

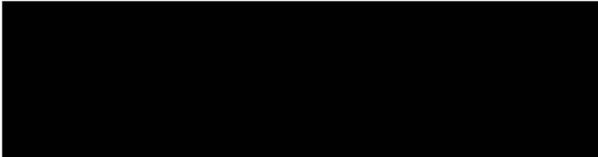
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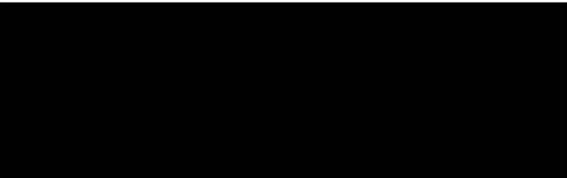


FILE: WAC 07 109 52868 Office: CALIFORNIA SERVICE CENTER Date: **JUN 09 2008**

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. 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 golf course management corporation. It seeks to extend the employment of the beneficiary as a supervising golf professional at The Tribute Golf Club in Colony, near Denton, Texas (The Tribute). 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).

In a June 26, 2007 decision, the director denied the petition. The director determined that the petitioner had not established the proffered position as a specialty occupation and had not established that the beneficiary was eligible to perform the duties of a specialty occupation. On appeal, counsel for the petitioner asserts the director erred when denying the petition based on a determination that the proffered position is not a specialty occupation as the director had not requested any evidence on this issue in the RFE. Counsel also contends that the director failed to address the evidence regarding the beneficiary's education, training, and experience and its equivalence to a United States bachelor's degree.

The record of proceeding before the AAO contains: (1) the Form I-129 filed March 5, 2007 and supporting documentation; (2) the director's March 21, 2007 request for evidence (RFE); (3) the petitioner's June 11, 2007 response to the director's RFE and supporting documentation; (4) the director's June 26, 2007 denial letter; and (5) the Form I-290B and counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

Preliminarily, the AAO observes that a petitioner must establish that its proffered position is a specialty occupation. Although the director did not request further evidence on this issue, the petitioner's burden was not relieved by this omission. Moreover, even if the director had committed a procedural error by failing to solicit further evidence on the issue of "specialty occupation," 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.

On the issue of the proffered position and whether the duties of the position comprise a specialty occupation, the 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 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.

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 (5th 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.

On the March 5, 2007, Form I-129, the petitioner described the duties of the position in nontechnical terms as: "[p]rovides golf instruction, conducts practices and tournaments." In a February 5, 2007 letter appended to the petition, the petitioner's general manager indicated: "[r]eporting directly to me is the Supervising Golf Professional who has the responsibility for golf course and tournament management, and acts as the assistant

manager of the operation in my absence." The petitioner's general manager further described the position as follows:

The duties of the position [of] Supervising Golf Professional cover Golf Operations and Club Management. Golf Operations comprise management of all golf staff and activities at The Tribute, and oversight of efficient and profitable execution of all group and tournament events. In addition, the Supervising Golf Professional must ensure appropriate pace of play is maintained at all times, supervise and coach the development of the assistant Golf Professionals, ensure that guests receive prompt and professional service at all times and manage the reservation system to maximize guest satisfaction and profitability. In the area of Club Management, the Supervising Golf Professional assists in the daily management of the Club, participates [in] Management Team meetings, represents the Club for the General Manager in my absence and assists in preparation of required reports and financial document[s], as needed. The Supervising Golf Professional must have leadership, management, and the ability to interact with club members and guests in a pleasant, effective and professional manner.

On appeal, counsel for the petitioner asserts that the above described duties require a specialized educational and training background in both the theoretical and practical aspects of the golf business and that a bachelor's degree has become the standard in this profession. Counsel references a printout from the Professional Golfing Association's (PGA) website (www.pga.info/PGAPro/Features/ThePGAPro/Index.aspx) that had previously been submitted in response to the director's RFE to substantiate his assertion. The PGA printout lists two routes to qualify as a PGA professional: (1) become a registered assistant at a PGA recognized golf facility where trainees complete a three-year foundation degree in professional golf studies accredited by the University of Birmingham; or (2) a three-year "BA Hons Degree in Applied Golf Management Studies" at the University of Birmingham. Counsel also submits a PGA brochure touting the PGA's Professional Golf Management (PGM) University Program, a 4.5-year college curriculum for aspiring PGA professionals at 19 PGA accredited universities. The brochure lists occupations available in the field, such as head golf professional whose primary employment is either ownership and operation of a golf shop at a PGA recognized facility or the supervision and direction of the golf shop and supervision of teaching at a PGA recognized golf facility. The brochure notes that students attending a PGA/PGM can graduate with a baccalaureate degree in majors ranging from marketing or business administration to hospitality administration or recreation and park management.

