. ...

With respect to the educational qualifications for administrative service managers, the *Handbook* states:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

Whatever the manager's educational background, it must be accompanied by related work experience reflecting demonstrated ability. For this reason, many administrative services managers have advanced through the ranks of their organization, acquiring work experience in various administrative positions before assuming first-line supervisory duties. ...

Specific requirements vary by job responsibility. For first-line administrative services managers of secretarial, mailroom, and related support activities, many employers prefer an associate degree in business or management, although a high school diploma may suffice when combined with appropriate experience. For managers of audiovisual, graphics, and other technical activities, postsecondary technical school training is preferred. Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. ...

Persons interested in becoming administrative services managers should have good communication skills and be able to establish effective working relationships with many different people, ranging from managers, supervisors, and professionals, to clerks and blue-collar workers. They should be analytical, detail-oriented, flexible, and decisive. They must be able to coordinate several activities at once, quickly analyze and resolve specific problems, and cope with deadlines. Persons interested in becoming administrative services managers should have good communication skills and be able to establish effective working relationships with many different people, ranging from managers, supervisors, and professionals, to clerks and blue-collar workers. They should be analytical, detail-oriented, flexible, and decisive. They must be able to coordinate several activities at once, quickly analyze and resolve specific problems, and cope with deadlines.

The *Handbook* indicates that contract administrators require a degree in business, human resources or finance. Thus the petitioner has established that the position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The director also found that the beneficiary is not qualified to perform the services of a specialty occupation. The AAO agrees that the record does not contain sufficient documentation to establish that the beneficiary qualifies to perform services in a specialty occupation, as required at section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), 8 C.F.R. § 214.2(h)(4)(iii)(C).

Further discussion of how an alien qualifies to perform services in a specialty occupation is found at 8 C.F.R. § 214.2(h)(4)(iii)(C), and requires the individual to:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

No evidence has been submitted to establish that the beneficiary holds a U.S. degree in the specialty or a foreign degree equivalent to a U.S. degree in the specialty, nor is the beneficiary required to have a license to perform the duties of the proffered position.

When a beneficiary is determined to lack the specific degree required by a specialty occupation, the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D) to determine whether the individual may still qualify to perform the proffered position. A beneficiary who does not have a degree in the specific specialty may still qualify for an H-1B nonimmigrant visa based on:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or

registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In support of its claim that the beneficiary has the equivalent of a degree from an accredited institution in the United States, the petitioner submitted copies of an Associate Degree certificate, unofficial transcripts, and a degree equivalence evaluation by ██████████ of Morningside Evaluations and Consulting. The evaluation states that the combination of the beneficiary's education and experience are equivalent to a baccalaureate degree in business administration with a concentration in tourism. The credentials evaluation indicates that the evaluator based his assessment of the beneficiary's credentials, in part, on the beneficiary's work experience. The evaluator determined that the beneficiary has the equivalence of a bachelor of Business Administration, with a concentration in Tourism based on a combination of her education and job-related experience between July 1999 and September 2004. ██████████ indicates that he is an official with authority to grant college-level credits for training and /or experience in the specialty at an accredited institution which has a program for granting such credit. The record also contains a letter from the Chair of the Business and Accounting Division at Mercy College confirming ██████████ has authority to grant college credit for training and/or work experience, and that Mercy College has a program for granting such credit. Thus, the petitioner states that the beneficiary is qualified for the position under the provisions of 8 CFR 214.2(h)(4)(iii)(D)(1).

The AAO finds that the evaluation from ██████████ is not supported by the documentary evidence of record. ██████████ indicated that the beneficiary graduated with an Associate's Degree from three different colleges: the Senzoku Gakuen Junior College in Japan, the Santiago Canyon College, and Santa Anna College. ██████████ then considered three years of work experience to equal one year of college training. ██████████ stated:

On the basis of the credibility of Senzoku Gakuen Junior College, Santiago Canyon College, Santa Anna College, and hours of academic coursework, and considering more than three years of work experience and professional training in Business Administration, Tourism, and related areas, it is my judgment that ██████████ has attained the equivalent of a Bachelor of Business Administration degree, with a concentration in Tourism, from an accredited institution of higher education in the United states.

The record reflects, however, that the beneficiary has two associate degrees, not three. The beneficiary has the equivalent of four years of study at the associate degree level, two years with a concentration in English from Senzoku Gakuen Junior College, and two additional junior college years with a

concentration in travel and tourism from Santa Anna College - Santiago Canyon College. The AAO cannot accept [REDACTED] opinion, as it assumes facts not in the record. Further, [REDACTED] does not indicate that these four years of study at junior colleges are the equivalent of three years of academic preparation at the university level at an accredited institution in the U.S. The AAO finds that four years of study at the junior college level does not equate to any academic study at the third and fourth years of an accredited institution in the U.S. Study at a junior college prepares a student for entry into a four-year university. Citizenship and Immigration Services (CIS) uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The AAO will accept that the beneficiary has two years of study at the university level. [REDACTED] conclusion that the beneficiary's three years of work experience is the equivalent of one additional year of university level training does not equal four years of university. Thus, the evaluation does not establish that the beneficiary is qualified to perform the services of a specialty occupation.

CIS may perform its own evaluation of the beneficiary's academic credentials under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The petitioner submitted evidence that the beneficiary has 3 years of related work experience. As the beneficiary would need 6 years of related work experience to equate to 2 additional years of study at the university level, under the 3-for-1 rule at under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the record does not establish that the beneficiary has the equivalent of a university degree. Further, the AAO notes that the letters submitted by the petitioner describing the beneficiary's previous employment do not establish that the beneficiary's work experience included the theoretical and practical application of a body of highly specialized knowledge, that it was gained while working with peers, supervisors or subordinates who have degrees in a related field, or that the beneficiary has recognition of expertise. Thus, the evidence does not establish that the beneficiary is qualified to perform the services of a specialty occupation.

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation. The petition may not be approved, however, as the beneficiary is not qualified to perform the services of 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.