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U.S. Citizenship
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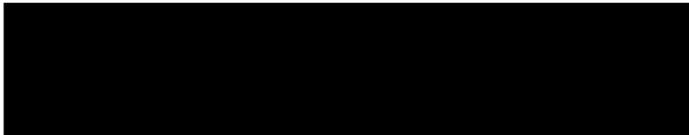
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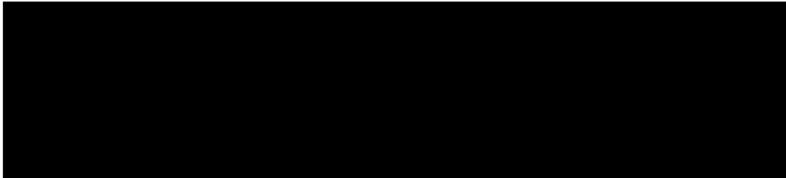
FILE: LIN 05 003 50054 Office: NEBRASKA SERVICE CENTER Date: JUN 04 2007

IN RE: Petitioner:
Beneficiary:



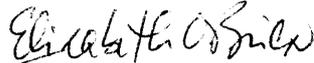
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen and reconsider the AAO dismissal. The motion will be dismissed as untimely filed. The AAO will reopen this matter on its own motion pursuant to 8 C.F.R. §103.5(a)(5)(ii) to reconsider its previous decision. Upon reconsideration of the appeal, the appeal will be dismissed, and the petition will be denied.

The petitioner operates a golf course and supper club. It seeks to employ the beneficiary as a golf club manager. Accordingly, 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 record of proceeding before the AAO contains: (1) the October 1, 2004 Form I-129 and supporting documentation; (2) the director's October 12, 2004, request for evidence (RFE); (3) counsel for the petitioner's January 4, 2005 request for an additional 60 days to respond to the director's RFE; (4) the director's January 14, 2005, denial letter; (5) the Form I-290B and counsel's brief and documentation in support of the appeal; (6) the AAO's June 23, 2006 decision dismissing the appeal; and (7) counsel's motion to reopen and reconsider the AAO decision received by the Nebraska Service Center on September 21, 2006. The AAO reviewed the record in its entirety before reaching its decision.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days of service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The failure to file before this period expires may be excused at the discretion of the AAO where it is demonstrated that the delay was reasonable and beyond the control of the petitioner. 8 C.F.R. § 103.5(a)(1)(i).

In accordance with 8 C.F.R. § 103.2(a)(7)(i), an application received in a CIS office shall be stamped to show the time and date of actual receipt, if it is properly signed, executed, and accompanied by the correct fee. For calculating the date of filing, the motion shall be regarded as properly filed on the date that it is so stamped by the service center or district office.

In this matter, counsel for the petitioner stated: "We timely file this Motion to Reopen and Reconsider (within ninety days from the AAO decision dated June 23, 2006) with the Nebraska Service Center." As observed above, the time requirement to file a motion to reopen is 30 days, not 90 days as counsel stated. The AAO does not find evidence in the record that the delay to file the motion is reasonable or beyond the control of the petitioner. Thus, the motion will be dismissed as untimely filed. However, upon review of the record, the AAO reopens this matter on its own motion to clarify and expound upon the basis of its previous decision.

On January 14, 2005, the director denied the petition determining that the duties of the position meet the definition of golf club manager found in the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the *Occupational Outlook Handbook (Handbook)* for this position and that the position of golf club manager is a "specialty occupation." On page 3 paragraph 2 of the decision, the director noted that counsel had requested an additional 60 days to respond to the RFE, but as indicated in the RFE, no extension of the period to submit evidence would be granted. As such, the request was denied and the decision was rendered based on the evidence in the record.

In the next paragraph of the decision, paragraph 3, page 3, the director states: "[t]he record does not establish that the position qualifies as a specialty occupation" although "[i]t appears that the beneficiary may qualify for a specialty occupation." The director then analyzes the duties of the proffered position, observes that the duties incorporate the duties of a food service manager with oversight of a grounds keeping crew, and determines that these duties do not satisfy the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner asserted that the position of "golf club manager" is a specialty occupation and that the beneficiary's credentials show that he has obtained the education, specialized training, and/or work experience equivalent to a baccalaureate degree. Counsel noted that the director's RFE, which included information regarding how Citizenship and Immigration Services (CIS) reviewed education and work experience, appeared to be based on an incorrect standard. Counsel contended that as the duties of the golf club manager included the duties of a food and beverage manager and as the petitioner required the incumbent of the proffered position to be proficient in both duties pertaining to the golf course and the clubhouse, the position required a mixture of job duties. Counsel further noted that the beneficiary's associate's degree in golf course management, his over 12 years of progressive work experience in the field, and his attendance and leadership of seminars and conferences pertaining to issues in the field, had been evaluated to be the equivalent of a baccalaureate degree. Counsel concluded that the beneficiary was qualified to perform the duties of a golf course manager.

