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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: EAC 02 060 51588 Office: VERMONT SERVICE CENTER Date: **MAR 31 2003**

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]

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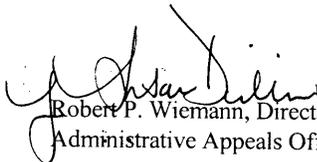
INSTRUCTIONS:

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a Virginia residential estate for lease and owner's use that has 1 employee and a gross annual income of \$38,766. It seeks to temporarily employ the beneficiary as an estate manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel asserts that the position of estate manager is a specialty occupation based on the complexity and specialized nature of the specific duties.

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.

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 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.

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 issue in this proceeding is whether the petitioner has established that the position offered to the beneficiary is a specialty occupation. In the original petition received by the Vermont Service Center on December 11, 2001, the petitioner explained the petitioner's business activities as follows:

██████████ is a 3-acre, 12,000 square foot estate with over thirty rooms, located in Richmond, Virginia. The facility is on file with the Virginia Film Commission, of whom we process several requests per year. . . . ██████████ has also been leased to the Commonwealth of Virginia to serve as the Governor's residence in 1999 while the Governor's mansion on the capitol grounds underwent renovations. Gross annual leasing income for 2000 was \$38,766 and for 1999 was \$82,185.

The petitioner described the proffered position as follows:

The position of estate manager for ██████████ is a complex and involving one. In this position, [the beneficiary] must supervise and direct all aspects of the estate: direct the housekeeping program; the maintenance and repairs of estates and grounds; hiring of any independent contractors needed to maintain the estate; preparing estate budget and paying all bills; and responsibility of all aspects of the efficient and orderly operation of the estate. In addition, [the beneficiary] must understand and manage all automated systems on the estate including security and mechanical systems. For example, [the beneficiary] must manage Trine's Tracer Automated Mechanical System with PCL; Strand Lighting Inc.'s Premiere Lighting Control System; Nortel's Meridian Phone System, Digital LAN for computers and Tracer; security system with surveillance cameras, and Toro Automated Control Systems with on-site well equipment.

The mechanical systems for ██████████ which control the pumps, valves, and other mechanical controls, are commercial systems. They are run by digital computer programming and require the services of an individual experienced in computer programming to operate, customize and when necessary alter the software and programs to more effectively manage the estate. Similarly, our lighting system is a commercial system

(similar to those found in theatres) and requires programming.

The estate manager is responsible for hiring, supervising and firing outside service contractors to provide the following services around the estate: lawn service, swimming pool service and maintenance systems, garden design and service, irrigation service, water well service, security alarm system report, surveillance security system repair, estate security gates, plumbing services, electrical services, Trane (if mechanical system problems become severe), computer LAN and WAN programmers (if the estate manager cannot resolve the programming issues himself); catering services, valet parking services, household services (including cleaning and general maintenance); Meridian phone system repair and maintenance with multiple external devices (including security gates).

The petitioner also submitted an educational equivalency document that indicated the beneficiary's educational work in Indonesia was the equivalent of the U.S. bachelor of science degree in public administration, with a second major in computer science. The petitioner also submitted the beneficiary's college transcripts and the beneficiary's resume.

On December 13, 2001, the director asked for further information with regard to whether the proffered position was a specialty occupation. In particular, the director requested evidence that within the petitioner's company or industry, a baccalaureate degree in a specific field of study is a standard minimum requirement for entry into the position. The director also wanted more information as to why the position required the services of a person with a bachelor degree in the field of management or business administration. The director stated: "There are many estates similar in size to your[s] or larger that do not have an estate manager. They are managed by the owner who probably does not have a four-year degree in management." Finally, The director wanted to know how many other employees were employed in similar positions by the petitioner.

In response, to provide more evidence with regard to why the proffered position would require a baccalaureate degree to perform the duties, the petitioner submitted a letter from [REDACTED] Ph.D and [REDACTED] Ph.D, employees of Educated Choices LLC, an education and employment research consulting firm in Montclair, New Jersey. [REDACTED] and [REDACTED] stated that the proffered position appeared to have significant overlap with the Department of Labor's (DOL) *Occupational Outlook Handbook* classification of lodging manager and some overlap with the *Handbook* classification of curator. In addition the evaluators stated:

Fewer than three percent of 802,000 U.S. private section hospitality positions were held by butlers and high level housekeeping managers in the last five years. Such positions exist in extremely wealthy and secured private households with valuable furnishings where business and charity entertaining is routinely done.

The position evaluation also included commentary from academics in business administration, and hotel management and hospitality fields as to whether the beneficiary's degree in public administration would be adequate preparation for the proffered position.

