

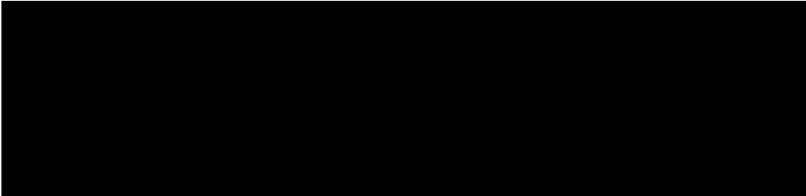
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

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*DZ*

FILE: SRC 05 212 53106 Office: TEXAS 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.

*for*  
*Michael T. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 develops and operates golf courses. It was incorporated in 2004 after the purchase of a golf course, employs one person, and estimates \$92,000 in net annual income. It seeks to employ the beneficiary as a marketing 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 July 28, 2005 Form I-129 and supporting documentation; (2) the director's August 4, 2005 request for evidence (RFE); (3) counsel's October 25, 2005 response to the director's RFE; (4) the director's November 7, 2005, denial letter; and (5) the Form I-290B and counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

On November 7, 2005, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. Thus the issue before the AAO is whether the petitioner has established 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner states that it is seeking the beneficiary's services as a marketing manager. In a July 25, 2005 letter appended to the petition, the petitioner indicated:

[The beneficiary] will be responsible for planning, organizing, directing, and evaluating marketing activities for the golf course. She will promote and establish membership contracts for the golf course and will conceptualize, design and implement marketing medium, such as brochure and website. As Marketing Manager, [the beneficiary] will also be responsible for preparing, conducting and analyzing marketing research and studies and will implement and guide new marketing projects to increase business output. The individual in this position will also be responsible for preparing and submitting periodical reports to Management regarding marketing and sales development and promotions. She will interview applicants for Marketing Department and make determinations on hiring as necessary.

This position requires at least a Bachelor's degree in Marketing, Business Administration, Management, or a related field.

The petitioner indicated that it was renovating the facilities and targeting a wider population of players in March 2005.

In an October 25, 2005 response to the director's RFE, counsel for the petitioner submitted a description of the proffered position's duties including the percentage of time allocated to those duties including:

**Business Development/Marketing:**

Development and coordination of club's marketing and business development strategy. Conduct market research and determine the demand and trend of members. Attend seminars and conferences to research new services, media-kit, and event sponsors. Develop pricing strategy for a local market. Identify potential markets and work to secure new members. Develop new corporate members by offering partnership agreements. Design, coordinate and

host events and tournaments for new and existing members. Conduct research on pro-workshop and golf academy to determine the feasibility of same. 50 percent.

**Personnel Management:**

Recruitment, hiring, training and termination of promotion employees involved in the projects. Provide and assist effective communications between employees, members and event specialists. 20 percent.

**Contract Negotiation & Administration:**

Overall administration, procurement, and fulfillment of the Contracts and Agreements of marketing-related events and corporate sponsorship. Estimate the overall project requirements, cost, delivery time and prepare accurate contract for clients. Further negotiate the terms and conditions of the contract with clients. Ensure all terms and conditions are fulfilled throughout the duration of the events, or request amendments or revisions as necessary. 10 percent.

**Project Administration:**

Monitor all event-related day-to-day operations and assure all items are presented in accordance with the plan and commitment. Supervise and direct various subcontractors engaged for the events. Review the business output subsequent to the event and measure/evaluate the success of the event. 20 percent.

**Other duties:**

Provide occasional assistance in typing, filing, computer input and answering the telephone. 5 percent.

Counsel also provided: brochures to demonstrate that golf marketing is a fast-growing profession; an excerpt from the Department of Labor's *Occupational Outlook Handbook (Handbook)* and the Department of Labor's *Online O\*NET Center (O\*NET)* regarding the occupation of marketing manager; a brochure for web-based tools used to promote a golfing facility; copies of six job announcements for various positions in the golf course industry; articles on golf courses' marketing departments; an affidavit from the head pro and manager of a golf club; and a copy of the petitioner's business plan. Counsel asserted that the individual in the proffered position would first recruit, interview, select, and train his/her team of promoters, using supervisory experience as well as theoretical knowledge gained through course work in organizational behavior and human resource management. Counsel also noted that the essential function of the marketing manager in the proffered position would be to research golf club member behavior and coordinate the use of five promotional elements including advertising, promotions, public relations, personal selling and direct marketing.

