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U.S. Citizenship
and Immigration
Services

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APR 03 2006

FILE: EAC 04 033 52501 Office: VERMONT 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:

SELF-REPRESENTED

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. Kelly
Robert P. Wiemann, Director
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 seeks to employ the beneficiary as a manager and coordinator and to classify her 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 on the basis that the position is not a specialty occupation. On appeal, the petitioner submits a brief.

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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documents including the petitioner's company support letter; (2) the director's request for further information (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) Form I-290B with accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a manager and coordinator. 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 RFE. According to this evidence, the beneficiary would perform duties that entail managing and coordinating all travel agency services; directing and overseeing workers engaged in the sale of vacation packages, special tours, and carrier tickets; reviewing and computing final cost of travels; summarizing daily transactions, reviewing financial statements, and preparing reports; keeping financial records up-to-date, and estimating future expenditures; planning work schedules for employees; training workers in advising customers on current traveling conditions, planning customer travel, booking functions, and calculating cost for transportation and accommodations; ensuring employee ticketing, sales activities, cost calculations, booking and transportation scheduling are in accordance with carrier schedules, tariff rates, and regulations; coordinating sales promotion activities; approving advertising copy; keeping employee records and hiring and discharging employees; reviewing and evaluating organized long distance cruises, and trips for individuals and groups and determining final rates and/or offering final suggestions; directing and monitoring workers in advising individuals or groups on foreign and/or domestic travel and airplane charters, foreign payment and transportation; resolving customer complaints regarding travel services; researching the market, analyzing and reviewing prices and suggesting advertising methods; determining international foreign currencies and advising customers on foreign country regulations. The petitioner stated that it requires the beneficiary to have a bachelor's degree in math, management, or administration.

The Form I-129 and the petitioner's original employer support letter did not list any duties for the proposed position but simply stated that the beneficiary was highly qualified to act as a manager and coordinator for the petitioner. As such, the director requested a detailed description of the work to be done, including specific job duties, and the percentage of time to be spent on each duty. The director also requested evidence that the petitioner could sustain an employee that would perform duties at the level required for consideration as a specialty occupation.

In response, the petitioner provided an expanded position description. The petitioner asserted that the job title indicated on the Form I-129 was only an internal title, and that the actual position combined the duties of a controller/financial manager, administrative services manager, and a computer/database administrator. The petitioner asserted that the job was professional in nature and satisfied all the elements of the definition of specialty occupation.

The director did not classify the proposed position as a combination controller/financial manager, administrative services manager, and computer/database administrator but found that the duties reflect those normally performed by office and administrative support supervisors and managers and travel agents. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which indicated that there is no requirement of a bachelor's or higher degree in a specialized area for employment in these positions. The director determined that the proposed duties and stated level of responsibility failed to establish that the position offered met any of the required criteria for classification as a specialty occupation.

On appeal, the petitioner asserts that the petition is for a job that combines the duties of three jobs that are each specialty occupations: controller/financial manager, administrative services manager, and database administrator.

Upon review of the record, the AAO finds that the petitioner has not established any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation.

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position most resemble a combination of the positions of an administrative services manager at a travel agency and a travel agent. According to the *Handbook*, administrative services managers manage the many services that allow organizations to operate efficiently. Many of the proposed duties, such as training, directing, hiring, and firing employees, as well as analyzing prices and handling customer complaints, are common managerial duties. The other duties appear to be managerial duties specific to the travel agency industry, such as overseeing workers engaged in the sale of vacation packages, special tours, and carrier tickets as well as reviewing organized long distance cruises and trips to determine final rates. Travel agent work includes reviewing and evaluating organized long distance cruises and trips for individuals and groups and determining final rates and/or offering final suggestions. Duties such as keeping financial records up-to-date and estimating future expenditures do not rise to the level of a financial manager, as described in the *Handbook*. According to the *Handbook*, financial managers often work on teams, acting as business advisors to top management and must be aware of special tax laws and regulations that affect their industry. None of the proposed duties appear to resemble the duties of a database administrator, a position described by the *Handbook* as working with database management systems software to determine ways to organize and store data; identifying user requirements; setting up computer databases; testing and coordinating modifications to the computer database systems; ensuring the performance of the system; understanding the platform on which the database runs; and adding new users to the system.

To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO looks at the *Handbook's* discussion of the educational requirements for administrative services managers and travel agents to determine whether or not the petitioner has established this criterion. A review in the *Handbook* of the educational requirements for administrative services manager positions reveals the following:

Educational requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience may be the only requirement needed to enter a position as office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance. In large organizations, however, administrative services managers normally are hired from outside and each position has formal education and experience requirements. Some administrative services managers have advanced degrees.

The *Handbook* lists the following as educational requirements for travel agents:

The minimum requirement for those interested in becoming a travel agent is a high school diploma or equivalent. Technology and computerization have increased the training needs, however, and many employers prefer applicants

with more education, such as a postsecondary vocational award. 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. Although few college courses relate directly to travel or tourism, a college education sometimes is desired by employers to establish a background in fields such as computer science, geography, communication, foreign languages, and world history.

The *Handbook* indicates that jobs in these areas do not require specific bachelor's degrees for entry into the field. Some employers consider those with relevant work experience suitable for jobs in this area. Some employers prefer, but do not require, administrative services managers and travel agents to possess bachelor's degrees in specific fields of study. The *Handbook* also notes that many employers fill the management positions by promoting experienced staff or related personnel. As no specific course of study is required for entry into these occupations and those without specific bachelor's degrees can be promoted into the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations. To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). The ten job announcements for managerial/financial positions at a variety of different companies the petitioner submitted to support this criterion are distinct from the instant case in several significant ways. For example, only one of the announcements is for a job in the travel agency industry. The employer in that announcement requires a bachelor's degree but apparently not in any specific field. The other employers included an international hotel chain, a multi-national pharmaceutical company, and a juice producer with over 2,000 employees. Several of these employers only require general, four-year bachelor's degrees for the advertised positions. They do not specify that those bachelor's degrees must be in a particular field. The petitioner has submitted no other evidence to support its assertion that a specialized degree requirement is common to the industry in parallel positions among travel agencies of similar size and scope. The employer did not provide information about the size of the business or the scope of the position. Thus, the job announcements fail to establish that a specific degree requirement is common for parallel administrative services manager or travel agent positions among travel agencies similar in size and scope to the petitioner. Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - the employer normally requires at least a bachelor's degree or its equivalent, in a specific field of study, for the position. To determine whether a petitioner has established this criterion, the AAO generally reviews the petitioner's past employment practices, including the histories of those employees who previously held the position, as well as their names, dates of employment, and copies of their diplomas. In the instant case, the petitioner has submitted no evidence to establish its normal hiring practices for the proposed position. In

the absence of an employment history for the proposed position, the petitioner fails to establish that the position qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to 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 bachelor's or higher degree in a specific field of study. The petitioner does not establish that the proposed position is so complex or unique that only an individual with a bachelor's degree in a business-related field can perform it. The petitioner also does not establish that the nature of the proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree in mathematics or a business-related field. The duties, as described by the petitioner, appear to be a combination of the typical duties of a manager at a travel agency and a travel agent, positions which the *Handbook* indicates do not require a bachelor's degree in a specific field and can be filled by a non-degreed individual who gets promoted from within based on experience. The petitioner asserts that, due to the complex nature of the proposed duties, it requires a minimum of a bachelor's degree in math, management, or administration. The petitioner's assertions are not supported by any document in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the decision and the director's decision is upheld.

The burden of proving eligibility for the benefit sought remains entirely 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.