The AAO, upon review of the duties of the position, the *Handbook*, and the job postings submitted by the petitioner, including the petitioner's job posting for the proffered position, determined that the petitioner had not established the proffered position as a specialty occupation. The AAO observed that as the position was not a specialty occupation, the issue of the beneficiary's qualifications to perform the duties of a specialty occupation is irrelevant.

As noted above, the AAO reopens this matter on its own motion to more fully discuss both the issue of the nature of the position and whether its duties comprise the duties of a specialty occupation and the issue of the beneficiary's eligibility to perform the duties of the position.

First, on the issue of the proffered position and whether the duties of the position comprise a specialty occupation, the 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 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:

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.

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.

Evidence of the duties of the proffered position includes the petitioner's September 17, 2004 letter in support of the petition and the petitioner's job announcement for the position of general manager.¹

¹ The petitioner's job announcement submitted on appeal is for the position of general manager; as the duties and responsibilities of the general manager position differ from the duties first described in the petitioner's letter in support of the petition for the proffered position of golf course manager, it is not clear from the record that the general manager position is the same position as the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to

In the September 17, 2004 letter appended to the petition, the petitioner indicated that the beneficiary would manage the golf club to provide entertainment for patrons and that the duties of the proffered position would include the following tasks:

Directs activities of dining room and kitchen workers and crews that maintain club buildings, equipment, and golf course in good condition. He will hire and discharge workers; estimate quantities and costs of foodstuffs, beverages, and groundskeeping equipment to prepare operating budget; explain necessity of items on budget to board of directors and request approval; inspect club buildings, equipment, and golf course. Requisition materials, such as foodstuffs, beverages, seeds, fertilizers, and groundskeeping equipment. Keep accounts of receipts and expenditures. May assist in planning tournaments.

The petitioner's advertisement for the position of general manager for the golf course and supper club, posted January 8, 2003 and closed January 24, 2003, listed the job duties as:

1. Oversee operation of the Pine Hills Golf Course & Supper Club and Many Trails Banquet Hall to provide excellent golfing facilities and first-class food and beverage services to course membership and general public.
2. Develop an annual working budget for approval by the Tribal Council.
3. Maintain an accurate system to account for income and expense and determine profitability.
4. Develop and maintain methods to effectively purchase, price, inventory, charge, and bill for all goods and services offered by the facilities.
5. Develop and implement a plan to market Pine Hills Golf Course & Supper Club and Many Trails Banquet Hall as a vital recreational facility, to ensure its success for the Tribe. Evaluate plan on a regular basis.
6. Ensure buildings, grounds, and equipment are cared for in a manner to prevent deterioration and maintain attractiveness.
7. Hold regular meetings with staff to coordinate planning, exchange information and ideas, and ensure clear communication regarding facilities operations.
8. Responsible for employee schedule flexibility, job satisfaction, and provision of best overall service to customers.
9. Responsible for direct supervision of Assistant General Manager, Greens Superintendent, and Pro Shop Manager. Such supervision includes but is not limited to receiving weekly time sheets, complete performance evaluations, approve time-off requests, and monitor work performance.
10. Prepare appropriate reports to supervisor as directed.

The petitioner also included attendance and reliability requirements and indicated that the general manager would perform other duties as assigned by the employer.

explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On motion, counsel for the petitioner repeats the original description of the job duties and states: "[a]s the Golf Club Manager at the Pine Hills Golf Course and Supper Club, it is essential that [the beneficiary] would be involved in not only management of the Golf Course but also being directly involved in the oversight of the Course's Supper Club; which would include job duties normally associated with a Food and Beverage Manager." Counsel also references an enclosed job description for Golf Club Manager from the petitioner; however, the record only contains the petitioner's January 8, 2003 advertisement for a general manager for the golf course and supper club as noted above. As footnoted above, the job description for golf club manager and the job description for general manager for the golf course and supper club differ; thus the petitioner has not provided a clear understanding of the nature of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In addition to the description of the duties of the proffered position, the record includes copies of job announcements submitted on appeal. Three of the job announcements are for general managers with country club experience issued by a management company responsible for managing municipal golf courses, resort facilities, and private country clubs. The three job announcements from this one employer are for three of its country clubs in different locations. Each of these three job announcements indicated that as the general manager, the successful incumbent would be expected to work with department heads and coworkers managing day-to-day operations in the areas of leadership, golf operations, course maintenance, customer service, sales and marketing, food and beverage, accounting/budgeting, and human resources. The advertisements indicated that the successful incumbent would have a bachelor's degree in business, marketing, sports, hospitality management or a related field, a strong background in the food and beverage area, and a minimum of three years as an acting general manager, among other things. The record also contains advertisements for: (1) a golf course superintendent/project manager for a developer/home builder that required a bachelor's degree in an unspecified discipline; (2) a golf manager for the City of Macon, Georgia to oversee golf course operations that required a bachelor's degree in an unspecified discipline; and (3) a general manager for a golf training facility that required a degree from a recognized PGM (professional golf management) Program, Hospitality Management, Business Administration or related field and at least three years of club management experience.

Counsel includes on motion, information from the websites of ten different universities describing the professional golf management programs offered by the universities and noting that completion of the program would result in a bachelor's degree in business administration, marketing, or sports management or, in one instance, completion of an online program would result in a turfgrass certificate. The record also includes an article from the University of Minnesota, Crookston, touting the university's bachelor's program in turf management and citing an industry survey that indicated 41 percent of those surveyed (148) found a four-year degree very important for an entry-level employee and 54 percent found a four-year degree moderately important. A second article printed from Entertainment Management Online at MSU, titled *Career Profile: Golf Course Professional*, indicated that some formal education is required to become the manager of a golf course, but also stated that a bachelor's of arts in management or recreation and golf course management is necessary; and then noted that its not what you know but who you know.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The AAO observes that the *Handbook* does not provide a description for the occupation of a golf course manager. The *Handbook* does describe occupations of lodging managers, and the occupations of food and beverage service manager and sales or marketing directors, under the heading of lodging managers, as well as including a separate heading for food service managers and administrative services managers, all occupations that are similar in scope to the position of a golf course manager. The *Handbook* reports that although most lodging managers work in traditional hotels and motels, some work in other establishments such as camps and recreational resorts and that a general manager would have overall responsibility for the operation of the establishment including allocating funds to departments, approving expenditures, ensuring expected standards for guest services, and would work within the guidelines established by the owners. Some of the position's duties in this matter, such as overseeing the operations of the petitioner's establishment, providing excellent golfing facilities and food and beverage services, developing a budget, and maintaining an accurate accounting system (duties found in the petitioner's advertisement for a general manager) seem to fall within the parameters of a hotel/resort general manager. The duties associated with marketing the petitioner's golfing establishment are also duties that are described in the *Handbook's* discussion of sales or marketing directors under the heading of lodging managers. The petitioner's description of the position also aligns with that of a food and beverage manager under the occupational title of lodging managers. The *Handbook* reports: "*food and beverage managers* oversee all food service operations" and "supervise the ordering of food and supplies, direct service and maintenance contracts within the kitchens and dining areas and manage food service budgets." The description of the duties of the proffered position is also similar to and overlaps with the *Handbook's* discussion of food service managers:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of the restaurant, its equipment, and facilities.

The descriptions of the duties of the proffered position also contain elements of the duties of an administrative services manager who works as a facility manager with duties such as managing buildings and grounds, operating and maintaining the facility, and improving efficiency. The common thread amongst all of these occupations described in the *Handbook* is the *Handbook's* recognition that there are many paths to employment in these fields outside of a bachelor's degree in a specific discipline.

The *Handbook* recognizes many avenues for entry into the occupation of lodging managers, including a two-year program offered to high school juniors and seniors, hotel management programs offered by technical institutes, vocational and trade schools, and community and junior colleges, attainment of a liberal arts degree coupled with related hotel experience, and completion of a bachelor's degree in hotel or restaurant management. The *Handbook* does not state that a baccalaureate degree is a requisite for entry-level

employment. Likewise, the *Handbook* reports that many food services managers are promoted from food services workers and that community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification. The AAO acknowledges that there are bachelor's degree programs offered in restaurant and food service management and that such a degree provides preparation for a career in this occupation. However, the *Handbook's* acknowledgement of four-year programs in restaurant and hospitality management does not alter the fact that many employers do not require a bachelor's degree for employment in this occupation. The *Handbook* also recognizes that educational requirements for administrative services managers vary widely depending on the size and complexity of the organization and that in some organizations experience is the only necessary factor, while other organizations may desire an associate's degree in management. The variety of the type of preparation for work in these service industries, from experience alone to a community or trade school education to completion of a four-year program, demonstrates that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into positions similar to that of a golf club manager. The petitioner has not offered evidence that establishes that the proffered position requires a baccalaureate or higher degree in a specific discipline for employment in this occupation.