The six job announcements provided by counsel included advertisements for the positions of: (1) a director of corporate marketing and sales for a golf course superintendent association that required an undergraduate degree in business, communications, marketing or a related field; (2) a marketing manager for a provider of management, consulting and marketing services in the golf industry that required a bachelor's degree in marketing or a related field; (3) a golf operations manager for a club that required a bachelor's degree in an unspecified discipline; (4) a golf events coordinator for a company's events department that required a high

school diploma plus 2-3 years college work in business, liberal arts, marketing or a related field and preferred a bachelor's of arts degree; (5) a hospitality, food service, customer service manager for a master's championship golf course that required a bachelor's degree in an unspecified discipline; and (6) an entry-level sports marketer for a promotional marketing company working with the sports, entertainment, and hospitality industries that required a minimum of 1 year experience in customer service/retail sales/marketing/serving or a degree in business, psychology, sports management, communications, military experience, or competitive athletic experience.

In an October 25, 2005 affidavit, [REDACTED], head pro and manager of a golf club in Stillwater, Oklahoma, listed his experience in the golf club industry since 1976. [REDACTED] stated that he knew that it is "a viable function of any golf course to have an experienced marketing professional," and that "[w]ith the exception of not-for-profit golf clubs, such as [his current employer], [he] had never worked for a golf club which did not employ a marketing professional who was solely dedicated to recruit new members and retain members. [REDACTED] further opined: "I recognize that the theoretical knowledge gained in obtaining a baccalaureate degree and related practical experience are essential for Marketing Managers and are very much preferred by golf related operations today."

On November 7, 2005, the director denied the petition determining that the proffered position is similar to the job of a marketing manager as listed under the title Advertising, Marketing, Promotions, Public Relations, and Sales Managers in the *Handbook*. The director observed that the *Handbook* reported that a wide range of educational backgrounds is suitable for the occupation of marketing manager. The director also determined that although some marketing positions are specialty occupations, the petitioner's use of the marketing position within its organization did not qualify as a specialty occupation. The director further determined that the job announcements submitted were from a variety of organizations and that the petitioner had not established its similarity to the organizations or that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry as a marketing manager as it related to the petitioner's organization or industry. The director concluded that the record did not substantiate that only an individual with a baccalaureate degree could perform the duties of the proffered position.

On appeal, counsel for the petitioner acknowledges the *Handbook's* report that for marketing, sales, and promotions management position, some employers prefer a bachelor's or even a master's degree in business administration with an emphasis on marketing. Counsel asserts, however, that as set forth in the description of duties for the petitioner's position of marketing manager, theoretical knowledge of marketing research methods, consumer behavior analysis, business statistics, and business management are crucial to producing membership growth. Counsel contends that the petitioner's preference for the beneficiary who has a master's degree in management is well within the training and other qualifications set forth by the Department of Labor for this position. Counsel notes the *O\*NET* assigns a Specific Vocational Preparation (SVP) rating of 7<8 for the position of marketing manager and asserts this designation recognizes that a baccalaureate degree or its equivalent can be required to enter the position. Counsel concludes that the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position.

Counsel references a brochure on golf courses' marketing departments, previously submitted and observes that the Billy Casper Golf consulting firm includes a team of seven marketing specialists who all possess

bachelor's degrees or above. Counsel also references the affidavit from [REDACTED] previously submitted and [REDACTED]'s opinion that the theoretical knowledge gained from obtaining a baccalaureate degree is essential for marketing managers. Counsel asserts this evidence shows that a degree requirement is common to the industry in parallel positions among similar organizations. Counsel indicates that it is essential for the petitioner to hire a marketing manager and asserts that the *Handbook* and [REDACTED]'s affidavit demonstrate that a successful and competent marketing manager will be a degreed professional.

Counsel asserts: that the marketing manager will need past supervisory experience and will need theoretical knowledge gained through course work in organizational behavior and human resource management; that the essential function of a marketing manager is to research golf club member behavior and coordinate promotional elements including advertising, promotions, public relations, personal selling and direct marketing; and that the marketing manager should possess knowledge of project planning and rural development as the club will be expanding.

