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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-01-008-50388 Office: California Service Center Date: FEB 1 0 2003

IN RE: Petitioner: [redacted]
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)

PUBLIC COPY

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner markets and operates luxury resorts. It has 90 employees and a gross annual income of $27 million. It seeks to employ the beneficiary as an "administrative coordinator/management" for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the degree requirement is prevalent throughout the travel industry because of the specialized nature associated with the industry. Counsel also states that the Department of Labor (DOL) in its Dictionary of Occupational Titles (DOT), assigns a specific vocational preparation level of 8 (SVP8) to the proffered position.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the "essential job functions" of the offered position as follows:

> * Proactively persuade prospective Hilton Grand Vacations Club guests to attend a sales presentation by promoting and selling the Gallery Presentation as an opportunity that should not be missed while on Oahu. Through professional persuasion, position qualified prospects with curiosity and interest in knowing more about HGVC.

Position the sales presentation as a positive and exciting experience that our guests wouldn't want to miss;

* Coordinate tour appointments and amvals with the Vacation Gallery and through our "Tour coordinator". In general, facilitate a smooth and effective marketing process that appears seamless and organized to our guests;

* Provide information and concierge services, as necessary, to all Hotel guests. Handle all customer questions, problems and complaints as they relate to the Vacation Preview Presentation and other marketing programs, remembering, our primary function is selling the "tour experience" and booking a tour that is curious, relaxed and pre disposed [sic] to the presentation experience;

* Qualify clients according to the "Details of Participation" of any given program. When clients do not qualify, politely explain the terms of our promotion and suggest a courtesy tour (no gift/GI) or sell them a bounce back package;

* Provide creative suggestions for new programs or improvements to current marketing programs in order to maximize efficiency in sales and guest/owner relations;

* Submit legible individual reporting forms, contact sheets, time sheet, invitations, grand prize drawing forms, etc., to Marketing Office. The information requested is always important and must be turned in accurate and on time;

* Maintaining a positive attitude with everyone while on property. Remember you are a Hilton representative at all times both ON and OFF the clock. Develop positive relationships with hotel staff and adhere to protocol standards as established by the Hotel General Manager and your HGVC management staff;

* Be aware of accident prevention at all times. Adhere to safety policies and report any real or potential safety hazards to Loss Prevention and management;

* Each associate is expected to carry out all reasonable requests by management which the associate is capable of performing;

* Achieve or exceed productivity goals set by management.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in business administration with an emphasis on travel industry management. Counsel asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL's DOT (4th Ed., Rev. 1991). However, the Associate Commissioner does not consider the DOT a persuasive source of information regarding whether a particular job 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.

The DOL has replaced the DOT with the Occupational Information Network (O*Net). Both the DOT and O*Net provide 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 DOL's Occupational Outlook Handbook (Handbook) provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Service is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the DOT.

The proffered position appears to combine the duties of a sales manager with those of a marketing manager. A review of the DOL's

Handbook, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment in sales and marketing managerial jobs. A wide range of educational backgrounds are suitable, but many employers prefer those with experience in related occupations plus a broad liberal arts background. In addition, most sales and marketing managerial positions are filled by promoting experienced staff or related professional or technical personnel. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as business administration with an emphasis in travel industry management, for the offered position. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.