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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



OCT 22 2002

File: EAC-00-112-53274 Office: Vermont Service Center Date:

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 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 approved by the Director, Vermont Service Center. Upon further review, the director determined that the proffered position was not a specialty occupation. Accordingly, the director properly served the petitioner with notice of intent to revoke approval of the visa petition and the reasons therefore, and ultimately revoked the approval of the petition. A subsequent appeal was dismissed by the Associate Commissioner for Examinations. The matter is now before the Associate Commissioner on a motion to reopen and reconsider. The motion will be granted and the previous decisions of the director and the Associate Commissioner will be affirmed.

The petitioner is a hotel with fifteen employees and a stated gross annual income of \$900,000. It seeks to employ the beneficiary as a hotel 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, the petitioner's former counsel argued that the proffered position is a specialty occupation because it was so complex and professional in nature as to require a bachelor's degree.

The Associate Commissioner dismissed the appeal reasoning that the petitioner had not established that the proffered position is a specialty occupation because it had not demonstrated that a baccalaureate degree in specialized area was required for employment in this position.

On motion, counsel asserts that the petitioner is now the owner of four hotels and that the proffered position is clearly a managerial position with such a high level of responsibility to warrant a baccalaureate degree or its equivalent for employment in the position. Counsel argues that the nature of the duties of the offered job is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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.

Counsel's statements on motion are 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 a separate letter that accompanied the I-129 petition, the petitioner described the duties of the offered position as follows:

- \* Supervise the employees of the hotel which includes desk clerk, maids, waiters[,] etc.;
- \* Review daily and monthly financial reports of the hotel operations;
- \* Negotiate and purchase goods and supplies for the hotel;
- \* Maintain customer relationships with corporate clients and others in the business community;
- \* Perform periodic inspection of the hotel.

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.

The Service does not agree with counsel's argument that the proffered position of hotel manager normally requires a bachelor's degree. The position is that of a general manager of a hotel. The duties of a general manager of a hotel are described at page 71 of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2002-2003 edition, as follows:

The *general manager*, for example, has overall responsibility for the operation of the hotel. Within guidelines established by the owners of the hotel or executives of the hotel chain, the general manager sets room rates, allocates funds to departments, approves expenditures, and establishes standards for guest service, housekeeping, food quality, and banquet operations. Managers who work for chains also may organize and staff a newly built hotel, refurbish an old hotel, or reorganize a hotel or motel that is not operating successfully. In order to fill low-paying service and clerical jobs in hotels, some managers attend career fairs.

A review of the Handbook at pages 70-72 finds no requirement of a baccalaureate degree in a specialized area for employment as a general manager of a hotel. Community and junior colleges, and some universities offer associate, bachelor's, and graduate degree programs in hotel and restaurant management. In addition, technical schools, vocational and trade schools, and other academic institutions offer programs leading to formal recognition in hotel or restaurant management. Although postsecondary education is preferred, some hotel employees still advance to hotel management positions without education beyond high school. Therefore, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

In an attempt to establish that a baccalaureate degree is a normal requirement for manager positions within the hotel industry, counsel submits a letter signed by James E. Kutz, president of the Institute for Urban Studies and Research in Washington D.C. An extensive evaluation of the duties and education requirements of the proffered position prepared by Mr. Kutz is included with his letter. Mr. Kutz states that a baccalaureate degree in motel/hotel management or a related field is a standard minimum requirement for the job of motel/hotel manager. However, Mr. Kutz bases his conclusions on the duties of the position as described by the petitioner. Although Mr. Kutz may be qualified to evaluate the academic credentials of the beneficiary and determine if a particular position is of a professional nature, he has not provided any credentials setting forth his ability to give expert testimony regarding the question of whether the proffered position qualifies as a specialty occupation. That determination is the province of the Service as set forth within the Immigration and Nationality Act. Moreover, one evaluation of the proffered position cannot be considered as evidence of an industry standard. For these

reasons, the Service is not inclined to accept the conclusions of Mr. Kutz relating to the issue of whether the offered position is a specialty occupation.

In addition, counsel submits two separate letters signed by Anil Patel, president of Northstar Management, Inc., and North East Hospitality, as well as a letter signed by Mukesh Majmudar, president of Star Hotels. Both of these individuals state that they require all of their hotel managers to possess a bachelor's degree and at least five years of experience in the hotel industry. However, neither Mr. Patel nor Mr. Majmudar indicated that a bachelor's degree in a particular academic discipline is required for employment as a hotel manager. In addition, Mr. Patel and Mr. Majmudar have not provided any evidence to corroborate the assertions made in their respective letters. The uncorroborated conclusions of these individuals are insufficient to establish evidence of an industry standard. Thus, the petitioner has not submitted sufficient evidence to show 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 with a baccalaureate degree in a specialty area in parallel positions.

Counsel contends that the petitioner has historically required a minimum of a baccalaureate degree, or its equivalent, for all managerial positions. The petitioner submits a list of six currently employed managers and the degrees these individuals purportedly possess. However, the record does not contain any documentation such as diplomas or academic transcripts to demonstrate that these individuals hold the claimed degrees. Furthermore, this list contains the names of both Anil Patel and Mukesh Majmudar, individuals who claimed to be presidents of corporate entities in the letters discussed in the previous paragraph. No explanation has been provided as to how these individuals could be currently employed in managerial positions by the petitioner, while allegedly working as executives with separate companies. Even if the individuals named on the list possess the degrees claimed, only one individual holds a degree in a specific area of study with the remaining five individuals possessing degrees in unspecified disciplines. Consequently, the petitioner has failed to establish that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position.

Counsel's argument that the duties of the offered job are so specialized and complex as to require an individual employed in the position to hold a baccalaureate or higher degree is not persuasive. While counsel asserts that the petitioner has expanded from a single hotel to four hotels, the record contains no evidence to support this assertion. Regardless, as noted above, the Handbook does not provide any indication that a baccalaureate degree in a

specialized area is required for employment as a general manager of a hotel. The record does not contain any documentary evidence that would tend to establish the existence of a higher educational requirement for employment in such management positions. Therefore, the petitioner has failed to establish 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 in a specific specialty.

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.

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 previous decision dated December 21, 2001, by the Associate Commissioner dismissing the appeal is affirmed.