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U.S. Department of Justice

Immigration and Naturalization Service

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prevent clearly unwarranted**

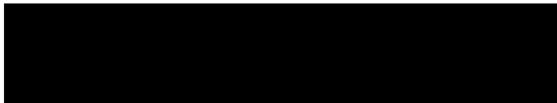


OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-01-137-54466 Office: Vermont Service Center

Date: **DEC 18 2002**

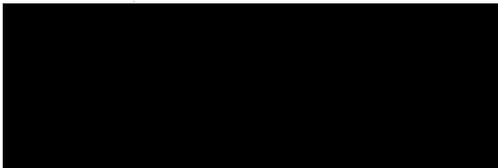
IN RE: Petitioner:
Beneficiary:



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)

PUBLIC COPY

IN BEHALF OF PETITIONER:



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 appeal will be sustained.

The petitioner is an international hotel and restaurant with 120 employees and a gross annual income of \$10 million. It seeks to extend its authorization to employ the beneficiary as a guest relations specialist 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.

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), provides in part for nonimmigrant classification to qualified aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that the proffered position requires a baccalaureate degree. On appeal, counsel states, in part, that the director did not properly address the expert opinions that had been submitted to demonstrate that the proffered position requires a baccalaureate degree in hospitality or an equivalent thereof. Counsel submits a letter from the petitioner's deputy general manager who states, in part, that his staff includes two senior specialists who both hold bachelor's degrees in hospitality management or an equivalent thereof. The petitioner's deputy general manager also states that the beneficiary had already been granted an H-1B classification for performing the same duties.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) 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.

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.

In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Assist in management of marketing and guest service relations planning and activities of the hotel.
2. Assist in supervision of customer relations in a bilingual setting.
3. Interface with American and Japanese corporate clients and provide presentations on our specialized client services and promotional campaigns.
4. Draft and create promotional materials such as guestroom information and hotel videos in both English and Japanese.
5. Conduct meetings and negotiations with potential clients of our catering menu and services.

6. Research and analyze the hospitality industry trends for services, products offered to clients and client interests.
7. Promote and train staff on client relations operations and policies.
8. Participate in planning and creation of promotional events and activities.
9. Assist in supervision of direct mailing campaigns for special offers of room rate and lunch/dinner packages.
10. Liaise between staff and management on client relations and organizational policies.
11. Liaise between management of the New York Hotel and Japan Corporate Offices.
12. Translate on an as needed basis, guest relations and promotion documents from Japanese to English and vice-versa.
13. Report to the top management on strategies and progress of promotional and guest service relation's activities.

The proffered position appears to be that of a hotel manager. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, at page 71, the Department of Labor (DOL) finds that 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.

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 specialized and related area. 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 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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.