The petitioner further stated that the estate only needed one manager, and that no similarly employed individuals worked for the petitioner. The petitioner noted that the [REDACTED] the previous estate manager, had received an H-1B visa from the Service. With regard to why the owners could not manage the estate themselves, the petitioner submitted the following information:

[The petitioners] are residents of Florida and are at [REDACTED] no more than four months every year. [REDACTED] is a significant investment (over four million dollars) requiring careful supervision and maintenance both while we are present and while we are out of the state.

The petitioner provided the following expanded explanation of the property and the duties of the proffered position:

The house itself was built in the 1880s and was extensively restored from 1990 to 1993. In addition to the value of the house and the land, the interior furnishing of the estate and require the specialized attention of a professional and competent manager. For example, our investment in antiques exceeds \$1 million, and the antique furniture requires a special range of temperature and humidity within the rooms of the house that must be monitored by specialized equipment (not unlike that found in museums to protect valuable paintings). Our collection includes pieces from the 18th, 19th and 20<sup>th</sup> century, and our focus i[s] primarily in 19th century England (the Regency period) and France (the Empire period). At least 100 pieces require careful attention, and the estate manager may be required to collaborate with experts as to their care. In addition, our wine cellar (which has a collection of wines valued in excess of \$100,000) must be maintained at a consistent temperature and level of humidity that is distinct from other areas of the estate.

We usually host 10 events (primarily political and charitable fund raising events) per year with average

attendance of 200 individuals at each event. Often, attendees include high-level political and elected officials, business executive, lobbyists, wealthy individuals. The estate manager must ensure that our guests are comfortable and secure. Security is always an issue (particularly when we have U.S. Senators or other individuals with private security personnel in attendance) and the estate manager must be able to coordinate with Virginia state police, Secret Service, and private security firms. In addition, the estate manager must be well versed in business etiquette, state protocol, and other issues involved in hosting dignitaries and high-level guests. Our guests travel from long distances and stay overnight at the estate. Just as a world-class hotel would require the services of an expert manager to ensure that its guests are at ease, we must have a manager capable of overseeing every aspect of comfort and security for these important individuals.

Finally, the estate manager must be competent to supervise (or personally perform) complex computer programming for the computer household systems.

The petitioner also submitted sections of a programming manual for the Trane Tracer mechanical system.

On January 22, 2002, the director denied the petition. The director stated that although the proffered position is very similar to a lodging manager, the position is not comparable to an 1000 room resort, but rather to a moderately sized bed and breakfast, or a small 60 to 100 room hotel. The director stated that such a position is not a specialty occupation because a four-year baccalaureate degree in business or hotel and restaurant management is not a requirement for entry into the position. The director also determined that it did not appear that the proffered position would require a baccalaureate degree in business, as other estates, much larger than that of the petitioners, and owned by actors, doctors, athletes or other wealthy individuals, are managed entirely by the estate owner. The director also found that proffered position was only remotely related to that of curator. In conclusion, the director stated that the petitioner had failed to establish that it is common for "all large estates to employ an estate manager with a four year baccalaureate degree in business or management. In addition, the director stated there was insufficient evidence on the record to show that a lodging manager would qualify as a specialty occupation.

On appeal, counsel asserts that the proffered position requires a bachelor's degree because the nature of the specific duties are specialized and complex, rather than based on the size of the estate. Counsel further asserts that the fact that the petitioner may or may not have a bachelor's degree in business is not the correct legal standard to use in determining whether a position

requires a bachelor's degree. Counsel further introduces the classification of human resource manager as being analogous to the proffered position.

The Service often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

Upon review of the record, both the petitioner and the director have proposed numerous job titles and Handbook classifications for the proffered position. Among these classifications and titles are estate manager, lodging manager, human resources manager, and curator. Another *Handbook* classification which also appears relevant to the proffered position is facilities manager.

With regard to training and experience for lodging manager, the Handbook on page 71 states:

Hotels increasingly emphasize specialized training. Post secondary 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.

With regard to human resource managers, the *Handbook* on page 60 describes numerous specializations within the field of human resources managers. The basic role of these workers is to perform the "administrative function of an organization, such as handling benefits questions or recruiting, interviewing, and hiring new personnel in accordance with policies and requirements that have been established in conjunction with top management." On page 60, the *Handbook* states that employers usually prefer college graduates for entry-level jobs, and "depending on the particular job, a strong background in human resources, business, technical or liberal arts subjects may be preferred."

With regard to facilities managers, the *Handbook* on page 25 states:

In a small organization, a single administrative services manager may oversee all support services. . . Facility managers have duties similar to those of administrative services managers, but also plan, design and manage buildings and grounds in addition to people. They are responsible for coordinating the aspects of the physical workplace with the people and work of an organization. This task requires integrating the principles of business administration, architecture, and behavioral and engineering science.

With regard to educational requirements, the *Handbook* on page 25 states, "most facility managers have an undergraduate or graduate degree in engineering, architecture, construction management, business administration or facility management."

