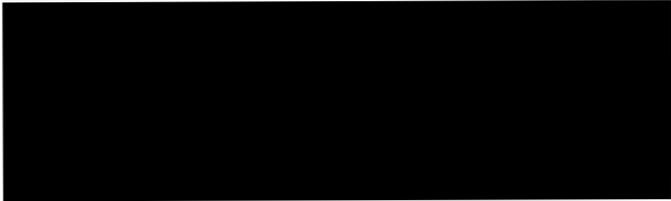




U.S. Citizenship
and Immigration
Services

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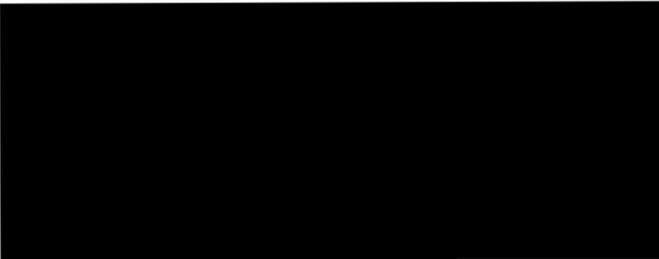
FILE: LIN 04 107 50513 Office: NEBRASKA SERVICE CENTER Date: MAR 27 2006

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.

for 
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 college/university that seeks to employ the beneficiary as an international student advisor. 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 on the ground that: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified for a specialty occupation.

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, the appeal, and additional evidence. The AAO reviewed the record in its entirety before issuing its decision.

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.

The petitioner is seeking the beneficiary's services as an international student advisor. 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: building relationships with students that vary in cultural and racial backgrounds; assisting in organizing and building the International Student Program, International Panel, and International Mentor Program; maintaining communication between international students and the college; promoting the college to current and prospective international students and the wider college community; and counseling international students regarding career options in their respective countries in order to prepare them for post graduate work/study. The petitioner's February 6, 2004 letter stated that the beneficiary would work under the close supervision of the director of student life, and the letter discussed the beneficiary's duties such as the duty to assist students in complying with governmental regulations concerning immigration, visas, passports, and work authorization. In the document "Position Description for International Student Advisor," (Exhibit 12), and the document "International Student Advisor," the petitioner did not indicate an educational requirement for the proposed position; however, the documents indicated a requirement of:

[G]ood communication, marketing, and management skills as well as experience in career advising and entrepreneurial problem solving . . . a thorough understanding of international issues relating to government regulations and procedures.

The petitioner's February 6, 2004 letter relayed that the proposed position requires at minimum a bachelor's degree in business administration, public administration, or a closely related field. The document "Posting Notice" listed the requirement of:

A [b]achelor's degree or equivalent combination of education and experience in [b]usiness [a]dministration, [p]ublic [a]dministration, or a closely related field is required. No experience is required.

In the denial letter, the director noted that the petitioner's job description and job advertisement did not list an educational requirement; and that the posting notice listed a requirement of a bachelor's degree or an equivalent combination of education and experience in business administration, public administration, or a closely related field. In light of the proposed position's educational requirement, the director found that the petitioner failed to qualify the proposed position as a specialty occupation. The director also found that the beneficiary was not qualified for an international student advisor position.

On appeal, counsel submits the following: a letter from the college's president, a revised description of the proposed position, and advertisements from colleges and universities.

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.

To establish that a position qualifies as a specialty occupation, the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) means not just any baccalaureate or higher degree, but one which is in a specific specialty that is directly related to the proposed position. In the May 26, 2004 letter counsel states that a specific baccalaureate degree is not offered for the proposed position, which is in the field of international student advising, and counsel discusses *Tapis International vs. INS*, 94 F. Supp. 2d 172, 176 (D. Mass. 2000), a case involving an occupation that does not have a specifically tailored baccalaureate program. In *Tapis International*, the court states:

For the equivalent language to have any reasonable meaning, it must encompass not only skill, knowledge, work experience or training . . . but also various combinations of academic and experience based training. It defies logic to read the bachelor’s requirement of “specialty occupation” to include only those positions where a specific bachelor’s degree is offered. In fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience. By including the “or its equivalent” language, the statute and regulations recognize that the needs of a specialty occupation can be met through education, experience, or some combination of the two.

The court found that the petitioner *Tapis International* had submitted undisputed evidence that it required “a bachelor[’]s degree from a limited number of academic fields (marketing or business) *in addition to specialized design experience.*” According to the court:

Applying the proper interpretation of INS guidelines, it is evident that Plaintiff Tapis demands, as a minimum requirement for the position of showroom manager, a bachelor’s degree or higher in business administration as well as specialized training or experience in the field of design. Together, these constitute the equivalent of a specialized baccalaureate degree. . . .

The AAO finds that the facts in *Tapis International* are distinguishable from those of the instant petition. In *Tapis International*, the petitioner required a bachelor’s or higher degree in business administration as well as specialized training or experience in the field of design. The court found that collectively this requirement was the equivalent of a specialized baccalaureate degree. With the position offered here, the petitioner does not unequivocally require at least a bachelor’s degree in a limited number of academic fields, as the documents entitled “Position Description for International Student Advisor,” (Exhibit 12), and “International Student Advisor,” do not list an educational requirement of a baccalaureate degree for the proposed position. Although the February 6, 2004 letter conveys an educational requirement of at least a bachelor’s degree in business administration, public administration, or a closely related field, it does not indicate that a candidate must have specialized training or experience in the field of international student advising.¹ In fact, the

¹ In the letter the petitioner states that the beneficiary possesses the required educational credentials, a bachelor’s degree in business administration, and has experience in international student advising, having worked as an international student advisor with the petitioner. The beneficiary’s coursework that the

document entitled "Posting Notice" listed the requirement of a bachelor's degree or an equivalent combination of education and experience in business administration, public administration, or a closely related field, and conveyed that no experience is required for the proposed position. For this reason, the petitioner's educational requirement is distinguishable from the educational requirement expressed by the court in *Tapis International*. Therefore, the petitioner's educational requirement does not constitute the equivalent of a specialized baccalaureate degree in the field of international student advising.

Furthermore, *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), indicates "the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility." Here, because the petitioner accepts a bachelor's degree or an equivalent combination of education and experience in business administration, without further specification as to a particular course of study in the broad field of business administration, the petitioner's educational requirement fails to establish that the proposed position requires a bachelor's degree in a specific specialty.

The AAO concludes, based on the evidence in the record, that the petitioner establishes none of the criteria 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; that a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; that the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or 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 in a specific specialty.

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.

petitioner states is related to the proposed position is as follows: principles of microeconomics, financial accounting, beyond race and racism, programming, managerial accounting, management, cost accounting, business communication, legal/ethical environment of business, marketing, corporate finance, management information systems, entrepreneurial problem-solving, global business, information resource management, intermediate accounting 1, data base management, and internship in business. The AAO notes that the coursework completed by the beneficiary primarily focuses on business. Although the petitioner stated that the beneficiary would assist students with personal finance and financial aide, because the petitioner did not elaborate on this particular duty, the AAO cannot conclude that the duty would require specific courses in finance and business.

The director also determined that the beneficiary is not qualified for a position as an international student advisor. Because the AAO concluded that the offered position does not qualify as a specialty occupation, the beneficiary's qualifications for the proposed position are of no consequence.

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.