Counsel cites two unpublished decisions and asserts that the position of marketing manager must be deemed to be that of a professional and/or a specialty occupation.

Counsel's assertions are not persuasive. The AAO does not take issue with the necessity of employing a marketing manager for a golf course. The issue in this matter is whether the petitioner has provided sufficient evidence to establish that its proffered position of marketing manager is a specialty occupation, an occupation that requires a baccalaureate or higher degree, in a specific specialty that is directly related to the proffered position. In this matter the petitioner has not provided such evidence.

The AAO turns first to an analysis of the duties of the proffered position and the occupation that includes the described duties. 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 (5<sup>th</sup> Cir. 2000).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations when considering the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The occupation described in this matter most closely aligns with that of a marketing manager. As discussed within the occupation of advertising, marketing, promotions, public relations and sales managers of the *Handbook*:

The objective of any firm is to market and sell its products or services profitably. . . . Advertising, marketing, promotions, public relations, and sales managers coordinate the market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities.

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*Marketing managers* develop the firm's detailed marketing strategy. With the help of subordinates, including *product development managers* and *market research managers*, they estimate the demand for products and services offered by the firm and its competitors. In addition, they identify potential markets . . . . Marketing managers develop pricing strategy to help firms maximize profits and market share while ensuring that the firm's customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and oversee product development. Marketing managers work with advertising and promotion managers to promote the firm's products and services and to attract potential users . . . .

In this matter, the petitioner's job description includes promoting golf memberships, organizing marketing mediums, and guiding new marketing projects to increase memberships. The petitioner indicates the successful applicant will spend 50 percent of his/her time developing pricing strategies, identifying markets, working to secure new members and business partnerships, and hosting events and tournaments for members. In addition, as the petitioner is a new facility, the petitioner requires the successful applicant in this position to hire and train promotions staff and monitor, supervise, and direct subcontractors engaged in events, supervisory components of the marketing managerial position. Further, the petitioner indicates the successful applicant will be directly involved in negotiating and preparing member contracts, a sales component of the proffered position. Thus, the proffered position includes marketing, promoting, and selling club memberships, as well as hiring and supervising staff and hosting and monitoring golfing related events. These duties all relate to increasing the petitioner's golf facility membership.

The *Handbook* discusses the educational requirements imposed on individuals who seek employment in the advertising, marketing, promotions, public relations, and sales manager positions as follows:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales managerial jobs, but many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy among other subjects, is acceptable. However, requirements vary depending upon the particular job.

For marketing, sales, and promotions management positions, some employers prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, economics, accounting, finance, mathematics, and statistics are advantageous . . . .

\* \* \*

Most advertising, marketing, promotions, public relations, and sales management positions are filled by promoting experienced staff or related professional personnel. For example, many managers are former sales representatives, purchasing agents, buyers, or product, advertising, promotions, or public relations specialists . . . .

The *Handbook* does not identify a specific degree requirement for employment as a marketing manager. The AAO acknowledges counsel's assertion that the petitioner's preference for the beneficiary who has a master's

degree in management is within the training requirements set forth by the *Handbook* for this position. However, the first criterion is not satisfied by the petitioner's preference, as an employer's preference is not synonymous with the normally required language of this criterion. The *Handbook* offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. As indicated above, the *Handbook* does not report that a degree requirement in a specific discipline is required for the position of marketing manager, or for positions incorporating promotions, public relations, and sales managerial duties.

The AAO also acknowledges counsel's reference to the Department of Labor's *O\*NET* SVP rating for the position of a marketing manager. However, the AAO does not consider the *O\*NET* 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. The *O\*NET* 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. An SVP rating 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 a marketing manager would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The position described is not a position that normally requires a baccalaureate or higher degree or its equivalent for entry into the position. Accordingly, the AAO finds that the petitioner has not established that the proffered position is a specialty occupation pursuant to the requirements of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

