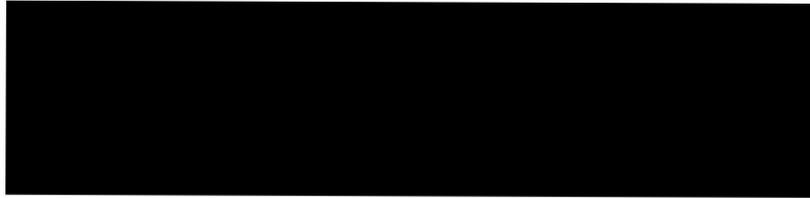


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U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 203 52985 Office: VERMONT SERVICE CENTER Date: MAR 28 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.

for Robert P. Wiemann, Direct
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 is a motel that seeks to employ the beneficiary as a manager (hospitality). 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 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) 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 denial letter; and (5) the 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 manager (hospitality). Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the proposed duties are as follows:

- Direct the operational, financial, and personnel activities of the housekeeping department;
- Interview, select, train, evaluate, and counsel staff working in the housekeeping department. Instruct and advise staff on changes involving policies, procedures, or working standards;
- Assist in developing and implementing departmental policies and procedures that are consistent with the hotel's policy and procedures. Represent and participate in committee activities;
- Assist in preparing the annual budget. Monitor departmental operations and objectives to ensure effective services are provided. Assist in developing, delegating, and monitoring departmental goals, objectives, and programs and ensuring their timely completion;
- Collaborate with other departments to ensure quality services;
- Confer with the general manager and other departmental managers to resolve operational problems and promote communications and good guest relations with the staff and public;
- Manage the departmental guest relations program. Plan, assign, and review (through support supervisors) the work of the staff in the hotel housekeeping department. Assist in coordinating work methods, standards, schedules, and other departmental activities;
- Direct maintenance and repair of housekeeping equipment;
- Direct the procurement and distribution of supplies for the housekeeping department;
- Maintain product equipment evaluations and standardizations;
- Communicate with outside vendors and suppliers;
- Develop and implement quality assurance programs for the department.

For the proposed position, the petitioner requires a baccalaureate degree (or its equivalent) in hotel management and two years of experience.

In the denial letter, the director stated that the petitioner failed to show that each of the three employees currently performing the proposed duties hold a bachelor's degree. The director stated that the Department of Labor's *Occupational Outlook Handbook's* (the *Handbook*) information about lodging managers does not support the proposition that the industry requires a baccalaureate degree for a hospitality manager. The director found the petitioner's job posting unpersuasive in establishing the proposed position as a specialty occupation.

On appeal, counsel states that CIS approved a similar petition, thereby establishing that the proposed position qualifies as a specialty occupation. Counsel contends that most universities provide a four-year undergraduate program in hospitality; that the industry norm is to require a bachelor's degree for an assistant manager; and that the national recruiting committee for various hotel groups carries out on-campus recruiting.

Counsel submits documents showing that a bachelor's degree was held by each of the former employees that occupied the proposed position.

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.

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain the supporting evidence submitted to the service center in the prior cases. In the absence of the corroborating evidence contained in those records of proceeding, the AAO cannot determine whether the proposed position parallels the other approved petitions. Furthermore, 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). In addition, 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 AAO now turns 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)).

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. Although the AAO agrees that the proposed duties are encompassed within the *Handbook's* description of a lodging manager, the AAO does not find that the *Handbook* conveys that a lodging manager requires a bachelor's degree in a specific specialty. The *Handbook* states the following regarding the qualifications of a lodging manager:

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. . . .

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 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.

Work experience in the hospitality industry at any level or in any segment, including summer jobs or part-time work in a hotel or restaurant, is good background for entering hotel management. Most employers require a bachelor's degree with some education in business and computer literacy, while some prefer a master's degree for hotel management positions. However, employees who demonstrate leadership potential and possess sufficient length or breadth of experience may be invited to participate in a management training program and advance to hotel management positions without the education beyond high school.

The *Handbook* relays that employers accept a bachelor's degree in the liberal arts for a lodging manager position. *Matter of Michael Hertz Assocs., 19 I&N Dec. 558, 560 (Comm. 1988)*, indicates "the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility." Thus, the proposed position, which resembles a lodging manager, would not require a baccalaureate or higher degree (or its equivalent) in a specific specialty such as hospitality management. Thus, the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. As discussed under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the proposed position resembles that of a lodging manager and the *Handbook* reveals that this occupation does not require a

baccalaureate degree in a specific specialty such as hospitality management. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the petitioner must establish that the petitioner normally requires a degree or its equivalent for the position. Counsel submits evidence relating to degrees granted to a previous employee that held, and a current employee who holds, an assistant manager position. However, the value of this evidence is diminished by counsel's September 24, 2004 letter, which indicates that three employees currently perform the proposed duties, and of these three employees, only one holds a bachelor's degree.¹ Thus, of the four employees only two hold a bachelor's or higher degree. This evidence is therefore insufficient to establish that the petitioner normally requires a degree or its equivalent for the position.

Furthermore, the evidence of record does not establish that the petitioner's preference for a degree is dictated by the level of theoretical and practical knowledge actually required to perform the proposed duties, as required by the aforementioned statutory and regulatory definitions of specialty occupation. The critical element is not the title that an employer assigns to a position, nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.² *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). If, as here, the evidence of record does not establish that actual performance of the proffered position requires the application of such knowledge and the attainment of such a degree, the employer's designations of title and hiring requirements are inconsequential. To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific 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. As discussed under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), the proposed position resembles that of a lodging manager, and the *Handbook* reveals that this occupation does not require a baccalaureate degree in a specific specialty such as hospitality

¹ The degrees held by former and current employees are a U.S. master's degree in business administration and a bachelor of commerce degree from a foreign institution. The latter degree is determined by Global [REDACTED] to be equivalent to a three-year program of post-secondary academic studies in business.

² The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

management. As such, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 on this ground.

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.