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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 MASS. 3/F
Washington, D.C. 20536



AUG 27 2003

File: EAC 02 156 52396 Office: VERMONT SERVICE CENTER Date:

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)

ON BEHALF OF PETITIONER:



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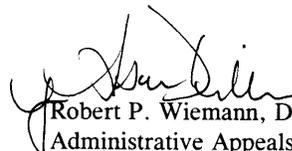
INSTRUCTIONS:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a corporation that operates a Resort/Inn & Spa. It has 130 employees and gross annual income of \$4,959,858. The petitioner seeks to employ the beneficiary as a Spa Manager for a period of three years. The director determined that the proffered position failed to qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that the beneficiary will be part of the petitioner's management team, and that all of its managers hold a baccalaureate degree in a specialty related to the petitioner's operations. Counsel further asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Section 214(i)(1) of the Immigration and Nationality Act (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 further 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 field 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 Bureau does not simply rely on a position's title 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 Bureau considers. The petitioner detailed the responsibilities associated with the

proffered position as follows:

- Ms. [REDACTED] will work as the Spa Manager at the [REDACTED]. In that capacity she will be responsible for all operational aspects of the Spa and for delivery of the Spa's services.
- **Staffing:** Ms. [REDACTED] will interview, hire and train therapists and instructors for the Spa, with firing authority in collaboration with the Emerson management. She will supervise the delivery of Spa services by therapists and instructors, and she will assist therapists with massage therapy, hydrotherapy and other treatments as required. She will develop and implement scheduling procedures for staff and guest services; she will plan, assign and direct work; and she will monitor service delivery for quality control purposes.
- **Training:** Ms. [REDACTED] will have responsibility for training the personnel under her supervision. She will prepare a staff training manual, implementing the required health and safety procedures. She will observe and appraise employee performance and provide feedback to ensure the delivery of a quality Spa experience for guests.
- **Guest Supervision:** Ms. [REDACTED] will supervise guest activities, providing direct assistance to guests as required. She will provide assistance/instruction on relaxation techniques to reduce stress and tension; she will instruct guests in the proper operation of exercise and cardio equipment at the Spa and on the relative benefits of using the equipment; and she will advise guests on techniques and agents to complement massage, such as heat, light, hydrotherapy and exercise.
- **Marketing:** Ms. [REDACTED] will have responsibility for the promotion of the Spa's services internally and externally. She will represent the Spa at industry trade shows and exhibits; and she will promote Spa activities, such as interviewing with journalists and arranging promotional television coverage. She will assist in the planning of Spa brochures and web site content and will work with the Resort senior management on marketing and development plans for

the Resort as a whole and the Spa as part of the Resort.

- **Financial operations:** Ms. [REDACTED] will monitor the Spa's daily financial operations, maintain the required financial records and ensure compliance by staff with Spa financial procedures. She will assist the Deputy General Manager in the annual budgeting process for the Spa.

In response to a request for additional information, the petitioner expanded upon the responsibilities of the Spa Manager:

Operations Management . . .

- Assist and instruct therapists in European massage therapy, hydrotherapy and other treatments as required;
- Develop and implement scheduling procedures for staff and guests services; [and]
- Manage guest relations; solve any guest issues to ensure guest satisfaction.

Personnel Management . . .

- Directly supervise at least 11 employees in the delivery of spa therapy, exercise and cosmetic services;
- Interview, hire and train therapists and instructors for the Spa; undertake necessary disciplinary actions and firing as required in collaboration with Spa management; [and]
- Prepare and maintain the staff training manual, implementing the required health and safety procedures for the Spa; ensure appropriate training of staff in and staff compliance with the required operational, treatment, and safety procedures.

Financial Management . . .

- Monitor the Spa's daily financial operations, including required financial records and ensure compliance by Staff with Spa.
- Generate periodic financial reports on Spa operation; confer with [REDACTED] management on operations, changes in operations, financial results; decide on any required financial

changes (e.g., addition of services, deletion of services, sourcing changes, pricing changes, changes in staffing, etc.); implement changes

- Assist with annual budgeting process for the Spa;

Marketing . . .

- Represent the [REDACTED] at trade shows and exhibits;
- Prepare press releases, articles and interviews for international spa and luxury hotel publications/travel guides; and
- Assist in planning of Spa brochures and web site content.

