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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

[REDACTED]

JUL 31 2003

File: EAC-02-013-51931 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
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)

ON BEHALF OF PETITIONER:

[REDACTED]

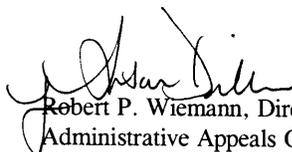
INSTRUCTIONS:

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 Bureau of Citizenship and Immigration Services (Bureau) 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 a hotel with 220 employees and a gross annual income of \$20 million. It seeks to extend its authorization to employ the beneficiary as an assistant executive housekeeper 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 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, as follows:

Effective March 1, 2002, [the beneficiary] is working as Director of Housekeeping of the Radisson Lexington Hotel New York. Under this position, [the beneficiary] is directing a department of 110 individuals who are under the employment of Radisson Lexington Hotel New York. Handling of staff to this scale for a luxury

hotel generates a great deal of complexity in the duties, which requires high professional skills and that can be acquired only through an individual who has a bachelor's degree.

Counsel's statement on appeal is not persuasive. Counsel's assertion that the proffered position is now that of director of housekeeping rather than assistant executive housekeeper is noted. The record, however, contains no evidence of an amended petition with fee having been filed to reflect such a change. Furthermore, the petitioner's labor condition application reflects the proffered position as that of an assistant executive housekeeper. As such, for the purposes of this proceeding, the proffered position is that of an assistant executive housekeeper.

The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The [petitioner] wishes to continue to hire [the beneficiary] as Assistant Housekeeper for an extended period of 3 years.

. . . .

In her position [the beneficiary] is currently supervising the cleaning personnel, prepares reports and paperwork in relation to her duties, handles and resolves complaints. Specifically [the beneficiary] is performing and will be performing the following duties[:]

- Screen job applicants, hire new employees, train employees, recommends [sic] promotions, transfers or dismissals.
- Orient and train new employees in company policies and housekeeping work procedures and in service training of other employees by demonstrating the use and maintenance of equipment.
- Record data concerning work assignments, personnel action and timecards. Prepare periodic reports concerning these items, as well as payroll expenses and

departmental expenses. Inventory stock to ensure adequate supplies.

- Investigate complaints regarding housekeeping service, equipment, and take corrective action.

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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in hotel management or an equivalent thereof. The proffered position is that of a building cleaning worker supervisor or manager. A review of the Department of Labor's *Occupational Outlook Handbook*, 2002-2003 edition, at page 301, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a building cleaning worker supervisor or manager. Supervisors usually move up through the ranks, and, in many establishments, they are required to take some in-service training to improve their housekeeping procedures and techniques, and to enhance their supervisory skills.

The *Handbook* further states as follows:

A small number of cleaning supervisors and managers are members of the International Executive Housekeepers

Association (IEHA). IEHA offers two kinds of certification programs to cleaning supervisors and managers - Certified Executive Housekeeper (CEH) and Registered Executive Housekeeper (REH). The CEH designation is offered to those with a high school education, while the REH designation is offered to those who have a 4-year college degree. . . .

The record does not demonstrate that the proffered position requires REH certification, as described herein. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the proffered position is a specialty occupation within the meaning of the regulations. 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 hotel management, for the offered position. With respect to the director's approval of a similar petition in the past, the AAO is never bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Third, although the record contains two job advertisements, neither is persuasive evidence of a degree requirement being common to the industry in parallel positions among similar organizations. One of the advertisements indicates that a degree is preferred rather than required. It is noted that this advertisement does not specify what kind of degree is preferred. The second advertisement indicates that an associate degree rather than a baccalaureate degree is required. The specialty indicated is "preferably in hotel management." 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 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.