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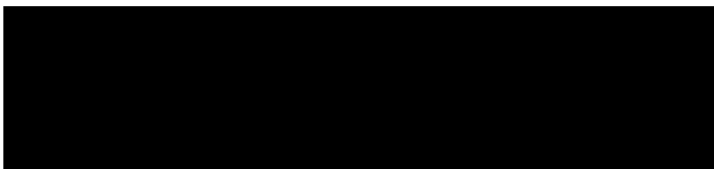
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U.S. Citizenship  
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FILE: LIN 05 003 50054 Office: NEBRASKA SERVICE CENTER Date: JUN 23 2006

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:



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, Chief  
Administrative Appeals Office

**DISCUSSION:** The director of the 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 operates a golf course and supper club and seeks to employ the beneficiary as a golf club manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits the Form I-290B and supporting documents.

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 baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a golf club manager. 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 perform duties that entail: directing activities of dining room and kitchen workers and crews that maintain club buildings, equipment, and golf course in good condition; hiring and discharging workers; estimating quantities and costs of foodstuffs, beverages, and groundskeeping equipment to prepare operating budget; explaining necessity of items on budget to board of directors and requesting approval; inspecting club buildings, equipment and golf course; performing requisition of materials, such as food stuffs, beverages, seeds, fertilizers and groundskeeping equipment; keeping accounts of receipts and expenditures; may include assisting in planning of tournaments.

The petitioner stated that the beneficiary has achieved the equivalent of a bachelor's degree in recreation, parks and tourism resources through a combination of education, specialized training, and work experience.

The director issued a request for evidence that the proffered position meets one of the above listed criteria. The director also requested evidence that the beneficiary was qualified to perform the duties of the proffered position.

The director found that the record does not establish that the position qualifies as a specialty occupation. The director found that the duties are varied and do not require a degree in a specific specialty. The director found that many of the duties of the position are those of a food service manager. The director determined that the additional duties of overseeing groundskeeping crews are not shown to require a degree in a specific specialty. The director found that the evidence did not establish that the proffered position met any of the above listed criteria. The director found that the evidence did not establish that a degree requirement is common to the industry in parallel positions among similar organizations; nor did the evidence show that the petitioner normally requires a degree for the position. The director found that the duties of the position were not shown to be so complex that knowledge required to perform the duties is usually associated with the attainment of a degree. The director also noted that the beneficiary may [not] qualify for a specialty occupation.

On appeal, counsel asserts that the proffered position is a specialty occupation. Counsel notes that some of the duties of the proffered position are those of a food and beverage manager. Counsel asserts that the industry standard for this position requires a minimum of a bachelor's degree. Counsel contends that the petitioner has established that the proffered position is a specialty occupation. Further, counsel contends that CIS used an incorrect "standard" to determine whether the beneficiary was qualified to perform the duties of a specialty occupation and believed that the independent evaluation should be reviewed under 8 C.F.R. § 214.2(h)(iii)(D)(5).

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 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. 1095, 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 refers to the Department of Labor *Occupational Outlook Handbook (Handbook)* for the duties of particular occupations and the education, training, and experience normally required to enter into and advance within the occupations. The proffered position is that of a golf club manager. The *Handbook* does not directly address the position of a golf club manager. The *Handbook* indicates that there are no minimum education requirements for the related position of groundskeeper. Many of the managerial functions of the position are performed by administrative services managers as described in the *Handbook*. The *Handbook* indicates that administrative services managers perform a broad range of duties in virtually every sector of the economy. They coordinate and direct support services for many diverse organizations. These workers manage the many services that allow organizations to operate efficiently, such as secretarial and reception, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management and telecommunications management. Additionally, the *Handbook* states that specific duties for these managers vary by degree of responsibility and authority. For example, mid-level managers develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer services. The *Handbook* notes that in small organizations, a single administrative services manager may oversee all support services. The *Handbook* reveals 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 the following about the training and educational requirements for administrative services manager positions:

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. In large organizations, however, administrative service managers are normally hired from outside and each position has formal education and experience requirements.

Counsel notes that many of the duties of the proffered position are similar to those of a food and beverage manager. According to the *Handbook*, food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. The *Handbook* notes that food service managers oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of a restaurant, its equipment and facilities. The *Handbook* states that food service managers generally are responsible for all of the administrative and human resources functions of running the business, including recruiting new employees and monitoring employee performance and training. The *Handbook* states, in part:

Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs which

require internships and real-life experience to graduate. Some restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated experience, interest and aptitude.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. Almost 1,000 colleges and universities offer 4-year programs in restaurant and hospitality management or institutional food service management; a growing number of university programs offer graduate degrees in hospitality management or similar fields. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification. Both 2- and 4-year programs provide instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science.

As discussed above, the *Handbook* does not indicate that a baccalaureate degree is the normal minimum requirement for entry into the occupation of a food service manager or a food and beverage manager, or an administrative services manager. Consequently, there is insufficient evidence in the record to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of golf club manager.

The petitioner has not provided evidence to satisfy the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submits several job postings for the position of a manager of a country club or golf club. Three of the positions require a bachelor's degree in business, marketing, sports, hospitality management or a related field. Additionally, two job postings indicate that a bachelor's degree is required without indicating a specific specialty. As noted above, 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 job postings do not support counsel's assertions that a specific degree is common to the industry. Furthermore, the job posting for the proffered position indicates that a bachelor's degree in business administration, business management, hospitality management, or golf sports management is required. However, the petitioner also stated on its job posting that at least seven years management of a golf club may be considered in lieu of a bachelor's degree if the applicant can demonstrate a successful operation. The petitioner's job posting contradicts its statement that a bachelor's degree is required for the proffered position. Consequently, the petitioner's statement and the submitted job postings fail to establish that there is a specific baccalaureate degree that is a common industry-wide requirement.

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; therefore the petitioner has not satisfied the second alternative prong of the second criterion. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to satisfy the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a specific degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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. To the extent they are described in the

record, the duties of the position are not so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The record does not establish the number of employees, the budget of the facility to be managed, the scope of the food and beverage operation, or the level and number of crew members that the beneficiary will supervise. The petitioner has not submitted evidence that the duties of the proffered position are more complex than the normal industry-wide minimum requirement for entry into the occupation of golf club manager. The evidence of record is insufficient to show that the job offered could not be performed by an experienced individual whose educational training falls short of a baccalaureate degree. The petitioner therefore fails to establish the fourth criterion.

Counsel asserts that the beneficiary is qualified to perform services in a specialty occupation. As discussed above, the proffered position is not a specialty occupation; therefore, the issue of whether the beneficiary is qualified to perform the services of a specialty occupation is irrelevant.

For the reasons related in the preceding discussion, 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.