The AAO acknowledges the petitioner's initial reference to the Department of Labor's *Dictionary of Occupational Titles (DOT)* and the SVP level of 7 for a golf club manager. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The SVP rating cited by the petitioner is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of golf club manager would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty to perform the duties of the occupation.

The material submitted from ten different universities to show that there are golf management programs that result in a bachelor's degree in business administration, marketing, or sports management or other certification is insufficient to establish that completion of such a program is necessary for employment in this industry. The concept of a four-year golf management degree program does not establish that individuals involved in golf club management automatically are required to have a baccalaureate or higher degree. For instance, the article counsel submitted on motion from the University of Minnesota, Crookston, suggests in a limited survey that a majority of employers in this field found a four-year degree only moderately important. Likewise, the second article submitted by counsel on motion from Entertainment Management Online at MSU states that some formal education is required, and then states that a bachelor's of arts in management or recreation and golf course management is necessary, and also states that its not what you know but who you know. Such indefinite language suggests that the writer understood that a variety of methods are available to enter into employment in this occupation.

The AAO notes that there is an occupational field of golf management but does not find that the duties of the proffered position require a baccalaureate or higher degree or its equivalent as the normal minimum

requirement for entry into the particular position. As described by the petitioner, the duties of its golf club manager include directing activities of dining room and kitchen workers as well as the grounds crew, hiring and firing workers, estimating quantities and costs foodstuffs, beverages, and equipment, preparing an operating budget, requisitioning materials, and keeping accounts of receipts and expenditures. These are duties of a type of lodging or administrative services manager, occupations that normally do not require a baccalaureate or higher degree. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first prong of the second criterion, that a specific degree requirement is common to the industry in parallel positions among similar organizations, counsel on appeal submitted six job announcements. Although all six announcements referenced a requirement of a bachelor's degree, none of the job announcements indicated that the bachelor's degree must be in a specific discipline. Rather, the job announcements listed bachelor's degrees in business, marketing, sports, hospitality management, professional golf management, or failed to specify an educational discipline. When a job, like that of the proffered position, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. The AAO determines that the six job announcements are insufficient to establish that a degree requirement in a specific discipline is common to the industry.

The petitioner has also failed to establish the second prong of the second criterion. The record does not contain evidence that would show the proffered position is so complex or unique that only an individual with a degree can perform the position. The description of the duties of the proffered position is that of a type of food and beverage service manager or administrative services manager, occupations that the *Handbook* indicates as not requiring a bachelor's degree in a specific specialty. On appeal, counsel asserted that the proffered position of golf club manager includes the duties of a food and beverage manager and thus requires a mixture of job duties pertaining to both the golf course and the clubhouse. However, the evidence of record does not establish that the duties described as associated with managing the golf course or the duties described as associated with managing the supper club and clubhouse are duties that are sufficiently complex or unique to satisfy this criterion. Rather, the petitioner describes duties that are routine for any individual managing a food service facility and grounds crew.

On motion, counsel for the petitioner repeats language from the article printed from Entertainment Management Online at MSU indicating that golf management includes golf skills, golf teaching, pro shop management, and club development and that a golf course manager is responsible for the maintenance of the golf course, managing money from clients, hiring and training employees, and teaching golf students about the game. Counsel repeats the initial description of the proffered position's duties and asserts that these duties are complex and unique and consistent with those of a golf club/course manager in the industry. Neither counsel nor the petitioner explain or substantiate how directing the activities of the dining room and kitchen workers and crews; hiring and discharging workers; estimating quantities and costs of foodstuffs, beverages, grounds keeping equipment; explaining the necessity of requested items to the board of directors; inspecting club buildings, equipment, and golf course; requisitioning materials; keeping account of receipts and expenditures; and assisting in planning tournaments elevate a food and beverage or administrative manager to