Counsel also references the Department of Labor's *Online Wage Library* listing for coaches and scouts and asserts that the JobZone rating of 5 requires extensive skill, knowledge, and experience as well as a bachelor's degree as the minimum formal education requirement. Counsel submits a copy of The Tribute's 2006 budget showing total revenues of over \$5,000,000 and asserts:

[T]he beneficiary is responsible for not only generating the better part of this income, but for managing it as well. He is personally in charge of all activities related to greens fees, cart rental, the driving range, golf instruction and merchandise accounting for in excess of \$2.8 million in revenue. . . . [The] [b]eneficiary is also charged with training assistant professionals as well as pro shop employees.

Counsel asserts that the director has ignored the evidence of the petitioner's operations and the beneficiary's job duties, both of which are sufficiently "specialized and complex" to be associated with the need for a baccalaureate degree as required by 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

To make its determination regarding the proffered position, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties and educational requirements of particular occupations. The AAO observes that the *Handbook* does not provide a description for the occupation of a golf course manager or head golf professional. The *Handbook* does describe the occupations of coach/instructor and of general managers, occupations that include elements of the proffered position.

The 2008-2009 *Handbook* reports:

Sports instructors teach professional and nonprofessional athletes individually. They organize, instruct, train, and lead athletes in indoor and outdoor sports such as bowling, tennis, golf, and swimming.

Regarding the education of coaches and related workers, the *Handbook* states:

Education and training requirements for athletes, coaches, umpires, and related workers vary greatly by the level and type of sport. Regardless of the sport or occupation, these jobs require immense overall knowledge of the game, usually acquired through years of experience at lower levels.

The *Handbook* discusses head coaches and sports instructors at public secondary schools and high schools indicating that these individuals usually must have a bachelor's degree and usually prefer to hire teachers willing to take on the jobs part time. The *Handbook* does not provide information regarding the education necessary for coaches or sports instructors in private industry, but suggests that knowledge regarding the sporting endeavor and experience are factors and that certification is highly desirable. As noted above, the *Handbook* does indicate that the education and training requirements for coaches and related workers varies greatly by the level and type of sport. The information in the *Handbook* is inconclusive regarding the necessity of a bachelor's degree in a specific discipline for a head golf professional.

The *Handbook* also discusses the occupation of administrative services managers who "coordinate and direct the many support services that allow organizations to operate efficiently." The *Handbook* states:

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers. Some mid-level administrative services managers oversee first-line supervisors from various departments, including the clerical staff. Mid-level managers also may be involved in the hiring and dismissal of employees, but they generally have no role in the formulation of personnel policy.

Regarding the educational requirements of administrative service managers, the *Handbook* indicates:

Education and experience 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 an office manager. When an opening in administrative services management occurs, the office manager may be promoted to the position based on past performance.

The AAO has also reviewed the *Handbook's* depiction of a general and operations manager as reported under the heading of top executives. The *Handbook* indicates:

General and operations managers plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

The *Handbook* notes that the "formal education and experience required by top executives vary as widely as their responsibilities do, but many of these workers have at least a bachelor's degree and considerable experience." The *Handbook* also states:

Many top executive positions are filled from within the organization by promoting experienced, lower-level managers when an opening occurs. In industries such as retail trade or transportation, for instance, it is possible for individuals without a college degree to work their way up within the company and become managers. However, many companies prefer that their top executives have extensive managerial experience and, therefore, hire individuals who have been managers in other organizations.

The description of the duties of the proffered position contains elements of each of these occupations. The individual in the proffered position will provide golf instruction, will manage the golf staff and activities, will manage daily operations including the appropriate pace of play as well as group and tournament events, and sometimes act as the assistant manager. On appeal, counsel asserts that the beneficiary will be in charge of all activities related to greens fees, cart rental, the driving range, golf instruction and merchandise accounting in excess of \$2.8 million in revenue, as well as training assistant golf professional and pro shop employees. However, counsel does not introduce elements that incorporate the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate degree.

The common thread among all the occupations described in the *Handbook* is the *Handbook's* recognition that there are many paths to employment as a general manager, as a golf instructor, as a supervisor or administrative manager outside of a bachelor's degree in a specific discipline. The *Handbook* does not state that a baccalaureate degree is a requisite for entry-level employment in these occupations. The variety of the type of preparation for work in service industries, from experience alone to a community or trade school education to completion of a four-year program, demonstrates that a baccalaureate or higher degree or its equivalent is not the normal minimum requirement for entry into positions similar to that of a golf club manager. The petitioner has not offered evidence that establishes that the proffered position requires a baccalaureate or higher degree in a specific discipline for employment in this occupation.

The AAO acknowledges counsel's submission of a PGA brochure noting that there is a 4.5-year college curriculum for aspiring PGA professionals at 19 PGA accredited universities, as well as the information submitted regarding ways to qualify as a PGA professional. However, the concept of a three-year program for certification as a golf professional and a four and a half-year golf management degree program does not establish that individuals involved in golf club management automatically are required to have a baccalaureate or higher degree. The record does not establish that to qualify as a PGA professional, an individual must complete a bachelor's degree in a specific discipline or that the four and a half-year degree program requires a bachelor's or higher degree in a specific discipline. The AAO finds that there is an occupational field of golf management, but does not find evidence that a baccalaureate or higher degree is the normal minimum requirement for entry into the particular position.

