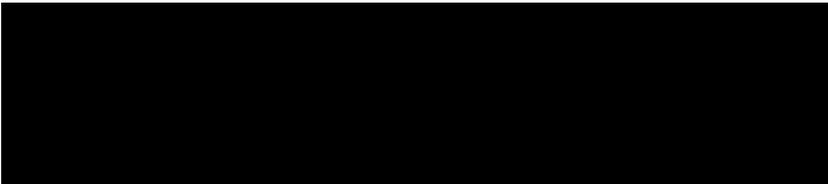




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FILE: EAC 04 023 52943 Office: VERMONT SERVICE CENTER Date: **AUG 16 2005**

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:

SELF-REPRESENTED

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 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 and restaurant that seeks to employ the beneficiary as a hotel facility manager and a front desk manager. The petitioner 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, the petitioner submits a letter.

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 hotel facility technology manager and a front desk manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 31, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: being responsible for efficient operation of hotel and restaurant infrastructure systems, including life cycle management, budgeting and forecasting, development of operational procedures and scheduling and oversight of systems maintenance and repair; being responsible for adequacy of systems operations and return of investment on operational facilities; preparing a report summarizing findings based on a system evaluation and developing recommendations for maintenance, repair, changes in operational procedures, as well as purchase requirements, and submitting a report to owners for approval; altering or initiating procedures to improve service and reduce operations expenses; being responsible for the network computer system, including all remote terminals and wireless system, the television system, including room units and all lobby and restaurant units, the telephone system, including room units, pay telephones and wireless devices, the alarm system, including the terminal remote alarm units and hard-wired room units, HVAC system, including room units and central systems, the outdoor swimming pool, hot tub and sauna, and kitchen equipment, including fire protection system; developing a network computer system; taking reservations; assisting clients at check-in and check-out; performing room quality control, coordinating with housekeeping staff to ensure rooms are prepared; performing oversight and maintenances of World Res account; assisting with back-office functions as necessary; participating in monthly management coordination meetings; and altering or initiating procedures to improve front desk service and reduce associated expenses. The petitioner stated that a qualified candidate for the position would possess a bachelor's degree in industrial technology management or a related field.

The director found that the proffered position was not a specialty occupation.

On appeal, the petitioner states that in order to compete with national chain hotels, it must implement a new computer network and business information systems to maintain its improving market performance. The petitioner states that the range of duties included in the proffered position require a specialized advanced degree. The petitioner states that in addition to the facility systems duties previously described, the critical element of the position is the information technology role that makes an advanced degree a necessity. The petitioner then describes ten detailed duties included in that role.

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 turns first to 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 Department of Labor's *Occupational Outlook Handbook (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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* indicates that the duties of a facilities manager fall under the general occupation of an administrative services manager. The *Handbook* states that most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration or facility management, but also states that some facility managers transfer from other departments within the organization or work their way up from technical positions. The *Handbook* also states that completion of the certified facility manager program offered by the International Facility Management Association can give prospective candidates an advantage. The AAO notes that one can take the certification exam without have a bachelor's degree in a specific specialty. This information all indicates that a degree in a specific specialty is not a prerequisite for entry into the occupation.

Another portion of the proffered position is as the front desk manager. The *Handbook* entry for lodging managers indicates that a degree in a specific specialty is not required for this occupation.

Finally, with the detailed duties provided on appeal, the proffered position also includes the duties of a systems analyst. The *Handbook* states:

While there is no universally accepted way to prepare for a job as a systems analyst, computer scientist, or database administrator, most employers place a premium on some formal college education. A bachelor's degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree. . . . [P]ersons with degrees in a variety of majors find employment in these computer occupations.

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 *Handbook* clearly indicates that one can enter this field with less than a baccalaureate degree, and there is no requirement for a degree in a specific specialty.

Regarding parallel positions in the petitioner's industry, the petitioner submitted a number of Internet job listings for each occupation. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Thus, the advertisements have little relevance.

The record includes one letter from the International Facility Management Association, which states that most of its members have an "associate or college degree" in engineering, business administration or architecture. This letter reflects that a bachelor's degree is not required for entry into the occupation.

The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The proffered position is a new position; therefore, the petitioner is not able to meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. To the extent that they are depicted in the record, 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.

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. Accordingly, the appeal will be dismissed and the petition will be denied.

**ORDER:** The appeal is dismissed. The petition is denied.