To establish its proffered position as a specialty occupation under the second criterion, a petitioner must prove that a specific degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that only an individual with a degree in the specific specialty can perform the duties of the position. The AAO has reviewed the brochure from the Billy Casper Golf consulting firm, listing its seven marketing specialists; but finds that the information provided does not show that the firm's marketing specialists possess degrees in a specific discipline. The AAO has also considered [REDACTED] opinion that a golf course must have an experienced marketing professional and that golf-related operations prefer marketing managers that possess theoretical knowledge gained when obtaining a baccalaureate degree and related practical experience. The AAO observes that [REDACTED] does not indicate in his experience that golf-related organizations routinely require their marketing managers to obtain baccalaureate degrees, but only have such a preference. The AAO observes further that [REDACTED] does not indicate that marketing managers for golf-related enterprises should obtain baccalaureate degrees in specific areas of study. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, or a degree without a specific area of study, does not

establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The AAO has also reviewed the six job announcements provided by counsel. The AAO finds that a golf course superintendent association is not sufficiently similar to the petitioner's golf course club to establish that the duties of the position are common to the industry among similar organizations. The AAO recognizes that the duties involved as a marketing manager for a provider of management, consulting and marketing services, a golf operations manager for a club, a golf events coordinator, a sports marketer, and a hospitality, customer service manager for a club, all encompass some similar duties to that of the proffered position. However, the educational requirements for these positions confirm the *Handbook's* report that a variety of paths are available to gain employment as a marketing manager or a similar position incorporating similar duties. One position advertised requires a bachelor's degree in marketing, another a high school diploma plus some college, two positions require a degree in an unspecified discipline, and one lists a myriad number of ways to qualify for the position. The advertisements submitted, the brochures, and [REDACTED] opinion do not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The record establishes that the proposed duties do not exceed the scope of a typical marketing manager. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical marketing manager, a position that does not normally require a degree or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next considers the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), whether the employer normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, CIS often reviews the position's employment history, including the names and dates of employment of those employees with degrees who previously held the position, as well as the petitioner's hiring practices with regard to similar positions. In this matter counsel notes that the proffered position is a new position for a new company. Thus, the record cannot demonstrate that the petitioner normally requires a degree or its equivalent for the position. Counsel's assertion that it is essential for the petitioner to employ a degreed individual in the proffered position does not establish that the position is a specialty occupation. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, counsel does not suggest that the successful applicant must obtain a degree in a specific discipline.

The petitioner's desire to employ an individual with a bachelor's degree does not establish that the position is a specialty occupation. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that proffered position cannot be established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific discipline. Counsel asserts that the petitioner's description of the proffered position's duties shows that the petitioner's marketing manager should have a theoretical knowledge of marketing research methods, consumer behavior analysis, business statistics, and business management as these skills are crucial to producing membership growth. Counsel further asserts that the petitioner's marketing manager will need past supervisory experience and will need theoretical knowledge gained through course work in organizational behavior and human resource management; that the essential function of a marketing manager is to research golf club member behavior and coordinate promotional elements including advertising, promotions, public relations, personal selling and direct marketing; and that the marketing manager should possess knowledge of project planning and rural development as the club will be expanding. Counsel seems to suggest that these duties comprise a combination of several occupations and that if the beneficiary will be performing the tasks of several different occupations, the position must be a specialty occupation. The AAO disagrees.

Upon review of the duties of the proffered position, the AAO has concluded that the position is closely aligned to that of a marketing manager. It does not find these duties, as described by the petitioner, to reflect a higher degree of knowledge and skill than would normally be required of marketing managers whose business responsibilities require them to survey and analyze industry trends and consumer behavior. Nor do they represent an amalgam of jobs that would require the beneficiary to possess skills and qualifications beyond those of a marketing manager. That the beneficiary may be required to also perform some advertising, promotion, supervisory, or sales tasks as well as marketing the petitioner's product does not elevate the position to a specialty occupation. The petitioner has not described specific tasks that require the theoretical and practical application of a body of highly specialized knowledge attained only through a four-year course of study resulting in a bachelor's or higher degree in a specific specialty. The job duties described, when reviewed as a whole, do not reflect the specialization or complexity that require the individual performing the tasks to have attained a bachelor's degree or the equivalent. The AAO, therefore, concludes that the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Regarding counsel's reference to unpublished decisions, counsel has not furnished evidence that establishes that the facts of the instant petition are analogous to those in the unpublished decisions. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon review of the totality of the evidence submitted in support of the petition, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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