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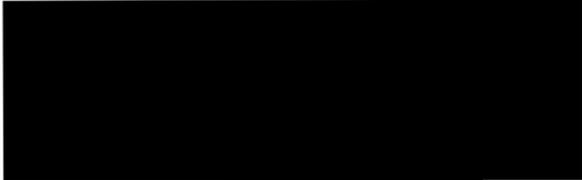
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 07 140 51603 Office: VERMONT SERVICE CENTER Date: OCT 28 2008

IN RE: Petitioner:
Beneficiary:



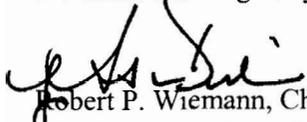
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner provides sports management services. It seeks to employ the beneficiary as a business and 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).

On May 17, 2007, the director denied the petition, determining that the record did not establish that the proffered position in the petitioner's company would be a specialty occupation. On appeal, counsel for the petitioner asserts that the director erred when making his decision. The issue in this matter is whether the petitioner has established that the proffered position is 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:

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 record includes: (1) the Form I-129 filed April 19, 2007 and supporting documentation; (2) the director's April 26, 2007 request for evidence (RFE); (3) the petitioner's May 7, 2007 response to the director's RFE; (4) the director's May 17, 2007 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

In an April 14, 2007 letter appended to the petition, the petitioner indicated that as a sports agency it provided management services and representation to tennis professionals, including contract negotiations, public relations, promotion, and endorsements. The petitioner stated that in the proffered position of business and marketing manager, the beneficiary:

[W]ill be responsible for the management and representation of our clients, including overseeing their career development. He will negotiate for representation with prospective clients, and will review and negotiate contracts and settlement offers, and advise our clients as to the best possible options for both short and long-term financial gains. He will review and analyze contract proposals and endorsement agreements, conduct risk and financial analysis on various contract offers, and will provide this information to our clients with his assessment. He will keep apprised of current trends in professional tennis, and will conduct assessments of potential impact on marketing and endorsement opportunities as well as performing analyses of financial benefits to our clients, and will develop comprehensive public relations plans and programs. He will also utilize his contacts in the tennis field and will attend tournaments and industry showcases to recruit and market the company's services to other tennis players to increase the company's client base.

In response to the director's RFE, the petitioner acknowledged that its business operations commenced in September 2005, but noted that it already had tennis professionals under contract using its management services. The petitioner provided copies of those management contracts, bank statements covering the expenses of the professionals under contract, as well as copies of representative endorsement contracts negotiated with equipment providers. The petitioner also provided a position evaluation prepared by Bruce [REDACTED] Ph.D., former Department Chairperson and Associate Professor of Management and Strategic Planning, Hofstra University. Dr. [REDACTED] upon review of the duties of the position, opined: "that the position of Business and Marketing Manager at [the petitioner] is a specialty position, and requires the services of someone with at least a bachelor's Degree or its equivalence in Business Administration, or a related field.

On May 17, 2007, the director denied the petition, determining that the evidence showed that the petitioner's office is not yet established and did not show that the petitioner was employing or had employed any other individual in a professional position in the past. Although the director reviewed the position evaluation prepared by [REDACTED], the director implied that the [REDACTED] was not qualified to provide an expert opinion. The director concluded that the petitioner had not established that its office is in a position to employ the beneficiary in a full-time position performing the duties as described in the initial filing; and that the petitioner had not established that the duties of the proffered position are so specialized or advanced that a degree in a specific field of study would be the minimum requirement for the position.

On appeal, counsel for the petitioner asserts that the director erred: (1) when finding that the petitioner's office was not established; (2) by placing a requirement on the size and length of existence of the petitioner to qualify as an employer of H-1B nonimmigrants; (3) when dismissing the opinion of [REDACTED] (4) when seemingly requiring that the petitioner demonstrate that it had sufficient full-time work for the beneficiary; and (5) when failing to consider the Department of Labor's *Occupational Outlook Handbook's (Handbook)* discussion of marketing managers and the educational requirements for such an occupation.

The AAO agrees that the director erred when suggesting that the petitioner must have full-time work in order for the proffered position to be a specialty occupation. The AAO finds that whether a position is part-time or full-time, it is the nature of the duties of the position in relation to the petitioner's business that determine if the position is a specialty occupation. The amount of time devoted to performing the position's duties does not lessen or increase the special nature of the position. Likewise, the AAO finds that the petitioner has provided sufficient documentary evidence that it is an established organization and is ready to hire appropriate personnel to operate its management business. In addition, the AAO has reviewed the nature of the petitioner's business and finds that the nature of the petitioner's business, sports management, substantiated by the number of endorsement contracts and agreements entered into with sports professionals does not necessarily require a large number of employees to operate.

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. In this matter, the *Handbook* does not discuss the specific occupation of a sports manager, the occupation most closely related to the duties of the position described by the petitioner. Thus, the *Handbook* is of little assistance in substantiating that the actual described position is a specialty occupation. In addition, the petitioner has not provided evidence of an industry standard for the particular position described. The AAO has reviewed [REDACTED]'s opinion and finds that [REDACTED] offers a conclusion that a bachelor's degree in business administration is considered necessary by individuals in the industry without providing a factual foundation for such a conclusion. The AAO does not find [REDACTED]'s opinion regarding an industry standard persuasive. Similarly, the petitioner has not established that the duties of the proffered position are of such complexity or uniqueness that it can be distinguished from similar but non-degree-requiring positions within the same industry. As the record does not provide sufficient evidence of an industry standard, the AAO is unable to ascertain whether the proffered position would be considered more complex or unique. The petitioner indicates that it has not previously employed an individual in the proffered position, but that its president had initially served as business and marketing manager. However, the record does not provide sufficient information regarding the duties the president performed as part of the proffered position to establish that the petitioner normally requires a degree or its equivalent for the position. The AAO does not find the record and outside sources sufficient to establish the proffered position as a specialty

occupation under the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), or 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to and the fourth criterion and whether the duties are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline, and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). When assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. The AAO determines that the occupation of a sports manager that incorporates the duties of a business analyst, a personal financial advisor, and a marketing manager/analyst as described by the petitioner and substantiated by the nature of the petitioner's operations is sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline. In this matter, the petitioner has provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of a generalist position such as a personal financial advisor or marketing manager as described in the *Handbook*. The proffered position requires the performance of a combination of facets of varying occupations making this proffered position specialized. The petitioner has established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Accordingly, the AAO withdraws the director's determination to the contrary.

The record reflects that the beneficiary holds a master's of business administration from Auburn University, a regionally accredited university in the United States. Thus, the beneficiary is qualified to perform the services of the specialty occupation.

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.