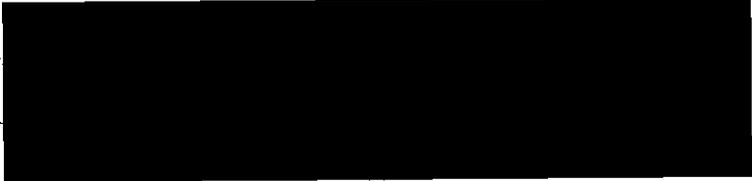




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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

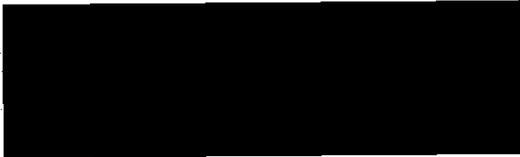


File: WAC-00-102-54062 Office: California Service Center Date: **DEC 21 2001**

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a hotel business with approximately 280 employees and an approximate gross annual income of \$23 million. It seeks to employ the beneficiary as a reservations and telecommunications manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. On appeal, counsel states, in part, that the position of hotel manager is a specialty occupation and the record contains evidence supporting his claim such as an expert opinion and job advertisements from other hotels.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The Reservations/Telecommunications Manager is responsible for supervising 10 employees involved in the sales and reservations of rooms inventory for the Hotel which consists of approximately 500 rooms, as well as maintaining the internal and external phone communication systems of the Hotel. [The beneficiary] will also be responsible [for] managing all of the hiring, scheduling, performance evaluations, and training of staff.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in hospitality management or an equivalent. In its Occupational Outlook Handbook, 2000-2001 edition, at pages 55-57, the Department of Labor finds no requirement of a baccalaureate degree in a specialized area for employment as a hotel manager. Community and junior colleges, and some universities offer associate, bachelor's, and graduate degree programs in hotel and restaurant management. In addition, technical schools, vocational and trade schools, and other academic institutions offer programs leading to formal recognition in hotel or restaurant management. Although postsecondary education is preferred, some hotel employees still advance to hotel management positions without education beyond high school. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as hospitality management, for the offered position. The record indicates that one of the petitioner's former reservations managers had some college (no degree was specified) in the field of social studies. He also had some related work experience; the petitioner has not, however, demonstrated that such employee's college courses in social studies and his previous work experience are equivalent to a baccalaureate degree in hospitality management conferred by a U.S. institution.

The record also indicates that another of its former reservations managers had some junior college background (no degree was specified) as well as related work experience and "hotel travel and tourism certification." Again, the petitioner has not demonstrated that such employee held the equivalent of a baccalaureate degree in hospitality management conferred by a U.S. institution. The record also indicates that a third former reservations manager held a baccalaureate degree (no field of studies specified) and related work experience. Again, the record contains no evidence that such employee held the equivalent of a baccalaureate degree in hospitality management by a U.S. institution.

It is noted that in the job description for the proffered position dated July 5, 2000, it is stated that a "[c]ollege degree or equivalent hotel experience" is required. It does not indicate that a degree in a specialized area is required.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. The record contains a job description for a reservations manager from The Regent Beverly Wilshire dated September 1, 1998, which indicates that a "[c]ollege degree or equivalent" is required. Again, it is noted that it does not specify a degree in a specialized area. The record also contains a job description for a reservations manager from the Wilshire Grand Hotel & Center dated June 22, 1995, which indicates that "college degree is a must in any highly technical, detailed, sales or revenue management preferred." Again, it appears that while a college degree is required, the specific specialties listed are preferred rather than required. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The record includes a letter from an academic expert. He states that the usual requirement for positions such as the proffered position is a hotel-related baccalaureate degree as well as several years of related experience. One letter is insufficient evidence of an industry standard. The writer has not provided evidence in support of his assertions. In addition, he has not indicated the number or percentage of reservations managers who hold such degrees.

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.