

PUBLIC COPY

12

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, D.C. 20536



File: LIN-02-099-52050

Office: NEBRASKA SERVICE CENTER

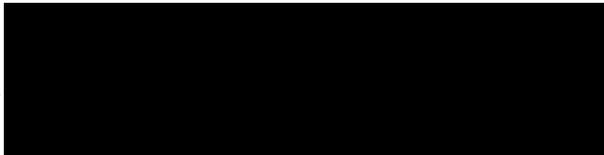
Date: DEC 15 2003

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:



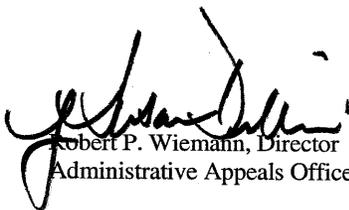
INSTRUCTIONS:

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 Citizenship and Immigration Services (CIS) 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an international luxury hotel with 350 employees and a gross annual income of \$30 million. It seeks to employ the beneficiary as a hotel business center manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

Counsel submitted a timely Form I-290B on July 29, 2002, and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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 nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the petitioner normally requires a baccalaureate degree for the proffered position, and that this requirement is industry wide for luxury hotels such as the petitioner.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[D]irect and oversee the proper and efficient management of hotel business center and overall guest service operations to ensure consistently high quality service and maximum profitability; establish and implement goals, objectives, staffing guidelines, and quality control standards for hotel business center and guest service operations; direct and oversee hotel business center and guest service operations department employees, including other professional and managerial personnel with respect to day to day management operations, quality control, service standards, and international hospitality standards; and, enforce the procedures and policies of Petitioner. In this specialty occupation, [the beneficiary] will make professional decisions and exercise discretion and independent judgment.

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 AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in hotel and restaurant management or a related field. The proffered position appears to be primarily that of a lodging manager. A review of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 71, finds no requirement of a baccalaureate degree in a specific specialty for employment as a lodging 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 demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as hospitality management, for the offered position. In his decision, the director discusses the documentation submitted by the petitioner pertaining to its managerial and professional staff. As pointed out by the director, this documentation demonstrates that the petitioner's managerial and professional staff holds a variety of educational backgrounds, including various certificates and diplomas that have not been independently corroborated to be the equivalent of a baccalaureate degree. Neither counsel nor the petitioner, however, addresses this issue on appeal.

Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. The job listings are noted. Some of the listings, however, do not specify the requirement of a baccalaureate degree in a specific specialty. Others indicate that four years or six years of related experience may be substituted for a baccalaureate degree. Four years or six years of related experience, however, do not equate a baccalaureate degree, as defined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

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.

The record contains letters from three individuals with knowledge of the hospitality industry. One such letter is from Mr. [REDACTED] Executive Director of the Hotel Council of San Francisco, who states, in part, that individuals who possess a four-year degree are the best prepared for a managerial position in the hotel and hospitality management industry. Mr. [REDACTED] does not state, however, that a four-year degree in a specific specialty is required for a managerial position.

A second letter is from Mr. [REDACTED] Vice President/Human Resources of Station Casinos, who states, in part, that individuals filling professional and managerial level positions in the luxury hotels, such as Inter-Continental Hotels, Ritz-Carlton, Nikko Hotels, Four Seasons, and Meridien Hotels, must hold at least a baccalaureate degree in hotel, restaurant, and hospitality management. Mr. [REDACTED] however, does not include the petitioner in his list of those luxury hotels that require such a degree. Furthermore, simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The third letter is from Ms. [REDACTED] Lecturer, School of Administration, Cornell University, who primarily, reiterates the DOL's position in its *Handbook*. Ms. [REDACTED] states, in part: "Hotels increasingly emphasize postsecondary training and 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." Ms. [REDACTED] does not specifically state, however, that a baccalaureate degree in a specific specialty is required for positions such as the proffered position. In view of the foregoing, these industry letters are accorded little weight.

The record contains documentation showing that Citizenship and Immigration Services (CIS) has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the Nebraska Service Center in these prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, such as the copies of the petitions, the record, as it is presently constituted, is not sufficient to enable the AAO to determine whether these H-1B petitions were approved in error.

Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior approvals were granted in error, no such determination may be made without review of the originals record in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding that is now before the AAO, however, the approval of the prior petitions would have been erroneous. The AAO is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I. & N. Dec. 593, 597 (Comm. 1988). Neither the AAO nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

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 appeal is dismissed.