



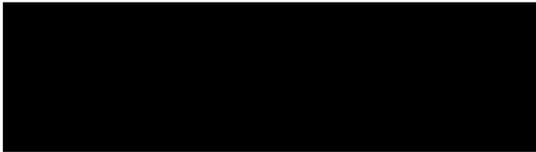
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U.S. Department of Justice

Immigration and Naturalization Service

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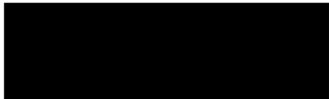
OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-01-062-51644 Office: Vermont Service Center

Date: AUG 05 2002

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)

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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. Wieman, 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 luxury hotel, resort, and conference center with 400 employees and a stated gross annual income in excess of \$18 million. It seeks to employ the beneficiary as a hotel front office 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 and additional documentation.

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 petitioner failed to establish that the proffered position requires a bachelor's degree or its equivalent in a specialized area. On appeal, counsel argues that within the luxury hotel and resort segment of the industry, the proffered position is a specialty occupation that requires a baccalaureate degree in hotel management or its equivalent. Counsel cites the holding reached in Matter of Sun, Int. Dec. 1816 (D.D. 1966), in support of his argument. Counsel asserts that all of the petitioner's current and past divisional and department managers have held the equivalent of bachelor's degrees in hotel and restaurant management, or in the alternative, a bachelor's degree in a field directly related to the department or division managed. Counsel submits opinions from an academic expert and hotel industry executives to support the appeal, as well as a revised description of the duties of the offered job.

Counsel's statements on appeal are 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 a separate statement that accompanied the I-129

petition, the petitioner described the duties of the offered position as follows:

...direct and oversee the proper and efficient management of front office and guest service department operations to ensure consistently high quality and optimum employee job performance; establish and implement goals, objectives, staffing guidelines, and quality control standards for front office and guest service operations; develop and implement hospitality guest service concepts in accordance with the highest international quality standards; job performance and evaluation of front office and guest service department employees, including other professional personnel; review and implementation of departmental budgets and departmental quality control programs; coordinate front office and guest service operations with other departments; and enforce the policies and procedures of the petitioner.

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.

The Service does not agree with counsel's argument that the proffered position of hotel front office manager would normally require a bachelor's degree in hotel and restaurant management. While a revised description of the duties of the proffered position has been provided on appeal, the position is that of front office manager. The duties of a front office manager are described at page

71 of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition as follows:

Front office managers coordinate reservations and room assignments, as well as train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. Front office managers often have authorization to adjust charges posted on a customer's bill.

A review of the Handbook at pages 70-72 finds no requirement of a baccalaureate degree in a specialized area for employment as a hotel front office 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.

Counsel argues that a baccalaureate degree in a specialized area is a normal requirement for manager positions such as a hotel front office manager within the luxury hotel and resort segment of the industry. Counsel submits three letters signed by Reneta McCarthy, Lecturer at the School of Hotel Administration at Cornell University, Robert F. Begley, Executive Director of the Hotel Council of San Francisco, and David M. Lloyd, Vice President of Human Resources at Station Casinos, Inc., respectively. All three of these individuals indicate that manager positions such as a hotel front office manager within the luxury hotel and resort segment of the industry generally require a bachelor's degree in the hotel, restaurant, or hospitality management. However, three letters are insufficient to establish evidence of an industry standard. The writers have not provided any evidence to corroborate the assertions made in each of their respective letters. In addition, the writers did not indicate the number or percentage of hotel front officers managers who hold such degrees. Thus, the petitioner has not submitted sufficient evidence to show 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 with a baccalaureate degree in a specialty area in parallel positions.

Counsel's citation of Matter of Sun, Int. Dec. 1816 (D.D. 1966), is noted. This decision, however, dealt with membership in the professions, not membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty

occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes Sun.

While counsel asserts that all of the petitioner's current and past divisional and department managers have held the equivalent of bachelor's degrees in hotel and restaurant management, or in the alternative, a bachelor's degree in the field directly related to the department or division managed, such an assertion is problematic when viewed in light of the statutory definition of specialty occupation. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. As with employment agencies as petitioners, the Service must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. Cf. Defensor v. Meissner, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position or 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 bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if the Service was 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 bachelor's degrees. See id. at 388.

Although the petitioner provides a list of its seven current hotel and restaurant managers that appears to reflect that these individuals hold baccalaureate degrees in hotel, restaurant, and hospitality management or an equivalent thereof, and that such degree is required for the proffered position, the position, nevertheless, does not meet the statutory definition of specialty occupation. The position, itself, does not require the theoretical and practical application of a body of highly specialized knowledge. Therefore, even though the petitioner has required a bachelor's degree or its equivalent in the past, the position still does not require a bachelor's degree in a specific specialty.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, this Service is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the approved visa petitions and their supporting documents. It is, therefore, not possible to determine definitively whether the visa petitions in question were approved in error or whether the facts and conditions have changed since their approval. Determinations of eligibility are based on the totality of evidence available to this Service at

this time. The Associate Commissioner, through the Administrative Appeals Office, is not bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v INS, 2000 WL 282785 (E.D.La. 2000), aff'd, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S. Ct.51 (U.S. 2001).

Finally, the petitioner did not submit any evidence to 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 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.