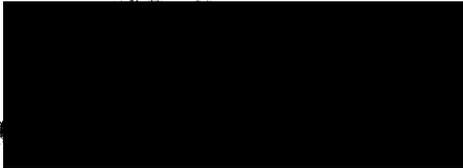


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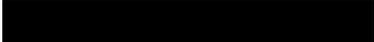
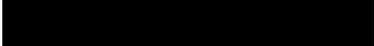
**U.S. Citizenship
and Immigration
Services**

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FILE: SRC 03 212 53119 Office: TEXAS SERVICE CENTER Date: **FEB 17 2005**

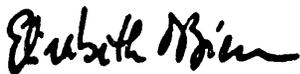
IN RE: Petitioner: 
Beneficiary: 

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, 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 business that seeks to employ the beneficiary as a hotel 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, counsel submits a brief.

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; and (5) Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a hotel manager. Evidence of the beneficiary's duties includes: the I-129 petition; the June 3, 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, in part: managing the hotel to ensure efficient and profitable operation; establishing standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit, food selection and service, and type of patronage to be solicited; planning dining room, bar and banquet operations; allocating funds, authorizing expenditures, and assisting in planning budgets for departments; interviewing, hiring and evaluating personnel; answering patron 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 processing reservations and adjusting complaints. The petitioner indicated that a qualified candidate for the job would have a bachelor's degree or equivalent with experience in a related occupation.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the *Handbook* indicates that large organizations, such as the petitioner, normally require formal education for entry into the position. Counsel also states that the duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree. Counsel asserts that a degree requirement is common to the industry.

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 *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* entry for Lodging Managers states: "Hotels increasingly emphasize specialized training. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions." This falls short of stating a bachelor's degree is required. Although the *Handbook* does state, "College graduates with degrees in hotel or restaurant management should have the best job opportunities," this does not establish that a degree is a prerequisite for entry into the field.

Although counsel states that the *Handbook* indicates that large organizations require formal education, there is no such information evident in the *Handbook*.

Regarding parallel positions in the petitioner's industry, on appeal, counsel submits Internet job postings for hotel managers. While the postings do indicate that a bachelor's degree is required, none of them state that a degree must be in 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. Thus, the advertisements have little relevance.

On appeal, the petitioner states, "**[M]ost Homewood suites by Hilton have Hotel Managers who have Bachelor's degrees.** [Emphasis in the original]. . . . I have therefore included a list of some of the Hotel Managers that I know, who have a Bachelor's Degree." The petitioner then lists ten hotels in the chain, although they appear to be either franchised or independently owned. The petitioner provides no specific information about the individual manager, or evidence regarding their degrees, or areas of specialization. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, in a brief review of the company's website, it appears that there are more than 150 hotels in the chain (26 in Texas alone) in 38 states. Even if listing ten hotels had been sufficient, it hardly would have established a standard in the chain, as those listed represent less than seven percent of the hotels in the chain.

The director requested additional evidence to establish that "Homewood Suites, Hilton considers a four-year Bachelor's degree in Hotel Management a minimum requirement for entry into the position of Hotel Manager of one of its franchises." In response, counsel stated:

[The petitioner] explains that the usual minimum requirement for performance of the job duties is a Bachelor's degree in Hotel management, or related field. All Hotel Manager [sic] at Homewood Suites Hilton considers a four-year Bachelor degree in Hotel Management a minimum requirement for entry into the position of Hotel Manager of one of its franchises must satisfy an education prerequisite. [sic] A person without this university level training would not have the necessary knowledge to perform the job duties. The Hilton franchise has expressed the desire, that the candidate for the position of Hotel Manager has adequate training, education and experience, since the Homewood Suites by Hilton in Amarillo, Texas is a new property and R.K. Hotels is a first time owner of a Hilton property.

Again, no evidence was submitted to establish that a bachelor's degree is required by anyone other than the petitioner, the franchisee. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. 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. As the hotel was not open at the time the petition was filed, the petitioner was not able to demonstrate its past hiring practices. As discussed above, the evidence the petitioner submitted regarding other hotels in the chain was not sufficient. Therefore, the petitioner has not met its burden of proof in this regard.

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.

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