



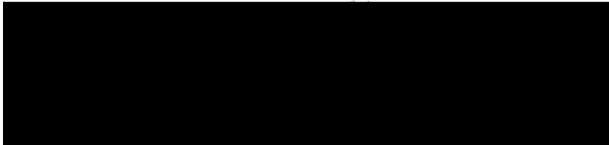
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U.S. Department of Justice

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: SRC 00 245 51332

Office: TEXAS SERVICE CENTER

Date: 4 FEB 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 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, Texas Service Center, and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a hotel that employs 20 individuals and has a gross income of \$1,400,000. It seeks to employ the beneficiary as a front desk manager for a three-year period. The director denied the petition finding that the petitioner had failed to establish that the position of hotel manager qualified as a specialty occupation and that the beneficiary was qualified to perform the duties of a specialty occupation.

On appeal, counsel submits a brief.

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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) provides that a petitioner can qualify the offered position as a specialty occupation if the petitioner can establish that:

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 petition is supported by a description of the duties of the position that indicates that the beneficiary will be required to coordinate front desk activities of the hotel; oversee operations of all the divisions of the hotel's internal management; assure that all the policies and procedures are properly followed; coordinate activities of the hotel's operation with various hotel outlets; assign duties and shifts to workers and observe performance to ensure adherence to hotel policies and established operating procedures; confer and cooperate with department heads to ensure coordination of hotel activities; answer inquiries pertaining to hotel policies and services; investigate disturbances; and, finally, arrange for special services. The record contains an evaluation of the beneficiary's education that indicates that the beneficiary has the equivalent of a bachelor's degree in the field of hotel management.

On appeal, counsel for the petitioner argues that the beneficiary has the equivalent of a bachelor's degree in hotel management and that the position qualifies as a specialty occupation. The appeal is accompanied by an evaluation stating that the beneficiary has the equivalent of a bachelor's degree in hotel management and a letter stating that the minimum academic requirements for the proffered position is a bachelor's degree in hotel management.

The record of proceedings has been carefully considered. While the record establishes the beneficiary has the equivalent of a bachelor's degree in hotel management, the petitioner has not established that the proffered position qualifies as a specialty occupation. The petitioner has not established that the position meets one of the four criteria enumerated above to qualify as a specialty occupation.

According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2000-2001 edition, hotels increasingly emphasize specialized training and that postsecondary training in hotel or restaurant management is preferred for management positions. However, the Handbook does not indicate that hotel management positions, in general, require a specific baccalaureate degree as a requirement for entry into the occupation. While the record contains a letter from an associate professor from the Johnson and Wales University attesting that the position requires the attainment of a bachelor's degree, the letter falls short of overcoming the findings of the Department of Labor. Further, while the author of the letter may have experience in determining educational equivalencies, it has not been demonstrated that he has any expertise in determining the minimum academic requirements for positions in the hotel industry. It is noted that the author makes no attempt to explain how he reached his conclusion. Therefore, the Service is not persuaded that the minimum academic requirement for entry into the position is a bachelor's degree.

Further, 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 for the proffered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions. Therefore, the director's decision is affirmed.

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. Accordingly, the decision of the director will not be disturbed.

ORDER: The appeal is dismissed.