a position that necessarily requires a bachelor's degree in a specific discipline. The description of the position does not include the skills listed as necessary for a golf management position or otherwise distinguish the proffered position as more complex or unique than similar, but non-degreed, employment, as required by the second prong of the criterion. The petitioner has, accordingly, failed to establish either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there adequate evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, in this matter although the petitioner indicated, in the September 17, 2004 letter appended to the petition, that the petitioner opened the facility in its current state in the spring of 1999, the petitioner does not provide information regarding the previous golf club manager(s) and whether the individual(s) holding the position were degreed employees. 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)). As such, it is not possible to conclude that the petitioner has previously required a degree or its equivalent for the proffered position. In addition, the AAO observes that while the petitioner indicates that the successful incumbent of the general manager position will have a bachelor's degree, the petitioner does not specify that the degree must be in a specific discipline.² Further, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Turning to the fourth criterion, the duties of the proffered position do not exceed the scope of those performed by an administrative services manager or a food services or food and beverage manager, occupations that do not require a specific baccalaureate degree. There is no evidence in the record sufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4); namely, that the petitioner 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. The *Handbook* reveals that the occupations of a food services manager, food and beverage manager, and administrative services manager are not occupations that require a specific baccalaureate degree as a minimum for entry into the occupation. The petitioner has provided a general description of the duties associated with the proffered position but has not explained how or offered documentary evidence to substantiate that the nature of the duties is specialized and complex, beyond the routine duties of these types of service managers. The petitioner has not explained how the performance of the routine duties of these service occupations requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in a specific specialty (or its equivalent) as a minimum for entry into the

² The AAO observes that the petitioner seems to rely on the beneficiary's experience and an evaluation that the beneficiary has the equivalent of a degree in recreation, parks, and tourism resources, as qualifying the position as a specialty occupation; however, a beneficiary's experience and background do not make a position a specialty occupation.

occupation. Neither the descriptions of duties nor any evidence of record establish that the position as described requires the performance of an amalgam of duties that would elevate the position to one that is so specialized or complex as to be usually associated with at least a bachelor's degree as a specific specialty. Accordingly, the petitioner has not proved that the position is a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Although the AAO finds that the position of golf course manager in this matter is not a specialty occupation, the AAO will address the issue of the beneficiary's qualifications to perform a specialty occupation. In this matter, the beneficiary's foreign education has been evaluated to be the equivalent of one year of college-level training at an accredited university in the United States. The petitioner asserts that the beneficiary's combined education and work experience is sufficient to show that the beneficiary is qualified to perform the duties of a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C)
 - (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

- (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.

The record includes: (1) a February 19, 2001 reference letter from [REDACTED], Dean and Director of West Virginia University, College of Agriculture Forestry and Consumer Science stating that based on an interview with the beneficiary, the beneficiary's qualifications and work experience is of a standard as high as required to obtain a college degree in golf course construction, golf course consultancy and machine/labor logistics; (2) a reference letter from Preston Country Club, in West Virginia, stating that the beneficiary had been working on a consultancy basis since November 2000 and had been involved in the purchase and use of the club's machinery, had organized and trained the greens keeping staff, introduced new policies within the clubhouse, had interviewed and employed the staff working within the pro-shop, and had organized a junior golf program; (3) a second letter from Preston Country Club, bearing no date, indicating that the beneficiary is a fully qualified superintendent and that the Board of Directors had determined that the beneficiary was the ideal choice to manage the country club; (4) a June 7, 2001 letter from [REDACTED] of RotoKnife, Ltd. indicating that the beneficiary had been dispatched to Preston Country Club to restructure the club house staffing levels, organize and train the greens keeping staff, and complete training and inventory controls of the pro shop facilities; (5) a second letter from [REDACTED], bearing no date, but indicating that the beneficiary had worked for the author of the letter from October 1998 to the present time on a number of projects including golf course construction, training, installation of specialized golf course equipment, and golf course management; (6) a third (reference) letter submitted by [REDACTED] also undated, indicating that [REDACTED] had attended a meeting where the beneficiary had been interviewed by [REDACTED] at West Virginia University and that the beneficiary had proved to be knowledgeable about the hospitality industry and fundamentals of the game of golf; (7) a September 20, 2000 letter from Gleneagles Hotel confirming that the beneficiary had worked at Gleneagles Hotel from May 1990 to June 1992 as a worker for one of its contractors constructing a golf course; (8) an undated letter from [REDACTED] indicating that the beneficiary was employed as the main contractor for greens and tee shaping during the construction of its golf club, commencing employment in September 1993 and ending employment August 1994; (9) an undated letter from Elmwood Golf Development indicating that the beneficiary was employed by Elmwood College, School of Greenkeeping, Horticulture and Sport under the supervision of a master greens keeper and a director of golf development from September 1994 to August 1995, with the objective of constructing a golf course, and that the beneficiary also provided training to college students on drainage, construction techniques, and machinery usage; and (10) an undated letter from Piperdam Golf and Country Park indicating that the beneficiary had been contracted to carry out a feasibility study to construct a golf course and had taken responsibility for the management of the development from September 1996 to October 1998.