The petitioner further asserts that the [REDACTED] is an internationally renowned luxury hotel with a reputation for excellence in European spa treatment and therapy. It was chosen as one of the best hotels/resorts/spas in the U.S. in the 2001 ZAGAT survey, and has been featured in the following publications:

- Small Luxury Hotels of the World;
- Newsday (February 2001);
- Spa Magazine (April 2001);
- Elle (May 2001);
- Fitness (March 2002);
- Hi-Class Living (January-February 2001);
- Fashion Wire Daily (January 2001);
- Gourmet Magazine (February 2002);
- Travel and Leisure (January 2002, April 2001);
- Wine Spectator (September 2001);
- North American Inns (Fall 2001);
- Bon Appetit (June 2001);

- Town and Country (July 2001);
- National Geographic Travel (May/June 2001);
- Departures Magazine (May/June 2001);
- Food and Wine (April 2001); [and]
- I Go U Go.

The petitioner described in great detail, the facility and services that the beneficiary would manage. The petitioner also noted that the beneficiary would be a member of the petitioner's senior management team, and that all members of the senior management team possess a bachelor's degree, or its equivalent.

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.

In his decision denying the I-129 petition, the director stated that the proffered position was parallel to that of a Manager of Lodging Facilities. In the *Occupational Outlook Handbook, 2002-03, (Handbook)* at 70-71, the Department Of Labor describes in part, the duties of lodging managers as follows:

[W]hile most lodging managers work in traditional hotels and motels, some work in other lodging establishments, such as camps, inns, boardinghouses, dude ranches, and recreational resorts. In full-service hotels, lodging managers help their guests have a pleasant stay by providing many of the comforts of home, including cable television, fitness equipment, and voice mail, as well

as specialized services such as health spas. . .

Lodging managers are responsible for keeping their establishments efficient and profitable. In a small establishment with a limited staff, the manager may oversee all aspects of operations. However, large hotels may employ hundreds of workers, and the general manager usually is aided by a number of assistant managers assigned to the various departments of the operation.

The *Handbook* further notes that hotels increasingly emphasize specialized training for lodging managers. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, but a college liberal arts degree may be sufficient when coupled with related hotel experience. In the past, many managers were promoted from the ranks of hotel staff. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. There are over 800 educational facilities that have programs leading to recognition in hotel or restaurant management. They include community colleges, junior colleges, universities, vocational and trade schools. *Id.* at 71.

The Department of Labor's description of "Manager of Lodging Facilities" does not however, parallel the duties of the proffered position. According to the petitioner, the beneficiary will: have the authority to interview, hire and train therapists and instructors for the spa; have the authority to fire employees, in collaboration with management; have the responsibility of training employees under her supervision and preparing a staff training manual; have the responsibility of marketing the spa's services, both nationally and internationally; represent the spa at industry trade shows; meet with journalists and arrange promotional television coverage; manage the spa's daily financial operations and ensure compliance with spa financial procedures; manage guest relations; and recommend and implement changes in operations and financial management. These duties are more complex than those listed in the *Handbook*.

The *Handbook* provides valuable information about a wide range of occupations in the nation's economy. That information however, is limited. It provides a general composite description of jobs and cannot reasonably be expected to reflect all work situations in specific establishments or localities. It is therefore, necessary, to consider the nature of the petitioner's operations and the specific duties of the proffered position when determining whether the job is a specialty occupation. Here, the petitioner is a luxury hotel of international acclaim. The duties of the proffered position are more complex than those described in the *Handbook* for a manager of lodging facilities. Thus, the petitioner's requirement of a bachelor's degree is a reasonable

requirement. The petitioner has established that 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 proffered position is therefore, a specialty occupation.

Pursuant to 8 C.F.R. 214.2 (h)(4)(iii)(c), one of the following criteria must be met in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted State license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The petitioner has established that the beneficiary is qualified to perform the duties of the proffered position. An evaluation of the beneficiary's education and work experience by the Foundation for International Services indicates that the beneficiary has obtained the equivalent of a bachelor's degree in general studies, with a minor in business from an accredited college or university in the United States. The work history considered in the evaluation indicates almost nine years of progressively more responsible employment in business that is related to the duties associated with the proffered position.

The burden of proof in these proceedings rests solely with the petitioner, and the petitioner has sustained that burden. Section 291 of the Act, 8 U.S.C. § 1361. The appeal shall accordingly be sustained, and the petition will be approved.

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