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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

[Redacted]

File: LIN-01-152-53956 Office: Nebraska Service Center Date: OCT 18 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:

[Redacted]

**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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The petitioner is a luxury hotel with 325 employees and a gross annual income of \$18.5 million. It seeks to employ the beneficiary as an assistant restaurant manager/food and beverage 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.

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.

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.

The director determined that the petitioner had not shown that a bachelor's degree in hospitality management is the normal minimum requirement for employment as a restaurant manager or food and beverage manager.

On appeal, counsel asserts that award-winning luxury hotels typically require a bachelor's degree in hospitality management or equivalent experience for food and beverage managers or restaurant managers. Counsel further asserts that the nature of the duties of the proffered position is so specialized and complex that the

knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specialized area.

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 proffered position are described in pertinent part as follows:

1. Utilize knowledge of restaurant operations, operational management, and hospitality administration to manage and direct restaurant operations and maintenance control policies and restaurant staff.
2. Utilize knowledge of accounting and bookkeeping principles and financial planning to plan and submit budget estimates and budget reports and to authorize restaurant expenditures.
3. Utilize knowledge of personnel management techniques, organizational behavior, and manpower planning to supervise professionally trained staff, establish performance standards and work schedules for restaurant staff, and direct personnel activities, including hiring, firing, training and promotion.
4. Utilize knowledge of principles, methodologies and industry standards on food science, food

hygiene, food service, restaurant administration, and procurement management to be responsible for food and beverage administration, review of menus and wine lists, restaurant operations, monitoring of inventory control and authorization of supply purchase.

5. Utilize knowledge of marketing strategies to assist in promotional activities.

It is noted that restaurant management/food and beverage management positions are not normally considered to be specialty occupations. However, each position must be evaluated based upon the nature and complexity of the actual duties. In this case, the petitioner, Little Nell, is a five-star luxury hotel. The petitioner's restaurants employ over 150 full-time staff. At any given time the Little Nell employs 6-8 assistant restaurant managers. The petitioner has provided four advisory opinion letters from managers of other five-star hotels owned by the Relaix & Chateaux Company attesting that luxury hotels normally require a bachelor's degree in hospitality management or equivalent experience for restaurant manager positions. In view of the foregoing, it is concluded that the petitioner has shown that the requirement of a bachelor's degree in hospitality management or equivalent experience is common to the luxury hotel industry for restaurant manager or food and beverage manager positions. 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.