The record also includes: (1) an undated letter from the secretary of course management at Plymouth College in the United Kingdom indicating that the beneficiary had attended and completed a course in Hotel and Catering Management from August 1989 through May 1990; (2) the beneficiary's military records; and (3) a November 30, 2001 evaluation of the beneficiary's education and work experience by [REDACTED] Associate Professor of Hotel Administration, Department of Management, Cornell University.

[REDACTED] found that the beneficiary's education at Plymouth College in the United Kingdom was the equivalent of one year of academic studies leading to a bachelor's level degree in hospitality management from an accredited institution of higher education in the United States. Professor Sturman also summarized the beneficiary's "eleven years and three months" of employment experience in hospitality management, golf course management, and related areas and concluded that this experience was equivalent to over three years

of college-level training required to obtain a bachelor's degree. [REDACTED] concluded that the beneficiary's academic education and work experience is equivalent to a bachelor's of science degree in hospitality management, with a concentration in golf course management from an accredited institution of higher learning in the United States. [REDACTED] stated that he had the authority to grant college level credit.

The record on appeal included a second letter from [REDACTED] Dean of the Davis College of Agriculture, Forestry and Consumer Sciences and Director of the West Virginia Experiment Station, West Virginia University, dated February 11, 2005 and expanded upon [REDACTED]'s previous comments regarding the beneficiary. [REDACTED] indicated that his previous evaluation of the beneficiary's qualifications and experience had been based on an interview he had conducted with the beneficiary on February 6, 2001 and the documents submitted by the beneficiary including his resume and letters from Whitmoss Leisure Ltd., Elmwood Golf Development, and Piperdam Golf and Country Park.

In this matter, the petitioner has not provided evidence nor does the petitioner assert that the beneficiary qualifies to perform a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(C) (1), (2), or (3); rather the record illustrates the petitioner's attempt to demonstrate that the beneficiary has a combination of education and work experience sufficient to qualify to perform services in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

When determining a beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the AAO relies upon the five criteria specified at 8 C.F.R. § 214.2(h)(4)(iii)(D). 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.

On motion, counsel asserts that CIS used the wrong standard when reviewing the information submitted by [REDACTED] and [REDACTED] by reviewing the information they provided pursuant to the standard set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) rather than the standard set forth at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Although counsel does not contend that the beneficiary's qualifications should be evaluated pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), the AAO will briefly address the reason why the information in the record is insufficient to establish this criterion.

The record contains an evaluation regarding the beneficiary's academic education and work experience dated November 30, 2001 by [REDACTED] Associate Professor of Hotel Administration, Department of Management, Cornell University. [REDACTED] evaluates the beneficiary's nine months of education at Plymouth College in the United Kingdom as equivalent to one year of academic studies leading to a bachelor's degree in hospitality management from an accredited institution of higher learning in the United States. The AAO accepts this evaluation of the beneficiary's academic education. However, Professor Sturman's evaluation of the beneficiary's work experience is not acceptable; the AAO may not accept this evaluation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), as no independent evidence of record establishes that [REDACTED] has the authority to grant college-level credit for training and/or work experience, or that Cornell University has a program for granting such credit. A petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Although [REDACTED] states he has authority to grant college-level credit within the context of his courses, this statement is not substantiated by independent evidence. The petitioner has not provided the necessary evidence to establish that the beneficiary is qualified to perform the services of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

Turning to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO acknowledges counsel's assertion that the information in the record establishes the beneficiary's qualifications under this criterion. The AAO disagrees. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS must make the determination as to whether the beneficiary has acquired the equivalent of a degree through a combination of education, specialized training, and/or work experience in areas related to the specialty. To meet this first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), CIS must consider whether the beneficiary's work experience coupled with his one-year of foreign formal education is sufficient to establish that he is qualified to perform the duties of the specialty occupation. In this matter it is not.

