



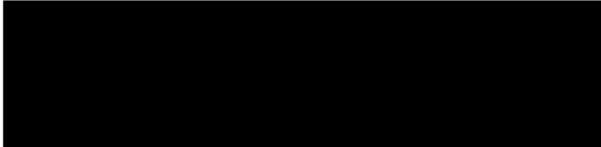
DA

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: WAC 02 223 52560 Office: CALIFORNIA SERVICE CENTER

Date: NOV - 7 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. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal shall be sustained. The petition will be approved.

The petitioner is a hotel/resort that employs 400 individuals and has a gross annual income of more than \$36,000,000. It seeks to employ the beneficiary as an administrative service manager (night manager) for a period of three years. The director denied the petition finding that the proffered position was not a specialty occupation.

On appeal, counsel submits a brief and copies of documents already included in the record.

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 the classification of qualified nonimmigrant 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 the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) 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.

8 C.F.R. 214.2(h)(4)(ii) further 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 petitioner is seeking the services of the beneficiary as an administrative services manager (night manager). In denying the petition, the director found that the proffered position was not a specialty occupation because the Department of Labor's Occupational Outlook Handbook (Handbook) indicated that a bachelor's degree in a specific specialty, while preferred by employers, was not a minimum requirement throughout the

hospitality industry. The director also noted that the petitioner did not establish that a bachelor's degree in a specific specialty was a reasonable requirement based upon the uniqueness or complexity of the proffered position, or that it had previously hired individuals with bachelor's degrees in a specific specialty.

On appeal, counsel states that the director either failed to examine or did not give any weight to, evidence that the petitioner submitted in response to the director's July 9, 2002 request for evidence (RFE). Attached to counsel's brief is an August 9, 2002 letter from the petitioner, copies of bachelor's degrees for several of the petitioner's employees, information from the petitioner's website about its management training program, the director's July 9, 2002 RFE, a July 19, 2002 letter from the petitioner in response to the director's RFE, and the petitioner's organizational charts. In addition, on October 22, 2002, counsel submitted to the Administrative Appeals Office (AAO) a letter from [REDACTED] Assistant Professor at the [REDACTED], who asserts that the proffered position requires a bachelor's degree in a specific specialty.

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 are 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 submits sufficient evidence on appeal to classify the proffered position as a specialty occupation. Specifically, the petitioner has shown that individuals in positions similar to the proffered position hold bachelor's degrees in hotel administration. In addition, the Department of Labor states in the 2002-2003 edition of the Handbook that "[p]ostsecondary training in hotel or restaurant management is preferred for most hotel management positions" Thus, the petitioner's requirement of a bachelor's degree in hotel administration for a

management position within its corporate structure is not excessive. Accordingly, the petitioner has satisfied the requirement in 8 C.F.R. 214.2(h)(4)(iii)(A)(3), and the director's objection to the approval of the petition has been overcome.

The record indicates that the beneficiary received a bachelor of science degree in hotel administration from the [REDACTED]. Therefore, the beneficiary is qualified to perform the duties of this specialty occupation.

As always, 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

ORDER: The appeal is sustained. The petition is approved.