The AAO also acknowledges counsel's reference to the Department of Labor's *Online Wage Library* and the JobZone rating of 5 for a coach or scout. However, JobZone ratings do not provide the necessary information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. JobZone ratings include only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The JobZone rating is meant to indicate the total number of years of preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of golf club manager or golf club professional would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty to perform the duties of the occupation.

As described by the petitioner, the duties of its supervising golf professional or head golf professional do not establish that the occupation satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

To establish the first prong of the second criterion, that a specific degree requirement is common to the industry in parallel positions among similar organizations, the record contains the PGA brochures discussed above. Again, the AAO finds that these brochures while informative regarding the occupation of a golf professional, do not establish that a specific degree requirement is common to the industry. Rather, the brochures establish the availability of training and certification to gain entry into the occupation, but do not establish that a four-year bachelor's level degree is a requirement. The AAO notes that the four and a half-year college curriculum for aspiring PGA professionals at 19 PGA accredited universities indicates that students attending the PGA/PGM may graduate with a baccalaureate degree in a variety of majors ranging from marketing or business administration to hospitality administration or recreation and park management. When a job, like that of a PGA golf professional includes a range of degrees or a degree of generalized title, or extensive experience alone without further specification, as preparation for entry into the position, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

The petitioner has also failed to establish the second prong of the second criterion. The record does not contain evidence that would show the proffered position is so complex or unique that only an individual with

a degree can perform the position. The description of the duties of the proffered position does not contain complex or unique elements. The AAO notes the petitioner's description of the golf course in this matter as a "links course" as well as the beneficiary's supervision of assistant golf professionals, handling of revenue from green fees and other revenue streams, and assisting in the preparation of reports, but does not find that these duties, or the other duties described have been established as duties that require a bachelor's degree in a specific discipline. The evidence of record does not establish that the duties described are duties that are sufficiently complex or unique to satisfy this criterion. Rather, the petitioner describes duties that are routine for any individual providing golf instruction and supervision of staff, managing golf events and tournaments, and assisting the general manager. The description of the position does not distinguish the proffered position as more complex or unique than similar, but non-degreed, employment, as required by the second prong of the criterion. The petitioner has, accordingly, failed to establish either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there adequate 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 degree or its equivalent for the position. The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. However, in this matter the petitioner does not provide information regarding previous golf club professional and whether the individual(s) holding the position were degreed employees. Going on the 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 190 (Reg. Comm. 1972)). As such, it is not possible to conclude that the petitioner has previously required a degree or its equivalent for the proffered position. In addition, the AAO notes that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Turning to the fourth criterion, the duties of the proffered position do not exceed the scope of those performed by an administrative services manager or a sports instructor, or a general manager, occupations that do not require a specific baccalaureate degree. There is no evidence in the record sufficient to satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4); namely, that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The *Handbook* reveals that the occupations that contain similar elements to the proffered position are not occupations that require a specific baccalaureate degree as a minimum for entry into the occupation. The petitioner has not provided a description of duties associated with the proffered position that contains elements showing that the nature of the duties of the proffered position is specialized and complex, beyond the routine duties of these types of instructors or managers. The petitioner has not explained how the performance of the routine duties of these occupations requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in a specific specialty (or its equivalent) as a minimum for entry into the occupation. Neither the descriptions of duties nor the evidence of record establish that the position as described requires the performance of an amalgam of duties that would elevate the position to one that is so specialized or complex as to be usually associated with at least a bachelor's

degree as a specific specialty. Accordingly, the petitioner has not proved that the position is a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not established that the proffered position is a specialty occupation pursuant to any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Although the AAO finds that the position of golf course manager in this matter is not a specialty occupation, the AAO will briefly address the issue of the beneficiary's qualifications to perform a specialty occupation. In this matter, the petitioner has established that the beneficiary has been certified as a PGA Coach Level III and has extensive experience as a golf professional as indicated in various letters submitted on the beneficiary's behalf. The AAO finds that the length of experience does not automatically translate into a bachelor's degree in a specific discipline. The record does not contain evidence establishing that the beneficiary qualifies to perform a specialty occupation pursuant to 8 C.F.R. §§ 214.2(h)(4)(iii)(C) (1), (2), or (3) or has a combination of education and work experience sufficient to qualify to perform services in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The information in the record establishes that the beneficiary is well qualified to perform the duties of the proffered position. However, as determined above, the proffered position is not a specialty occupation.

The AAO notes that the record contains evidence that the beneficiary was previously approved for H-1B status on the basis of a petition filed by the same petitioner. However, prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the facts as those facts pertain to the statutory and regulatory requirements. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The AAO notes that each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). When 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). This record of proceeding does not indicate whether the director reviewed the prior record and the rationale for the prior decision. However, if that record contained the same evidence as submitted with this petition, the CIS would have erred in approving the previously filed petition. CIS is not required to approve applications or 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). It would be absurd to suggest that CIS or any 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 petition will be denied and the appeal dismissed for the above stated reason. 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.