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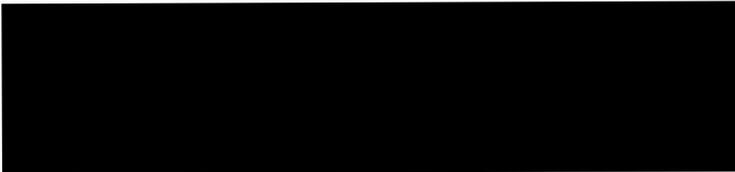
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FILE: EAC 04 254 51411 Office: VERMONT SERVICE CENTER Date: **MAY 24 2006**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a private golf club and seeks to employ the beneficiary as a greens superintendent. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 is not a specialty occupation. On appeal, the petitioner submits the Form I-290B and supporting documents.

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

The petitioner is seeking the beneficiary's services as a greens superintendent manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company

support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail supervising and coordinating activities of workers engaged in constructing new areas and preserving golf course grounds; planning work programs, utilizing experience and established agronomic practices to improve and maintain turf and playing condition of course; directing workers engaged in cultivation, grading, seeding and sodding of area; determining the work priorities and assigning workers to specific tasks; reviewing test results of soil and turf samples and directing application of fertilizers, lime, insecticide, and fungicide; inspecting turf to designate height and frequency of mowing and determining need for supplemental irrigation to sustain or force growth. The petitioner states that the position requires at least a baccalaureate degree, or its equivalent, in the fields of turfgrass management, agronomy, horticulture, or parks recreation and leisure facilities management.

The director referred to the evidence submitted by the petitioner, including a portion of the publication: "Selecting a Professional Superintendent" by the Golf Course Superintendent Association of America (GCSAA). On page 5 of this publication, the director noted the following information about selecting a golf course superintendent:

Education – Golf course superintendents typically hold a bachelor's degree in a field related to agronomy or horticulture, or a degree from an intensive, two-year turfgrass management program.

The director noted that the Department of Labor's *Occupational Outlook Handbook (Handbook)* does not directly address the position of Golf Course Superintendent. The closest position is that of groundskeeper which the *Handbook* indicates has no minimum education requirements for the position. Therefore, the director found that the position is not a specialty occupation. Additionally, the director found that the evidence of record does not establish that the beneficiary is qualified to perform services in a specialty occupation.

On appeal, counsel asserts that the petitioner has provided ample evidence that the proffered position meets one or more of the above listed criteria. Counsel explains that the petitioner has been ranked as the number one golf course in the world and that its employees are held to the highest standards. Counsel notes that the petitioner's proposed annual pay exceeds the prevailing wage for the industry because it wants to attract the most qualified applicants. The petitioner asserts that it has always required candidates to hold a bachelor's degree for the position of superintendent of the greens and that its last employee in that position was approved for an H-1B.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely refers to the *Handbook* for the duties of particular occupations and the education, training, and experience normally required to enter into and advance within the occupations. As noted by the director, the *Handbook* indicates that there are no minimum education requirements for the closely related position of groundskeeper. The reference material submitted by the petitioner for the position of golf course superintendent indicates that golf course superintendents typically hold a bachelor's degree in a field related to agronomy or horticulture, or a degree from an intensive, two-year turf management program.

Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the greens superintendent position.

The petitioner has not provided evidence to satisfy the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Consequently, the petitioner's statement fails to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree; therefore the petitioner has not satisfied the second alternative prong of the second criterion.

Nor is there evidence in the record to satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a specific degree or its equivalent for the position. Counsel states that the petitioner has always required a bachelor's degree for the position of superintendent of greens. Counsel notes that the petitioner's last superintendent of greens was approved for an H-1B for the same position. Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved another, similar petition in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior case. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior case was similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve 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). Neither CIS nor any other 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).

The evidence submitted is insufficient to establish that the petitioner normally requires a specific degree or its equivalent for the position. The petitioner did not submit proof of employment such as an employment contract or payroll documentation for the previous holder of the proffered position of greens superintendent. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent they are described in the record, the duties of the position are not 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 specialty. Counsel contends that because the petitioner is a highly ranked golf course, its employees are held to a higher standard. Although counsel has documented the rating of the petitioner as a golf club, he has not provided evidence that its employees are held to a higher standard or articulated the standard. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

Counsel refers to the GCSAA pamphlet as stating that the position of superintendent of greens requires the application of individual professional knowledge in more than sixty different scientific disciplines. Counsel asserts that the scope of the superintendent's job duties has expanded in recent years as a result of increased environmental awareness, requiring the application of a variety of new scientific disciplines which add to the complexity of the position. However, the information in the record indicates that the proffered position is that of a superintendent of greens and that the proffered position will report to the golf course superintendent. The information provided by the petitioner in the pamphlet from GCSAA "Selecting a Professional Superintendent" refers specifically to the position of golf course superintendent not a greens superintendent. Further, the duties listed in the publication are more extensive than those of the proffered position. Therefore, this information does not support counsel's assertions the specific duties of the proffered position are specialized and complex. Counsel notes that the petitioner is a certified Audubon cooperative sanctuary and to reach certification the course must demonstrate certain characteristics. Counsel asserts that this certification will make the duties of the greens superintendent even more complex. The petitioner has not submitted evidence that the duties of the proffered position are more complex than the normal industry-wide minimum requirement for entry into the occupation of greens superintendent. The evidence of record is insufficient to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Therefore, for the reasons related in the preceding discussion, 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 second issue is whether the beneficiary is qualified to perform services 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

- (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.

The petitioner submitted an educational and experience evaluation from a foreign educational credentialing service indicating that in scope and intent, the beneficiary has the equivalent of the completion of a bachelor's degree in parks, recreation and leisure facilities management from a regionally accredited institution of higher education in the United States. The evaluation states that the beneficiary has the equivalent of a one-year undergraduate college study in horticulture and over ten years of work experience in the field. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) limits credentials evaluation service evaluations to the beneficiary's education only; the regulation does not accept these services' evaluations of experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) recognizes only an evaluation of work experience that is supported by adequate documentation from an accredited U.S. college or university that (1) the institution has a program for granting college-level credit for training and/or experience in the relevant specialty, and (2) the evaluator is an official authorized by that institution to grant such college-level credit as part of the program. The petitioner has not submitted an evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) 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. Therefore, the petitioner has not established that the beneficiary has the equivalent of a baccalaureate degree in a specific specialty.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. The petitioner has also failed to establish that the beneficiary is qualified to perform the duties of 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.