

**PUBLIC COPY**

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

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

*DA*

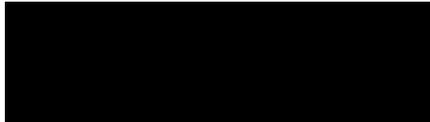
ADMINISTRATIVE APPEALS OFFICE  
CIS, AAO, 20 Mass, 3/F  
425 Eye Street, N.W.  
Washington, DC 20536



NOV 05 2003

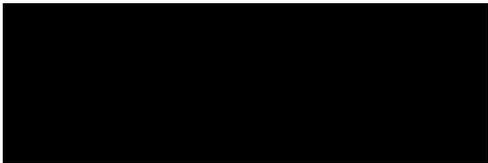
FILE: LIN-02-187-50450 OFFICE: NEBRASKA SERVICE CENTER DATE:

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:



**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 a hospitality company that owns and operates hotel and motel franchises, employs 100 persons, and has a gross annual income of approximately \$3,000,000. It seeks to employ the beneficiary as a lodging manager. The director denied the petition because the position is not a specialty occupation.

On appeal, counsel submits a brief. Counsel reiterates past discussions and summarizes evidence previously submitted.

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 for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

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 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.

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 asserts that the lodging manager position is a specialty occupation. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. Citizenship and Immigration Services (CIS) must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an 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 baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In its initial nonimmigrant visa petition filing, the petitioner

---

<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 id.* at 387.

described the duties of the proffered lodging manager position as follows:

Coordinates front office tasks performed in this occupation. Resolves disputes with customers[sic];] answers inquiries regarding hotel policies[; and] cooperates and communicates with other department heads to ensure complete coordination and profitability of [the] hotel enterprise. Interviews and hires applicants[;] [r]esponsible for scheduling of staff[;] purchases and supplies [sic];] [a]udits financial situations for each hotel property[;] and observes and monitors performance to ensure efficient operations and adherence to facility's policies and procedures.

The petitioner also submitted a supporting letter that initially described general lodging manager positions, and then described the specific duties of the proffered lodging manager position under its section "Position Offered" as follows:

[The beneficiary] will be responsibl[e] for activities which include the coordination of front office activities of our hotel and the direction of special events, including tours and conventions for the [petitioner]. He will also be responsible for the supervision and direction of staff to ensure adequate service coverage. In this position he will be responsible for the hiring procedures, employment compliance with Federal and State laws, payroll and all aspects of Front Desk Supervision, customer relations, and multi-functioned management skills. Furthermore, [the beneficiary] will be answering inquiries pertaining to hotel policies and services and resolve [sic] guest's complaints. He further may be responsible for the purchase of supplies and maintain [sic] the quality and safety of the hotel. He will engage in receiving payment and recording data specific to the operations of our hotel. He further assigns accommodations to our guests, arranges for special requests and services[,] and observes and monitors performance to ensure efficient operation and adherence to our guidelines and policies.

The petitioner also submitted advertisements by other businesses seeking to employ lodging managers as supporting documentation with the petition.

Subsequent to the filing of the nonimmigrant visa petition, the director requested evidence that the position requires a baccalaureate or higher degree or its equivalent as defined

through regulatory criteria. The director also requested a copy of a certified labor condition application (LCA) corresponding to the proposed employment dates; proof of approval of a waiver of a foreign residence requirement correlating to the beneficiary's J-1 nonimmigrant visa, as well as proof he was still enrolled with the J-1 nonimmigrant visa sponsor's program; and an organizational chart from the Days Inn in Alexandria, Minnesota, the beneficiary's employment site.

In response to this request for evidence, counsel for the petitioner submitted the following: certified LCA with correct dates of employment and pre-dating the nonimmigrant visa petition's filing date<sup>2</sup>; copy of I-612 application to waive foreign residence requirements with a copy of the U.S. Department of State's recommendation; quotations from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* with respect to the training of hotel managers and general managers; Internet advertisements from other businesses for general hotel manager positions; letters from other hospitality businesses asserting only degreed individuals are hired for management positions at their hotels; and an organizational chart for the Days Inn Motel of Alexandria, Minnesota.

In response to the director's request for evidence, counsel also provided an additional breakdown and elaboration of duties for the proffered position as follows:

35% Manage and oversee key customer accounts. Research, develop, and coordinate marketing information for the [petitioner's] entire . . . corporate business. Using the integrated research from the market share, he will establish rates for rooms, allocate funds to department, approve expenditures, and establish standards for service to guests, décor, housekeeping, food quality, and banquet operations for all hotels under the [petitioner's] umbrella.

20% Provide professional services to oversee expansions proposals. Organize and staff a newly built hotel or remodeling and reorganization of hotel or motels that are not operating successfully.

