

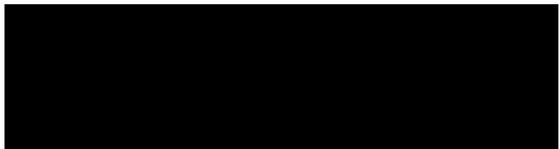
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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Room 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: SRC 05 240 50865 Office: TEXAS SERVICE CENTER Date: **APR 18 2007**

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director 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 is a hotel that seeks to employ the beneficiary as a hotel general 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 record of proceeding before the AAO contains (1) the 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 first denial letter; (5) the petitioner's first Form I-290B and supporting documentation; (6) the director's second denial letter; and (7) the petitioner's second Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis of her determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n 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 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 proposed position.

The petitioner is a hotel with 17 employees. In documentation submitted with its August 23, 2005 letter of support, the petitioner stated that the duties of the proposed position would include managing the hotel to ensure its efficient and profitable operation; establishing standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit transactions, food selection and service, and type of patronage to be solicited; planning special events such as corporate meetings and conventions; allocating funds, authorizing expenditures, and assisting in planning budgets for departments; interviewing, hiring, and evaluating personnel; answering patrons' complaints and resolving problems; delegating authority and assigning responsibilities to department heads; inspecting guests' rooms, public access areas, and outside grounds for cleanliness and appearance and to ensure compliance with strict franchise standards.

In determining whether a proposed 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* provides the following information regarding the educational background necessary for entry as a lodging manager:¹

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. Internships or part-time or summer work experience in a hotel are an asset to students seeking a career in hotel management. The experience gained and the contacts made with employers can greatly benefit students after graduation. Most degree programs include work-study opportunities.

Community colleges, junior colleges, and many universities offer certificate or degree programs in hotel, restaurant, or hospitality management leading to an associate, bachelor, or graduate degree. Technical institutes, vocational and trade schools, and other academic institutions also offer courses leading to formal recognition in hospitality management. In total, more than 800 educational facilities provide academic training for would-be lodging managers. Hotel management programs include instruction in hotel

¹ The AAO agrees with counsel that the duties of the proposed position are encompassed within the *Handbook's* description of the duties of lodging managers.

administration, accounting, economics, marketing, housekeeping, food service management and catering, and hotel maintenance engineering. Computer training also is an integral part of hotel management training, due to the widespread use of computers in reservations, billing, and housekeeping management.

Additionally, over 450 high schools in 45 States offer the Lodging Management Program created by the Educational Institute of the American Hotel and Lodging Association. This two-year program offered to high school juniors and seniors teaches management principles and leads to a professional certification called the "Certified Rooms Division Specialist." Many colleges and universities grant participants credit towards a post-secondary degree in hotel management.

These findings do not support the contention that a bachelor's degree is required for entry into the field, as it reports that postsecondary training is "preferred" by "many" employers. Employer preferences do not equate to employer requirements, and do not rise to the "normally required" standard imposed by the regulation. Nor does the fact that "many" employers prefer such training mean that such preferences are the norm. Moreover, such a preference for postsecondary "training" does not necessarily equate to a bachelor's degree or university coursework. As the *Handbook* notes, institutions offering hotel or restaurant management courses include technical institutes and vocational and trade schools, as well as community, junior, and four-year colleges.

On appeal, counsel states that the director misinterpreted the *Handbook*. Counsel contends that although the *Handbook* does reference employer preferences, that statement relates to a preference for a degree in hotel, restaurant, or hospitality management and not to a preference for a degree in general. In other words, counsel contends that the *Handbook* does state that a degree is required for this position. That the degree be in hotel, restaurant, or hospitality management is preferred.

The AAO disagrees with counsel's analysis. The *Handbook* states that "postsecondary training in hotel, restaurant, or hospitality management is preferred." However, as noted previously, postsecondary "training" does not necessarily equate to a bachelor's degree or even university coursework. Technical institutes, vocational and trade schools, and community, junior, and four-year colleges offer hotel or restaurant management courses.

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the job postings submitted by counsel in response to the director's request for additional evidence and resubmitted on appeal. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

First, the AAO notes that these job postings do not establish the petitioner's degree requirement as an industry norm. For example, the posting from AmeriSuites states that a bachelor's degree is a plus, and the posting from HQ Global Workplaces states that a four-year degree is preferred.

Nor has counsel submitted any evidence to demonstrate that any of these job postings are from companies "similar" to the petitioner, a hotel with 17 employees and stated net annual income of \$197,009. For example, there is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Simply going on 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 Dec. 190 (Reg. Comm. 1972)).

Moreover, even if the AAO were to find that these four companies were similar to the petitioner, their job postings are too few to establish an industry-wide standard, particularly in light of the fact that the petitioner itself submitted job postings from two companies that do not require a bachelor's degree. Also, the information regarding the duties and responsibilities of the advertised positions is general and does not support a meaningful comparison of their actual performance and specialty knowledge requirements to those of the proposed position. Thus, while relevant to this proceeding, these job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations, and they do not satisfy the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor do the letters from [REDACTED] satisfy this prong. The authors of these letters submit no evidence to establish that their establishments are similar to the petitioner and their personal opinions conflict with the industry-wide data contained in the *Handbook*, as well as the two job postings submitted by the petitioner which do not require a bachelor's degree. None of the authors offer industry surveys or other data to support their assertions. Simply going on 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 Dec. 190 (Reg. Comm. 1972)).

Moreover, none of the authors have established adequate factual foundations to support their opinions. None of the authors note the location or size of the petitioner. Nor do they indicate whether they reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. While some positions may require a bachelor's degree as a prerequisite for employment, none of these authors provide sufficient details about the complexity of the details of the proposed position or similar positions within their own organization to substantiate their conclusions, which differ from those in the *Handbook*. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is

in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Therefore, the proposed position does not qualify as a specialty occupation under the criteria set forth at the first prong of the second criterion.

The second prong of the second criterion requires that the petitioner prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. However, there has been no demonstration that the proposed position is more complex or unique than the general range of hotel management positions in other, similar organizations, which would not require a degreed individual. Rather, the proposed position appears very similar to the lodging manager position described in the *Handbook*. The *Handbook* indicates that such positions generally do not normally require at least a baccalaureate degree in a specific specialty; and the evidence of record does not establish the proposed position as unique from or more complex than the general range of such positions.

Therefore, the petitioner has not established that the proposed position qualifies for classification as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

No such evidence has been presented. Accordingly, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's 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 in the specialty occupation. Again, the proposed position appears very similar to the lodging manager position described in the *Handbook*. The evidence of record, as discussed above, does not establish the nature of the duties is so specialized and complex as to require the application of knowledge usually associated with at least a bachelor's degree in a specific specialty. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of hotel managers in other, similar organizations.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. Accordingly, the AAO will 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.