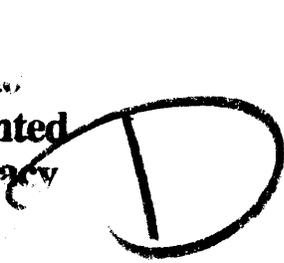


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U.S. Department of Homeland Security  
20 Mass. Rm. A3042, 425 I Street, N.W.  
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U.S. Citizenship  
and Immigration  
Services

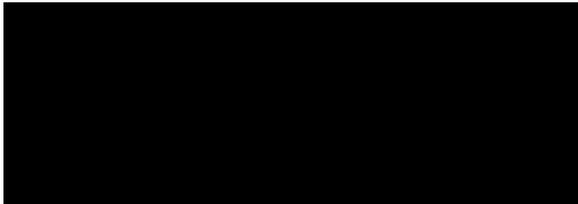


FILE: LIN 01 098 54397 Office: NEBRASKA SERVICE CENTER Date: **MAR 22 2004**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

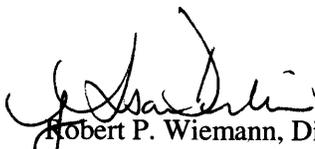
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decision will be affirmed.

The petitioner is a glass manufacturing company that seeks to employ the beneficiary as an office manager/supervisor – accounts payable. The director denied the petition on the basis that the petitioner had not established that the proffered position was a specialty occupation or that the beneficiary was qualified to perform the duties of a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel states that the AAO has ignored the petitioner's letters and evidence, and erroneously referred to the petitioner as a "hotel" on pages three and four of its decision. Counsel further states that the proposed duties, which include cost benefit analysis and profit projections, are so specialized and complex that a baccalaureate degree in economics is required. Counsel submits a new letter from the petitioner detailing the beneficiary's proposed duties as its office manager.

The AAO will first address the director's conclusion that the position is not 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.

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; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the denial of the petition; and (7) 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 office manager/supervisor – accounts payable. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's January 23, 2001 and November 12, 2002 letters in support of the petition; and the petitioner's response to the director's request for evidence. According to the evidence submitted originally, the beneficiary would perform duties that entail office managerial duties such as handling accounts payable and payroll processing. It is further noted that on page two of the petitioner's January 23, 2001, signed by the petitioner's vice president, Bella Roiburt, the proposed duties are described, in part, as follows: "The individual will be responsible for auditing, processing and payment of the hotel's disbursement and maintain files for accounts payable." (Emphasis added.) As such, counsel's assertion that CIS or the AAO "is providing erroneous documentation to the file, or that the files have been mishandled. . . ." is without merit.

On motion, counsel states that the proffered position is so complex that only a person with a baccalaureate degree can perform the job duties. As such, counsel indicates that the petitioner has satisfied one criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO will address this criterion only.

The AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

As stated previously, the proposed duties of the proffered position were initially described as those associated with an office manager, in this case, primarily handling accounts payable and payroll processing. It is noted that on part 5 of the I-129 petition, for the "Nontechnical Description of Job," the petitioner listed "Payroll officer." Subsequently, the petitioner and counsel submitted letters describing more complex duties, such as negotiating loan terms, generating financial statements, and performing business analysis and forecasts. CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(12). A petitioner cannot materially change a position's title or its associated job responsibilities after the filing of the petition. *See Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, as have occurred here, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

To the extent that they were depicted in the record at the time of the filing of the petition, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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, and its affirmation of that decision.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, as the AAO is affirming its previous decision that the proffered position is not a specialty occupation, it will not discuss the beneficiary's qualifications.

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 decision of the AAO, dated October 15, 2002, is affirmed.