With regard to the classification of curator, the *Handbook* on page 184 states that curators "oversee collections in museums, zoos, aquariums, botanical gardens, nature centers, and historic sites." With regard to training, the *Handbook* on page 185 states:

For employment as a curator, most museums require a master's degree in an appropriate discipline of the museum's specialty or museum studies. . . . Since curators-particularly those in small museums-may have administrative and managerial responsibilities, courses in business administration, public relations, marketing, and fundraising also are recommended.

Upon review of all these classifications, it appears that the proffered position is an amalgam job that combines elements of hospitality services, systems and facility management, and security. The curator classification appears to be the least relevant to the duties of the proffered position, as the petitioner's property is not identified on the record as a small museum or historic site. The beneficiary may contract with independent curators or conservator for work on the antiques; however, he himself does not have any significant curatorial duties, as documented by the record. With regard to the human resource manager classification, it appears that this classification is less analogous to the proffered position than the lodging manager since the petitioner does not appear to have numerous staff onsite with attendant needs for benefits analysis and provision. The petitioner appears to contract for number technical or services help in the area of hospitality, correction of serious computer malfunctions, security requirements, and the preservation of antique furnishings and fine wines.

Thus, the *Handbook* classifications of lodging manager, and facilities manager appear most relevant to the proffered position. Both classifications also require a baccalaureate degree for entry into the position, although not in the same specific specialty. The facility manager classification indicates that a degree in business or business administration could be an appropriate degree along with engineering, architecture, construction management, or facility management, while the lodging manager appears to require a degree in hotel or restaurant management. To the extent that these two classifications require bachelor degrees in distinct specific specialties, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the particular position.

Nevertheless in reviewing the nature of the petitioner's business and the prospective duties of the beneficiary, the petitioner has

presented a persuasive argument for classifying the position as a specialty occupation, based on 8.C.F.R. § 214.2(h)(4)(iii)(A)(2), namely that the particular position is so complex or unique that it can be performed only by an individual with a degree.

For example, with regard to the nature of the petitioner's business, since the petitioner's property is only used for approximately ten social or fundraising events per year, with the property owners in residence for only four months of the year, the property would not be appropriately described as a bed and breakfast operation or a small resort hotel, as the director determined. The petitioner's property is a private estate used for both personal use and for social entertaining and fundraising. The proffered position and the duties of the beneficiary involve estate management.

As described by the petitioner, the position encompasses several distinct areas of responsibility. These areas of responsibility appear to be unique to the nature of the petitioner's business. For example, given the nature of the entertaining and the level of both hospitality and clientele, it would appear that the management of guest accommodations for the estimated annual 2000 overnight invited guests would be much more unique and complicated than the accommodation of travelers in bed and breakfast businesses or hotels with sixty to one hundred rooms. In addition, the systems in place with regard to lighting and security of both the property and grounds surrounding it appear to be much more complicated than those encountered at bed and breakfasts or hotels with sixty to hundred beds with no limited on public access. Since the commercial computer systems for lighting, security, and other apparatus appear to operate all year round, the furnishings and wine collections remain on the premises all year round, and the property as well as outside areas such as gardens are maintained all year round, the year round facility management of the property, including the management of specialized and/or commercial computer systems, appears to much more unique and complicated than the management of other facilities, such as office buildings, or smaller commercial hotels.

Given the multiple layers of duties with regard to security, facility management, systems management and hospitality, and the unique nature of the estate, it does not appear excessive that the petitioner requires a bachelor's degree in business administration, and also extensive experience in computer systems and programming. The Service acknowledges that the beneficiary's bachelor degree is in public administration with studies in computer science as opposed to business administration. However, the Service found the materials placed on the record by the petitioner with regard to the position evaluation to be persuasive with regard to the equivalency of a business administration degree to a public administration degree within the context of the proffered position.

In the position evaluation provided by Educated Choices, LLC, [REDACTED]

[REDACTED] Michigan State University, formerly with the Norwegian Embassy in London and presently a professor in the hotel and hospitality field, testified to the hybrid nature of the estate management position. In addition, [REDACTED] of the School of Business, Central Connecticut University, added, "there is a great deal of overlap between business administration and public administration degree programs." Thus, based on the unique and complex nature of the estate manager position, the petitioner has established that the proffered position is a specialty occupation.

The critical element in the analysis of this criterion is not the employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> In the instant petition, the petitioner appears to have met both the statutory requirements as outlined in the Act and the regulatory criteria as outlined in 88 C.F.R. § 214.2 (h) (4) (iii) (A).

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.

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2 (h) (4) (iii) (A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." See *Defensor v. Meissner* 201 F.3d 388 (5<sup>th</sup> Cir. 2000)