---

<sup>2</sup> It is noted that the LCA reflected discrepant occupational codes and number of employees in the blackened dots than what was typed into corresponding boxes; however, there is a DOL certification stamp and the DOL has jurisdiction over the LCA. The LCA is certified for Buffalo, Minnesota in addition to Alexandria, Minnesota. The record does not contain an itinerary of or addresses for additional worksite locations for the petitioner's proffered position.

15% Research, analyze findings, and write reports on business activities of hotels [sic] profitability so that we can better serve our clientele. Develop and implement improved logistics programs to meet client needs.

10% Establish standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit, food selection and service, and type of patronage to be solicited.

10% Plans [sic] dining room, bar, and banquet operations. Allocates [sic] funds, authorizes expenditures, and assists in planning budgets for departments.

10% Interviews, hires, and evaluates [sic] personnel. Answers [sic] patrons' complaints and resolves [sic] problems. Delegates [sic] authority and assigns [sic] responsibilities to department heads. Inspects [sic] guests' rooms, public access areas, and outside grounds for cleanliness and appearance.

Processes [sic] reservations and adjusts [sic] guests' complaints when necessary.

Counsel also stated the following in her response to the director's request for evidence:

The complexity of the uniqueness of this position is further enhanced by the specialized duties of writing training manuals for the properties owned by [the petitioner], i.e. training manuals for the front desk and housekeeping operations. He will establish standards for each department, train the staff to attain the established standards for the hotel industry, research which computer systems would be appropriate for the front desk operations and to [sic] install and maintain those systems. He will be required to be up to date on the latest health and safety regulations for the swimming pools and spa per the state regulations for each property. He will focus on rooms allocation management with the respective centralized reservation systems. He will be required to forecast future occupancy and to plan and implement various strategies to increase the room occupancy rate and the average room rate. He will be required to prepare and submit an annual budget to the CEO of [the petitioner]. He will also and in addition to all of

the above described duties be required to direct the hiring, staffing, and training of employees and to streamline the organizational structure to increase the quality and quantity of the tasks performed.

Also included in documentation provided in response to the director's request for evidence was an additional job description, not on the petitioner's letterhead, but with the petitioner's name typed at the top of the paper that listed duties for a "General Lodging Manager" as follows:

- Responsible for all hotel operations including front desk, housekeeping, maintenance and guest services[;]
- Develops operating budgets for the hotel[;]
- Prepare[s] training staff manuals for various positions throughout hotels[;]
- Implement[s] sales and marketing programs[;]
- Perform[s] market research for advertising and promotions programs[;]
- Maintains a high community profile to enhance the Hotel within the immediate vicinity[; and]
- Perform[s] administrative duties according to company policy.

The director denied the nonimmigrant visa petition because the petitioner failed to prove the proffered position is a specialty occupation. The director noted the petitioner's advertisements directly contradicted the assertion that a bachelor's degree is the minimum requirement in the industry for parallel positions among similar organizations. The director referenced the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* and determined that a bachelor's degree is not the minimum requirement for entry into a hotel management position. Additionally, the director cited the petitioner's elaboration of duties and responsibilities for the proffered position as inconclusive and unrealistic.

On appeal, counsel presents evidence previously submitted and asserts that the petitioner's proffered position meets three out of four specialty occupation regulatory criteria.

The position requirements from the initial nonimmigrant visa petition are the duties and responsibilities that will be considered in determining if the position qualifies as a specialty occupation. The only other information concerning the position provided by the petitioner is a piece of paper with the petitioner's name typed at the top with a generic description of a general lodging manager position that was provided in response

to the director's request for evidence. This additional job description is not probative evidence of the job description because it is not specific to the position being offered to the beneficiary, such as an employment letter or contract. The job description adds additional duties and responsibilities that were not set forth in the petitioner's initial job description. For example, the lodging manager position was expanded to include developing an operations budget for the hotel which is a significant duty and responsibility that was not initially set forth by the petitioner.<sup>3</sup> CIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). Any facts that come into being subsequent to the filing of a petition cannot be considered when determining whether the petitioner's proffered position is a specialty occupation. See *Matter of Michelin Tire*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The petitioner did not revise or clarify the duties as previously described, but provided a materially altered job description. A petitioner may not make a material change to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. The instant petition has been analyzed on the basis of the original documents and any revisions that corrected the original inconsistencies. See *Matter of Izummi*, 22 I&N Dec. 169 (Assoc. Comm. 1998).

Additionally, counsel's elaboration of job duties and percentage breakdown of responsibilities cannot be considered in determining whether the petitioner's proffered position is a specialty occupation. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

<sup>3</sup> In its support letter to the initial petition, the petitioner stated, in its general description of lodging manager positions, that "Lodging Managers may assess financial transactions and supervise budget to guarantee efficient operations of the department, this includes analyzing data and compiling reports on expenditures, wages, supplies and other related operating costs." The petitioner did not specify that the lodging manager position being offered to the beneficiary was the same as its generic lodging manager position. Additionally, *supervising* a budget is very distinguishable from *developing* a budget. Budget development is typically reserved for chief financial officers of a corporation and not general managers who oversee front desk service, customer complaints, and supplies. See DOL's *Handbook*, at page 86, on "Top Executives." Under "Lodging Managers," the *Handbook* does not mention budget development as a duty or responsibility encompassed within that occupation, even for operations managers.

