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FILE: WAC 02 257 50978 Office: CALIFORNIA SERVICE CENTER Date: **AUG 11 2005**

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, Director  
Administrative Appeals Office

**DISCUSSION:** The director of the California 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 travel agency. It seeks to hire the beneficiary as a travel consultant. The director denied the petition based on his determination that the petitioner had failed to establish that its proffered position was a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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.

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 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.

The petitioner is seeking the beneficiary’s services as a travel consultant. 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 consult with clients to define travel needs or identify problems; conduct studies and surveys to obtain data for comparison and basis; analyze data collected and recommend solution using travel/tourism principles; consult with clients to ascertain and define need or problem areas to determine scope of investigation to obtain solution; conduct study re: problem to obtain data required to resolve problems, changes in current methods/practices or services; advise client on solving the problem or recommend specific solution; consult with staff and management to resolve problems; design travel packages for approval of management; and recommend office policies. The petitioner stated that only a person with a college degree with a concentration in tourism could perform the described duties. Additionally, counsel for the petitioner stated “[i]t is seriously doubted that a high school graduate although with some experience in a travel agency in some other capacity could be able to carry out the above enumerated duties.”

The director determined that the proffered position was not a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A). The director determined that the petitioner had not provided any evidence that clearly showed that the position offered required a baccalaureate or higher degree or its equivalent as the minimum requirement for entry into the particular position. The director determined that the petitioner did not establish that the degree requirement was common to the industry in parallel positions among similar organizations; there was no evidence provided that indicated that the employer normally required a degree or its equivalent for the position, and finally, the duties and responsibilities of the position did not appear to be of a nature that would usually be associated with the attainment of a baccalaureate or higher degree. Referring to the occupation of travel agent in the Department of Labor’s (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the *Handbook* reported that the minimum requirement for this position is a high school diploma or equivalent, and that the travel agent’s duties in the *Handbook* are similar to those of the proffered position.

Finally, the director mentioned that although the beneficiary may be academically qualified in a field, which may lead to professional (specialty occupation) classification, eligibility for such classification is available only if the position to be occupied is a specialty occupation based on the duties to be performed. The director determined the proposed duties and level of responsibility do not indicate a complexity or authority that is beyond what is normally encountered in the occupational field for individuals who work as an industrial tour coordinator.

On appeal, counsel states that the position of travel consultant is "distinct and separate" from that of a travel agent. Counsel asserts that a travel consultant performs duties and responsibilities that are more complex than those performed by an ordinary travel agent. Counsel restates the previously described position duties. Counsel contends that only a person with a college degree with a concentration in tourism could perform the listed duties "productively and efficiently."

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 first 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. 872, 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 consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position resemble those performed by travel agents. The *Handbook* describes the duties of travel agents as follows:

To sort out the many travel options, tourists and business people often turn to travel agents, who assess their needs and help them make the best possible travel arrangements. Also, many major cruise lines, resorts, and specialty travel groups use travel agents to promote travel packages to millions of people every year.

In general, travel agents give advice on destinations and make arrangements for transportation, hotel accommodations, car rentals, tours, and recreation. They also may advise on weather conditions, restaurants, tourist attractions, and recreation. For international travel,

agents also provide information on customs regulations, required papers (passports, visas, and certificates of vaccination), and currency exchange rates.

Travel agents consult a variety of published and computer-based sources for information on departure and arrival times, fares, and hotel ratings and accommodations. They may visit hotels, resorts, and restaurants to evaluate comfort, cleanliness, and quality of food and service so that they can base recommendations on their own travel experiences or those of colleagues or clients.

Travel agents also promote their services, using telemarketing, direct mail, and the Internet. They make presentations to social and special-interest groups, arrange advertising displays, and suggest company-sponsored trips to business managers. Depending on the size of the travel agency, an agent may specialize by type of travel, such as leisure or business, or destination, such as Europe or Africa.

These duties are similar to the duties of the proffered position as stated by the petitioner, among others: “consult with client to define travel needs or identify problems” and “advise client on solving the problem or recommend specific solution design travel packages for approval of management.” The duties described are primarily those of a travel agent in the *Handbook*.

The *Handbook* describes the training and other qualifications required for a travel agent, in part, as follows:

The minimum requirement for those interested in becoming a travel agent is a high school diploma or equivalent. Technology and computerization are having a profound effect on the work of travel agents, however, and formal or specialized training is increasingly important. Many vocational schools offer full-time travel agent programs that last several months, as well as evening and weekend programs. Travel agent courses also are offered in public adult education programs and in community and 4-year colleges. A few colleges offer bachelor’s or master’s degrees in travel and tourism . . . .

The *Handbook* indicates that the minimum requirement to become a travel agent is a high school diploma or equivalent. Accordingly, the petitioner fails to establish the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A).

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - the petitioner submitted one internet job posting. However, the advertising company is dissimilar to the petitioner in that it has over 1,000 stores around the world. Additionally, the posting indicated that a four-year degree was required. It did not indicate that a degree in a specific specialty related to the occupation was required for the advertised position. Consequently, the petitioner did not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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. As noted above, counsel asserts that the duties of the proffered position are more complex than those of a travel agent. 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).

Nor is there sufficient 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 bachelor's degree or its equivalent for the position. The petitioner stated that this is a newly created position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. As already discussed, the *Handbook* reports that employers do not require a baccalaureate degree for a position as a travel consultant. Therefore, the petitioner fails to satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, 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.