When evaluating a beneficiary's qualifications under the fifth criterion, CIS considers three years of specialized training and/or work experience to be the equivalent of one year of college-level training. In addition to documenting the length of the beneficiary's training and/or work experience, the petitioner must also establish such training and/or work experience has included the theoretical and practical application of the specialized knowledge required by the specialty occupation, and that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. In this matter as

noted above, the AAO finds that the beneficiary's academic education is equivalent to one year of college-level credit; thus the petitioner must establish that the beneficiary's work experience is equivalent to an additional three years of college-level courses.

The AAO does not find the information in the letters submitted by the beneficiary's prior employers sufficient to establish that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in a particular specialty occupation. The AAO has reviewed the numerous letters submitted on the beneficiary's behalf. The beneficiary's foreign work experience of record: began in May 1990 to June 1992 as a construction worker for a contractor building a golf course; continued in September 1993 to August 1994 as a sub-contractor for greens and tee shaping during construction of a golf course; continued for one year from September 1994 to August 1995 under the supervision of a master greens keeper and a director that included in addition to construction duties, the training of college students on construction techniques and machine usage; and continued from September 1996 to October 1998 as a contractor and developer in the construction of a golf course. The AAO does not find the beneficiary's first three years of experience equivalent to college-level courses. The AAO will accept the beneficiary's combined three years of work under the supervision of a master greens keeper and as a developer of a golf course, as evidence that the beneficiary gained experience in golf course construction and development. The information describing these duties suggests that the beneficiary gained progressive work experience; however, the information is insufficiently detailed to show (1) that the beneficiary was required to apply theoretical and practical specialized knowledge in the field of golf course construction and development, and (2) that the beneficiary worked with peers, supervisors, or subordinates with at least a baccalaureate degree in a specific specialty. These three years may be progressive work experience but the AAO cannot determine that the actual duties involved in this work experience is equivalent to one additional year of college-level training in the field of golf course construction and development.

The three letters submitted by [REDACTED] covering the beneficiary's work from 1998 to 2001 reference the beneficiary's experience in restructuring golf courses, including responsibility for site works and installation of aeration machinery, golf course construction, as well as introducing training to course managers, superintendents and grounds supervisors. [REDACTED] also indicated, without adequate detail, that the beneficiary was involved in applying management skills to the management of clubhouses and associated areas of business as a member of a team to improve golf courses in a variety of troubles. It is not possible to tell from the information in [REDACTED] letters whether the beneficiary's work experience included the theoretical and practical application of the specialized knowledge required by a specialty occupation, or that the experience was gained while working with peers, supervisors, or subordinates who have degrees or the equivalent in the specialty occupation. Mr. [REDACTED] letters lack the specificity required to establish that the beneficiary's work experience from 1998 to 2001 is the equivalent of an additional year of college-level courses in a field related to a specialty occupation.

The AAO has also reviewed the information submitted by the Preston Country Club in West Virginia and their employment of the beneficiary on a consultancy basis since November 2000.³ The Preston Country Club notes

³ It appears the beneficiary's work with the Preston Country Club began when the beneficiary was employed or worked with [REDACTED]. The AAO also notes that the Preston Country Club petitioned for the beneficiary's classification as an H-1B worker and that said petition was approved for a period beginning

that the beneficiary had been involved in the purchase and use of the club's machinery, had organized and trained the greens keeping staff, introduced new policies within the clubhouse, interviewed and employed staff in the pro-shop, and had organized a junior golf program. A second letter indicates that the beneficiary is a fully qualified superintendent but does not provide documentary evidence detailing the credentialing process, if any, or documentary evidence substantiating that the beneficiary has received a "superintendent" credential. In the beneficiary's resume, also included with this petition, the beneficiary identified his position with Preston Country Club as general manager/director of golf and indicates that he supervised all golf operations and maintenance procedures, prepared budget and marketing strategies, scheduled corporate events, increased workforce training and employability, and instituted liaison meetings between homeowners/stockholders/board of directors.

The AAO notes that this information suggests that the beneficiary is gaining experience as a golf course manager; employment that the AAO does not find requires a bachelor's degree in a specific discipline. The AAO further observes that this information is insufficiently detailed to allow a determination that the beneficiary has gained the theoretical and practical application of specialized knowledge required by a specialty occupation or that the experience was gained while working with peers, supervisors, or subordinates who have degrees in a specialty occupation. The AAO declines to speculate on how the beneficiary's work experience at the country club and with its employees translates to work with peers, supervisors, or subordinates that comprised an atmosphere conducive to obtaining knowledge that consequentially progressed to the equivalent of one year of college-level education in a recognized specialty field.

