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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



File: EAC-01-033-53144 Office: Vermont Service Center

Date: 16 DEC 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:



Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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. 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 The director's decision will be withdrawn and the matter remanded for further action and consideration.

The petitioner is a luxury hotel with 270 employees and an approximate gross annual income of \$28.5 million. It seeks to employ the beneficiary as an assistant manager, front office, 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 specific specialty. On appeal, counsel argues that within the luxury hotel segment of the industry, the proffered position is a specialty occupation that requires a baccalaureate degree in hotel management or its equivalent. Counsel asserts that the petitioner has historically required a minimum of a baccalaureate degree, or its equivalent, in hotel and restaurant management or a related field for all managerial positions including that of assistant manager, front office. Counsel submits an opinion from an academic expert to support the arguments put forth on appeal.

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 letter that accompanied the I-129 petition, the petitioner described the duties of the offered position as follows:

1. Managing the scheduling and personnel divisions of the Front Office operations;
2. Directly supervising and controlling a staff of approximately eleven people including Guest Service Agents and Telephone Operators;
3. Participating in personnel decisions including recommending when to hire, fire, and promote his subordinates;
4. Acting in the absence of senior management in all matters concerning the safety, security and well-being of hotel guests, patrons, and employees;
5. Exercising a wide latitude of discretionary decision making authority in performing the daily duties of his position;
6. Supervising and directing guest arrival procedures, room assignments, follow-up on special requests, and guest complaints;
7. Working closely with other department heads to ensure maximum cooperation, productivity, morale and guest service;
8. Managing our guest history and repeat guest program; and
9. Participating in the annual budgeting process of a \$21 million Rooms Divisions budget.

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 duties of the offered position appear to combine those of a hotel assistant manager with those of a hotel front office manager. The duties of a hotel assistant manager are described at page 71 of the Department of Labor's (DOL) Occupational Outlook Handbook, (Handbook), 2002-2003 edition as follows:

Assistant managers help run the day-to-day operations of the hotel. In large hotels, they may be responsible for activities such as personnel, accounting, office administration, marketing and sales, purchasing, security, maintenance, and pool, spa, or recreational facilities. In smaller hotels, these duties may be combined into one position. Some hotels allow an assistant manager to make decisions regarding hotel guest charges when a manager is unavailable.

The Handbook describes the duties of a front office manager 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.

The Handbook notes the level of education required for employment in hotel management positions has increased in certain instances. At page 71, the DOL states that:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, although a college liberal arts degree may be sufficient when coupled with related hotel experience. Internships or part-time or summer work are an asset to students seeking a career in hotel management. The experience gained and the contacts made with employers can greatly benefit students after graduation. Most bachelor's degree programs include work-study opportunities.

In the past, many managers were promoted from the ranks of front desk clerks, housekeepers, waiters, chefs, and hotel sales workers. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred.

Restaurant management training or experience also is a good background for entering hotel management because the success of a hotel's food service and beverage operations often is of great importance to the profitability of the entire establishment.

It is noted that not all hotel management positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specific specialty. Furthermore, the record contains evidence that tends to establish that the petitioner normally requires that all of its assistant managers, front office, hold a baccalaureate or higher degree or the equivalent thereof in hotel, restaurant, and hospitality management. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of the regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter will be remanded to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

ORDER: The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.