

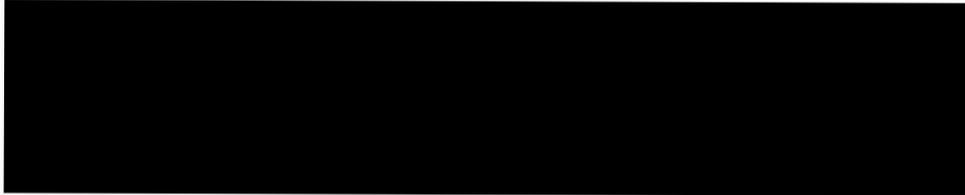
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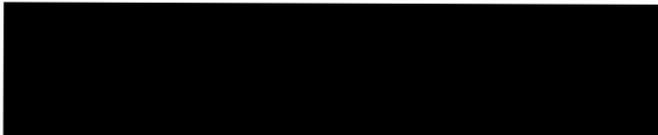
FILE: SRC 04 093 50665 Office: TEXAS SERVICE CENTER Date: **SEP 25 2006**

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 hotel with three employees and seeks to extend the employment of the beneficiary as an evening manager. The petitioner, therefore, 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 petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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) counsel'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 an evening 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 overseeing the hotel operations as well as handle customer complaints and queries; scheduling subordinates' schedules as well as handling employee grievances; preparing daily and end of month financials for the company and interacting with the company accountant; recruiting corporate accounts; preparing reports for company accountant; overseeing staff; scheduling staff and handling staff grievances. The petitioner stated that the job duties require a candidate to have a degree in business with a background in accounting and financial analysis.

The petitioner asserted that it was a successor-in-interest to the previous petitioner and therefore that CIS had previously determined that the proffered position was a specialty occupation. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In 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). Although the AAO may attempt to hypothesize as to whether the prior case was similar to the proffered position or was approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been erroneous. Citizenship and Immigration Services (CIS) is not required to approve 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). Neither CIS nor any other 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 director noted that he requested evidence that the petitioner is a successor-in-interest to Little Rock Hospitality Inn Inc., the beneficiary's original petitioner. The director noted that the petitioner responded with an affidavit. The director found that this affidavit, without supporting evidence, was insufficient to demonstrate that the petitioner is the successor-in-interest. The director determined, therefore, that CIS considers the petition to be "new employment," and not a petition for an extension of previously approved employment.

The director issued a request for additional information to establish that the proffered position meets one of the above listed criteria. The director did not classify the offered position as a specialty occupation. The director noted the petitioner's reference to the Department of Labor's *Occupational Outlook Handbook (Handbook)* for lodging managers. The director found that the *Handbook's* statements do not support that a bachelor's degree is the minimum for entry into the position, as although some employers may prefer a four-year degree, traditionally, hospitality workers have risen through the ranks to managerial positions. The director did not find that the record contained sufficient documentation to conclude that the petitioner normally requires a degree for the position. The director determined that the duties of the position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

Further, the director noted that a review of the record did not demonstrate that the beneficiary has the equivalence to a U.S. bachelor's degree in a field related to hotel management, and the record did not indicate that the beneficiary's experience was gained in the area of hotel management.

On appeal, counsel contends that the petitioner, Arkansas Hospitality took over operations of the motel pursuant to instruction from [REDACTED], and that the franchise rights are still technically titled

in the name of [REDACTED] Counsel submits a letter from the law firm of Friday Eldredge & Clark in support of the petitioner's contention.

Counsel refers to an unpublished decision in support of his contention that the proffered position of night manager is a specialty occupation. Counsel further refers to an unpublished decision in which the AAO determined that the proffered position was a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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. 872, 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 consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties are most similar to those of a lodging manager. As described in the *Handbook*:

General managers have overall responsibility for the operation of the hotel. Within guidelines established by the owners of the hotel or executives of the hotel chain, the general manager sets room rates, allocates funds to departments, approves expenditures, and ensures expected standards for guest service, decor, housekeeping, food quality, and banquet operations. Managers who work for chains also may organize and staff a newly built hotel, refurbish an older hotel, or reorganize a hotel or motel that is not operating successfully. In order to fill entry-level service and clerical jobs in hotels, some managers attend career fairs.

Resident or hotel managers are responsible for the day-to-day operations of the property. In larger properties, more than one of these managers may assist the general manager, frequently dividing responsibilities between the food and beverage operations and the rooms or lodging services. At least one manager, either the general manager or a hotel manager, is on call 24 hours a day to resolve problems or emergencies.

Assistant managers help run the day-to-day operations of the hotel. In large hotels, they may be responsible for activities such as personnel, accounting, office administration, marketing and sales, purchasing, security, maintenance, and pool, spa, or recreational facilities. In smaller hotels, these duties may be combined into one position.

The *Handbook* reveals that lodging managers are responsible for keeping their establishments efficient and profitable. In a small establishment with a limited staff, the manager may oversee all aspects of operations. Computers are used extensively by lodging managers and their assistants to keep track of guests' bills, reservations, room assignments, meetings, and special events.

The *Handbook* indicates the following about the education and training needed for lodging manager positions:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel, restaurant, or hospitality management is preferred for most hotel management positions; however, a college liberal arts degree may be sufficient when coupled with related hotel experience or business education.

The *Handbook* does not indicate that a baccalaureate degree is the normal minimum requirement for entry into the occupation. Based on the evidence in the record, the AAO does not conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, night manager of a motel. The petitioner has failed to establish eligibility under the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The evidence of record does not 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 has not established that the particular position is so complex or unique that it can be performed only by an individual with a degree, as required to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there 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 fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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. The petitioner has not described the proposed duties with sufficient specificity to establish that their performance necessitates highly specialized knowledge that is usually associated with at least a bachelor's degree in a specific specialty, as required by this criterion. Rather, the duties are described in generic and general terms such as overseeing the hotel operations as well as handling customer complaints and queries; scheduling subordinates' schedules as well as handling employee grievances; preparing daily and end-of-month financials for the company and interacting with the company accountant. The petitioner states that it has a 110 room facility and between three to eleven employees. The petitioner submits a letter from its certified public accountant indicating that the beneficiary has interacted with the accountant to provide various financial reports. The petitioner's descriptions do not differentiate the proffered position as more specialized or complex than the general range of lodging management positions, for which the *Handbook* indicates no usual association with a bachelor's degree in a specific specialty.

As related in the discussion above, 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.