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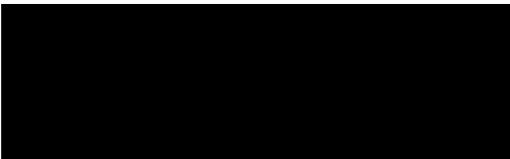
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FILE: SRC 04 199 52172 Office: TEXAS SERVICE CENTER Date: JUN 15 2006

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 private country club and seeks to employ the beneficiary as a service director. The petitioner 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 position did not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the proffered position is a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 are 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) the 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) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a service director. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. The duties set forth in the petitioner's response to the director's request for evidence, however, will not be considered as those duties significantly changed the nature of the position. In the petitioner's support letter of July 1, 2004, the duties to be performed by the beneficiary were defined as follows:

- Plan and organize recreational activities and create a friendly atmosphere for club members;
- Greet new arrivals, introduce them to other members, acquaint them with recreation facilities, and encourage them to participate in group activities;
- Ascertain interests of groups and evaluate available equipment and facilities to plan activities;
- May assist management in resolving guests' complaints;
- Serve as liaison between the service staff and management; and
- Assist in analyzing business needs in order to make improvements and organize new programs.

According to the evidence set forth in the petitioner's response to the director's request for evidence, the beneficiary would:

- Set the complete service component payroll of the Timarron Country Club and be responsible for the recruitment, retention, supervision, development, and training of all service personnel;
- Develop and implement sales programs for employee partners, and assume a high level of responsibility directly related to the petitioner's budget control, which, in addition to cost and labor controls, includes all revenues and expenses of the Food and Beverage operations;

- Utilize labor forecasts and management systems to optimize service levels while maintaining the petitioner's financial goals and objectives;
- Collaborate with the Private Event Director and Member Relations Director to anticipate and strategize appropriate staffing levels suitable for event and member requirements;
- Manage, modify and incorporate the promotion of the petitioner's social activities and various service oriented events with the petitioner's service personnel;
- Outline, develop, manage and implement training programs to service personnel, and hire, develop and discipline all service personnel in compliance with the petitioner's procedures;
- Organize and conduct weekly service training meetings for all service personnel and, as needed, provide special training sessions to assist in special events requiring unique, customer/client demands and expectations;
- Work directly with the Food and Beverage Manager and Club Manager and supervise all captains and service personnel;
- Inspect and review all service tickets and transactions to ensure proper and accurate accounts receivable, and, in collaboration with the Club Manager, review and manage the wine expense benchmarks for the food and beverage plan; and
- Supervise and review the assignment of service personnel and, as needed, implement modifications in order to meet the petitioner's service needs.

The purpose of a request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position that was offered to the beneficiary at the time the I-129 petition was filed is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The duties assigned to the beneficiary in the petitioner's response to the director's request for evidence materially changed the nature of the position offered to the beneficiary. Initially, the beneficiary was only to: plan and organize recreational activities; create a friendly club atmosphere; greet new arrivals and introduce them to other members; acquaint new arrivals with the club's recreational facilities and encourage participation in group activities; plan group activities consistent with the club's facilities; solve member complaints; and assist in making club improvements and organizing new programs. Under the duties to be performed as set forth in the response to the request for evidence, the beneficiary's duties were substantially changed so that the beneficiary would now: set the beneficiary's complete service component payroll; be responsible for service employee recruitment, retention, supervision, development and training; develop and implement sales programs for employee partners and assume a high level of control for the

petitioner's budget, including all revenues and expenses for food and beverage operations; maintain appropriate staffing levels for club events; supervise all captains and service personnel; and inspect and review all service tickets for accuracy. These duties were not included in the duties the beneficiary was to perform when the petition was filed, and actually represent a new position. As such, they may not be considered and the position will be evaluated based on the duties detailed with the initial filing of the petition.

The petitioner requires a minimum of a bachelor's degree in business management or business administration for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general managerial positions in a service industry. The *Handbook* does not require a degree in a specific specialty for entry into this type of position. For example, a degree in a specific specialty is not required for operations managers, general managers, convention services managers, or food and beverage managers. These type positions are regularly filled by individuals with a wide range of educational backgrounds, and by individuals who do not hold a baccalaureate level education. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the proffered position. Positions requiring a college degree are filled from a wide range of educational disciplines. A degree in a specific specialty, however, is not required. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement, in a specific specialty, is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

Finally, the duties to be performed by the beneficiary are not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nor are the duties so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The duties appear to be routine for the position in the industry and regularly performed by individuals with a wide range of education in a number of different disciplines. The petitioner states that the proffered position requires a baccalaureate level education in a specific specialty

because the duties of the position have changed with the petitioner's expanding business functions. The petitioner did not, however, provide evidence of any expanded business functions. Simply going on the record without supporting documentary evidence is not sufficient for purposes 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 190 (Reg. Comm. 1972)). Further, any increase in the complexity of the duties to be performed as set forth in the petitioner's response to the director's request for evidence cannot be considered as those duties create a new position, and that position is not the same as originally petitioned. As previously noted, if the petitioner wishes to obtain H-1B approval for the beneficiary under those duties, it must file a new petition. The petitioner has failed to establish the referenced criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) or (4).

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 failed to sustain that burden and the appeal shall accordingly be dismissed.

**ORDER:** The appeal is dismissed. The petition is denied.