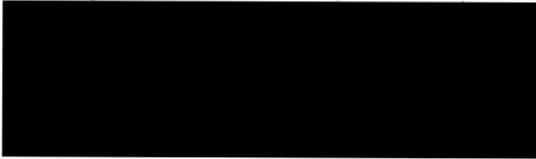


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U.S. Citizenship  
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02

FILE: EAC 04 212 52098 Office: VERMONT SERVICE CENTER Date: OCT 05 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:  
[Redacted]

**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.

Handwritten signature of Robert P. Wiemann in cursive.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a large international travel agency that seeks to employ the beneficiary as a Contract Administrator. 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 Form I-129, Petition for a Nonimmigrant Worker (Form I-129) on the basis that the proffered position was not a specialty occupation. On appeal, counsel submits a brief disputing the director's findings regarding the duties and the educational requirements of the position. Counsel also asserts that the AAO erred in not issuing a Request for Evidence (RFE) in the present matter.

Title 8 of the Code of Federal Regulations (8 C.F.R.) section 103.2(b)(8) requires the director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." The director, however, is not required to issue a request for further information in every potentially deniable case. Thus, if the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. *See* February 16, 2005, U.S. Citizenship and Immigration Services Memorandum by William R. Yates, Associate Director, Operations, entitled, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)*, HQOPRD 70/2. A review of the record reflects that the Form I-129 contained the initial evidence specified in the regulations and on the Form I-129. The director was therefore not required to issue an RFE in the present matter. Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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 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.

8 C.F.R. § 214.2(h)(4)(iii)(A), provides that in order to qualify as a specialty occupation, a 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.

U.S. 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 evidence of record includes the Form I-129 and supporting documentation, the director’s denial letter, the Form I-290B, Appeal to the AAO, and a brief by counsel and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner asserts that in the present matter the position duties are specialized, and that a qualified candidate for the position must have the equivalent of a baccalaureate degree in law. Evidence of the Contract Administrator position duties is included in the Form I-129, a July 02, 2004, letter from the petitioner, and documentation submitted on appeal. According to this evidence, the beneficiary would perform duties that entail: procuring, negotiating, drafting and administering contracts with airlines, hotels, car rental companies and other tour suppliers; identifying and seeking resolution of contract issues; producing reports on potential legal issues and researching and analyzing travel related regulations; maintaining legal issue related databases, and analyzing and interpreting legal documents to determine contractual rights and obligations; verifying hotel and transportation company agreement compliance; ensuring receipt of specified services and ensuring payment for services; and tracing and monitoring future contract obligations.

The director found that the proffered position duties ranged from the specialized duties of an attorney to the non-specialized duties of a travel agent. The director found further that the non-specialized duties of the position outweighed the specialized duties, in part because the beneficiary did not possess an education qualifying him to perform the specialized duties of an attorney. The director concluded that the petitioner had therefore failed to establish that the proffered position met any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the AAO finds that the petitioner has established one of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Thus the position is a specialty occupation. In order to meet the specialty occupation criteria contained in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2), the petitioner must establish that either: 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 Department of Labor's *Occupational Outlook Handbook (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." *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. 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.

Upon review of the record, the AAO finds that the duties of the proffered contract administrator position are closely related to those contained in the *Handbook's* (2006-2007 Edition, at pages 25-26) description of an Administrative Services Manager/Contract Administrator. The *Handbook* states on page 25 that, "[a]dministrative services managers perform a road range of duties in virtually every sector of the economy." The *Handbook* states further that:

[A]s the size of the firm increases, administrative services managers are more likely to specialize in specific support activities. For example, some administrative services managers work primarily as office managers, contract administrators, or unclaimed property officers . . . . The nature of managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products or services.

The *Handbook* states on page 26, that:

[E]ducational requirements for these managers vary widely, depending on the size and complexity of the organization . . . . In large organizations . . . administrative services managers normally are hired from outside and each position has formal education and experience requirements . . . . Managers of highly complex services, such as contract administration, generally need at least a bachelor's degree in business, human resources, or finance. Regardless of major, the curriculum should include courses in office technology, accounting, business mathematics, computer applications, human resources, and business law.

§ C.F.R. § 214.2(h)(4)(iii)(A)(I) provides that, "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position." Upon review of the record, the AAO finds that the proffered position duties are those of a Contract Administrator, as set forth in the *Handbook*. The *Handbook* indicates that a Contract Administrator position generally requires at least a bachelor's degree in

business, human resources or finance, and that a baccalaureate or higher degree or its equivalent in a specialty is normally the minimum requirement for entry into the position. Accordingly, the AAO finds that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO next turns to the issue of the beneficiary's qualifications. The petitioner asserts that the proffered position requires the equivalent of a Bachelor's degree in law, and that the beneficiary possesses a Bachelor's degree in law. The AAO notes that no such degree exists in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), provides that for 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) purposes, 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 record contains a June 30, 2004, Educational Evaluation by Global Education Group, Inc., a credentials evaluation service. The evaluation states that the beneficiary's education in Japan, "[i]s equivalent to a U.S. Bachelor's degree (in a major not offered at the undergraduate level in the United States) awarded by a regionally accredited university in the United States." An accompanying letter from Global Education Group, Inc. states that the beneficiary completed secondary education in Japan, equivalent to a U.S. high school diploma, and that on March 19, 1998, he was awarded a degree of Bachelor of Laws from the Law Department of Okinawa International University, an accredited university in Japan. The record contains a Certificate of Graduation from Okinawa International University reflecting that the beneficiary "[c]ompleted all required courses of the Law Department in the College of Law, and was awarded a B.L. Degree". The record additionally contains a Transcript of Records from Okinawa International University, College of Law,

Law Department, reflecting that in addition to general educational, foreign language and physical education courses, the beneficiary took 23 law related courses.

Upon review of the above information, the AAO finds that the petitioner has satisfied the educational equivalency requirements as set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), despite the lack of such a degree emphasis in the United States. In addition, the evidence reflects that the petitioner is a large international travel agency whose primary travel contracts and clientele are in, and from, Japan. The petitioner has thus demonstrated that there is a close corollary between the required specialized studies (equivalency of a bachelor's degree in law) and the proffered position. Accordingly, the petitioner has established that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the beneficiary is qualified for employment in the position.

The director notes in her decision that the beneficiary failed to carry a sufficient course load to maintain student status in the U.S., and that the beneficiary's student status was terminated. CIS records reflect that the beneficiary was terminated from student status prior to the filing date of the instant petition. The issue of the beneficiary's eligibility for a change of status is not before the AAO.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. In the present matter, the petitioner has sustained that burden. Accordingly, the appeal will be sustained.

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