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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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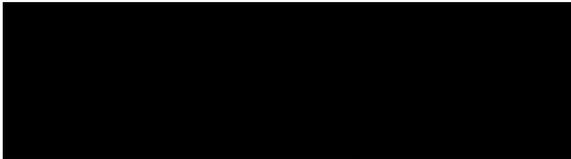
File: EAC-01-063-54254 Office: Vermont Service Center

Date: 17 MAY 2002

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 23,000 employees and a gross annual income of \$2.5 billion. It seeks to employ the beneficiary as a night 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 in a specialized field. On appeal, counsel states, in part, that the position of a night manager is a specialty occupation as the petitioner is a 435-room luxury hotel, employing dozens of nighttime personnel in several departments, and ranked as the best hotel in North America. Counsel further states that the proffered position is a senior management position and the proposed duties include overseeing all aspects of service and operation for the entire hotel. Counsel provides an opinion from an academic expert in support of her claim.

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:

\* Supervise the entire hotel during the overnight shift and be familiar with all Front Office, Reservation, Housekeeping, Concierge, Valet Parking, and Telephone policies and procedures.

- \* Work closely with all hotel departments having staff on the night shift to improve service to guests.
- \* Discipline and handle night employee grievances and problems in an efficacious and fair manner;
- \* Review late arrivals, next day early arrivals and departures, in-house list, and next day function sheets. Block and escort VIP rooms, guest returns, and group arrivals.
- \* Oversee guest registration and handle all guest relocations according to established guidelines and be knowledgeable on all aspects of hotel services, hours of operation, local attractions, group policies, and credit policies.
- \* Handle all computer and Remanco functions.
- \* Handle any guest problems or complaints and keep management informed.
- \* Prepare the High Balance Report as well as ensure the timely completion of the night audit.
- \* Ensure all room discrepancies are resolved.
- \* Act without prior authority in all matters concerning the safety, security, and well-being of hotel guests, patrons, and employees in the absence of senior management; possess strong crisis management skills and be thoroughly familiar with all emergency procedures (fire training, CPR, etc.); be fully responsible to take charge of any emergency situation in conjunction with Security and Engineering.
- \* Perform routine hotel inspections and walk-throughs to establish a supervisory presence (including overseeing night cleaners to insure optimum service and sanitation standards).

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 and management or a related field. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds no requirement of a baccalaureate degree in a specialized area for employment as a hotel manager. 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. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. Community and junior colleges, and some universities offer associate, bachelor's, and graduate degree programs in hotel or restaurant management. 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 and management, for the offered position. The petitioner's statement that since 1998, it has hired two night managers with relevant hotel industry experience and bachelor of science degrees, is noted. The record, however, contains no evidence that such degrees were in hospitality and management or an equivalent thereof. Counsel's statement that all previous night managers have held degrees and/or the equivalent and experience in the hospitality industry, is also noted. It was held in Matter of Obaiqbena, 19 I&N Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I&N Dec. (BIA 1980) that the assertions of counsel do not constitute evidence. 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. 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.

Counsel has provided one letter from an academic expert of the hospitality industry. She states that the usual requirement for positions such as the proffered position is a baccalaureate degree in hospitality management or an equivalent thereof. One letter is insufficient evidence of an industry standard. The writer has not provided evidence in support of her assertions. In addition, the writer has not indicated the number or percentage of night managers who hold such degrees.

With respect to counsel's objection to denial of this petition in view of the approval of a similar petition in the past, 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).

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.

Beyond the decision of the director, the petitioner's labor condition application was certified on December 19, 2000, a date subsequent to December 15, 2000, the filing date of the visa petition. Regulations at 8 C.F.R. 214.2(h)(4)(i)(B)(1) provide that before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application. As this matter will be dismissed on the grounds discussed, this issue need not be examined further.

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.