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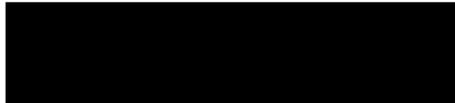


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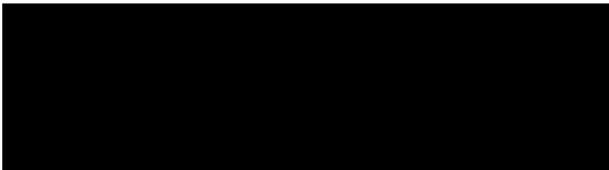
FILE: SRC 06 049 52584 Office: TEXAS SERVICE CENTER Date:

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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a travel agency that wishes to employ the beneficiary as a manager/flight reservations. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not qualify as a specialty occupation. On appeal, the petitioner submits a brief asserting that the offered position qualifies as a specialty occupation.

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

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a manager/flight operations. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to the evidence the beneficiary would:

- Apply principles of logic and scientific logic analysis to define problems, collect data, establish facts, and draw valid conclusions;
- Interpret an extensive variety of technical instructions via directing and coordinating reservation activities for certificate and commercial travel;
- Review statistical data on miles flown and conduct comparison studies on airline reservations to develop methods and procedures designed to increase operation efficiency and increase reservations for company flights;
- Interpret policies and procedures regarding customer relations;
- Analyze economic statistics as applied to air transportation such as weather conditions, special flight rates and future volume;
- Perform budgetary and supervisory functions, such as preparing estimates of work force required to process workload and equipment requirements in order to formulate budget estimates;
- Review performance evaluations on reservations personnel and initiate personnel action as required;
- Schedule rotation of worker assignments to improve capabilities of personnel and develop worker overall knowledge of department activities;
- Direct investigation of customer complaints regarding reservation services and prepare correspondence designed to improve customer relations; and

- Resolve personnel grievances and submit unresolved grievances to higher authority.

The petitioner requires a minimum of a bachelor's degree for entry into the proffered position, but does not state that the degree need be in any particular discipline.

The AAO routinely consults the Department of Labors *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The petitioner states that the duties of the proffered position are those of a "Manager, Flight – Reservations (air trans.)" as detailed in the *Dictionary of Occupational Titles (DOT)*. The AAO does not agree. In describing the duties of the proffered position, the petitioner has merely restated and paraphrased the duties detailed for a "Manager, Flight – Reservations" in the *DOT*. Its description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's contention. A petitioner cannot establish its employment as a specialty occupation by describing the duties of that employment in the same general terms as those used in the *DOT* in discussing an occupation title, e.g.:

- Review statistical data on miles flown and conduct comparison studies on airline reservations to develop methods and procedures designed to increase operation efficiency and increase reservations for company flights;
- Interpret policies and procedures regarding customer relations;
- Analyze economic statistics as applied to air transportation such as weather conditions, special flight rates and future volume;
- Perform budgetary and supervisory functions, such as preparing estimates of work force required to process workload and equipment requirements in order to formulate budget estimates;
- Review performance evaluations on reservations personnel and initiate personnel action as required;
- Schedule rotation of worker assignments to improve capabilities of personnel and develop worker overall knowledge of department activities;
- Direct investigation of customer complaints regarding reservation services and prepare correspondence designed to improve customer relations; and
- Resolve personnel grievances and submit unresolved grievances to higher authority.

This type of generalized description is necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. The duties referred to by the petitioner in the *DOT*, involve the direction and coordination of reservation activities normally performed through subordinate supervisory personnel, for certificated or commercial transportation

companies. These are not the duties to be performed by the beneficiary who would perform his services for a travel agency.

In the instant case, the petitioner has offered no description of the duties of the proffered position beyond the generalized terms describing the position in the *DOT*. It cannot, therefore, establish that the position meets any of the requirements for a specialty occupation set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A). As previously noted, CIS must examine the actual employment of the alien, i.e., the specific tasks to be performed by that alien, to determine whether a position qualifies as a specialty occupation. The petitioner's description of the duties, however, is so generic that it is not possible to identify those tasks and, therefore, whether the performance of those duties requires the theoretical and practical application of a body of highly specialized knowledge. For example, the record does not reflect what type of statistical data on miles flown would be reviewed, how that data would be obtained, the specific purpose for which the data would be obtained, or how that data would be used in the petitioning travel agency. The record does not establish what type of comparison studies on airline reservations would be conducted, or how the data obtained from any such studies would be used to increase operational efficiency or reservations for company flights in the petitioning travel agency. Without a reliable description of the position's duties, the AAO is unable to determine whether the performance of those duties meets the statutory definition of a specialty occupation – employment requiring the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner does not state that a degree requirement is common to the industry in parallel positions among similar organizations for entry into the proffered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Alternatively, under the second prong of this criterion, the petitioner may establish the offered position as a specialty occupation by showing that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As stated above, the duties of this position are so generally described in relation to the petitioner's business environment that it cannot be determined from the record that the duties are complex or unique, as it cannot be determined with any degree of specificity precisely what tasks the beneficiary would perform on a daily basis for the petitioner. As such, the petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for entry into the proffered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner stated in its response to the director's request for evidence that it relied on the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The fourth criterion requires a petitioner to establish that the nature of the specific duties of the position 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 duties of the proffered position, as described, are too generic to determine what specific tasks would be performed by the beneficiary in the petitioner's business environment. The generic description of the duties discussed under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) also makes it impossible to evaluate these duties under the specialized and

complex threshold of the fourth criterion. Accordingly, the AAO concludes that the proffered position is not a specialty occupation under the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The proffered position does not meet any of the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the director's denial of the I-129 petition shall not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the appeal shall accordingly be dismissed.

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