Upon review of the information in the record regarding the beneficiary's work experience, the AAO finds that the record lacks evidence that demonstrates that the beneficiary has attained the equivalent of a bachelor's degree in a specific discipline through a combination of his education, specialized training, and work experience. The petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For this reason, the AAO determines that the petitioner has not established that the beneficiary is qualified to perform the duties of the specialty occupation.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) requires that the petitioner document recognition of the beneficiary's expertise in the specialty, as evidenced by one of the following: recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation; membership in a recognized foreign or U.S. association or society in the specialty occupation; published material by or about the alien in professional publications, trade journals, books or major newspapers; licensure or registration to practice the specialty in a foreign country; or achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation. Counsel relies on and contends that the two opinion letters submitted by [REDACTED] and [REDACTED] constitute recognition of the beneficiary's expertise in the specialty occupation of hospitality or the golf course industry.

Recognized authority means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinion, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research

material used. 8 C.F.R. § 214.2(h)(4)(i)(C)(ii).

Upon review of the November 30, 2001 evaluation of the beneficiary's education and work experience by [REDACTED] Associate Professor of Hotel Administration, Department of Management, Cornell University, the AAO finds that [REDACTED] has supplied sufficient evidence of his expertise in the field of hotel and restaurant management, but not in golf course management. Although not explicitly stated, the record suggests, based on [REDACTED] experience in this field, that he has provided expert opinions in the past. However, the AAO cannot find that the beneficiary's several years of experience in the construction of golf courses, his one-year of indefinite duties under the supervision of a master greens keeper and team leader, and his three years of consulting work, including the training of course managers, superintendents and grounds supervisors is equivalent to two or more years of college-level education or that the experience is directly related to the management of a golf course and supper club. The AAO does not find a factual basis upon which to accept [REDACTED]'s opinion that the beneficiary's academic education and work experience is equivalent to a bachelor's of science degree in hospitality management, with a concentration in golf course management from an accredited institution of higher learning in the United States. [REDACTED] does not provide an analysis of the beneficiary's experience and how that experience equates to particular courses of study at the university level. He does not discuss how the beneficiary's work experience in constructing and developing golf courses is equivalent to experience in golf course management or hospitality management. Moreover, [REDACTED] does not indicate that he interviewed the beneficiary, the beneficiary's prior employers, or otherwise investigated the beneficiary's foreign work experience. There is thus an inadequate factual foundation established to support his opinion. 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 has also reviewed the February 19, 2001 reference letter from [REDACTED] of the University of West Virginia and his subsequent letter dated February 11, 2005. [REDACTED] initial letter indicates, based on an interview of the beneficiary, that the beneficiary's work experience is equivalent to a college degree in golf course construction, golf course consultancy, and machine/labor logistic. [REDACTED] does not address any management skills or advanced knowledge in fields other than the knowledge relating to constructing and developing golf courses and attending to the required machinery. [REDACTED] does not indicate that the beneficiary has attained a college-level degree in hospitality management or other type of management. Although [REDACTED] bases his opinion on an interview of the beneficiary, the beneficiary's resume, and letters from the beneficiary's foreign employer, he does not provide an analysis of the beneficiary's experience and how the experience contributes or is otherwise equal to college-level courses in a specific discipline that relates directly to the proffered position. Again, the AAO recognizes [REDACTED] has expertise in the field of education, but cannot accept his opinion that the beneficiary's work experience is equivalent to courses required in the pursuit of a four-year degree in hospitality or food service management.

Accordingly, the petitioner has not established that the beneficiary has recognition of expertise under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). Neither expert expounded upon their conclusions regarding the beneficiary's work experience and whether the beneficiary's prior work required advanced training or the theoretical and practical application of specialized knowledge equivalent to a U.S. bachelor's degree in a specific

discipline directly related to the proffered position. For this additional reason, the petition will be denied.

The record reflects that CIS has previously approved an H-1B visa for the beneficiary in the United States. The director's decision does not indicate whether he reviewed the prior approval of the other nonimmigrant petition. If the previous nonimmigrant petition was approved based on the same assertions that are contained in the current record, the approval would constitute material error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.