Additionally, in her response to the director's request for evidence, counsel erroneously confused the issues by focusing on the beneficiary's credentials as support for the complexity of duties to be performed in the proffered position.

The position is a lodging manager position as described in the petitioner's initial petition. The *Handbook* provides information about lodging managers, at page 70, as follows:

While most lodging managers work in traditional hotels and motels, some work in other lodging establishments.

. . .

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. In hotels of every size, managerial duties vary significantly by job title.

. . . .

*Front office managers* coordinate reservations and room assignments, as well as train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. Front office managers often have authorization to adjust charges posted on a customer's bill.

*Convention services managers* coordinate the activities of large hotels' various departments for meetings, conventions, and special events. They meet with representatives of groups or organizations to plan the number of rooms to reserve, the desired configuration of hotel meeting space, and the banquet services. During the meeting or event, they resolve unexpected problems and monitor activities to ensure that hotel operations conform to the expectations of the group.

The duties described in the *Handbook* reflect the description of duties provided by the petitioner: coordination of front desk activities and conventions and special events; handling customer service; personnel administration and administrative services; and general operational oversight. The *Handbook*, at page 71, provides guidance on training and educational requirements for

assuming a lodging manager position as follows:

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.

The *Handbook* clearly shows that a lodging manager position does not require a bachelor's degree in a specific field of study to enter into the position. Training requirements are not distinguished within the *Handbook* and are the same for all hotels, motels, and resorts, regardless of size or caliber. Instead of specifying a specific field of study required to enter into the field, the *Handbook* states that a general liberal arts degree may be accepted. The *Handbook* states that employers have a preference, but not a requirement, for degreed individuals to assume a lodging manager position. Thus, the petitioner has failed to establish the first criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

There is no evidence that a degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining the industry standard include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The *Handbook*, as discussed above, does not report that employers of lodging managers require a degree. A letter on Shalom Hospitality Inc. letterhead is in the record. The letter is written by James Joseph, Operations Manager for Shalom Hospitality Inc, and states that he staffs hotels with lodging managers. He expresses personal knowledge of three recent placements into lodging management positions with individuals who hold degrees. However, Mr. Joseph did not unequivocally affirm that all lodging management positions in the hospitality industry are staffed with individuals who hold

degrees. He also did not unequivocally affirm that a degree in hotel management or a related area was required industry-wide. There is no corroborating evidence concerning his claims and his letter is not notarized. 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). For example, there is no evidence in the record that Days Inn and Ramada Inn actually hired management personnel with degrees, such as a copy of the manager's credentials and proof of hiring. There is also no evidence in the record that those same positions were always staffed with degreed individuals. The evidence concerning Shalom Hospitality Inc.'s similarity to the petitioner is slim as only one sentence in the letter, without corroborating evidence, states that it offers hotel and resort business services to international business and tourist clientele in the United States. Thus, Mr. Joseph's letter on behalf of Shalom Hospitality Inc. fails to establish a recruiting and hiring pattern for lodging managers among hospitality businesses.

The petitioner also presented job descriptions from the Omni Hotel, the Hermitage Hotel, and Singh Investment Group. The Hermitage Hotel job description for a housekeeping manager position states that a degree is preferred. A preference is not a requirement and housekeeping is not the same position as a lodging manager position. The other two job descriptions, from Omni Hotel and Singh Investment Group, are not accompanied by information about those employers and how they are similar to the petitioner. The Omni Hotel advertisement does not list a position title but the description of duties is apparently for a Rooms Assistant Manager.

The Omni Hotel and Singh Investment Group advertisements list a general bachelor's degree requirement, but do not specify a degree in hotel management or a related area. Thus, this is not adequate evidence that there is a degree requirement in the industry for lodging managers among similar organizations.

The voluminous employment advertisements submitted by the petitioner from an Internet job bank do not establish that a degree requirement is common to the hotel industry for parallel positions among similar organizations. The advertisements actually provide evidence to the contrary. For example, most of the advertisements state that an associate's degree, which is a two-year post-secondary degree, would be accepted for a lodging management position. Many of the advertisements do not state a requirement for a bachelor's degree at all. Some state that a degree is helpful but not required. Many of the advertisements do not provide details about the duties and responsibilities of positions advertised or the employers to ascertain similarity to the petitioner and the petitioner's proffered position. The petitioner also submitted a chart of managers holding bachelor's

degrees at various locations in Midwestern states, but again, fails to provide corroborating evidence or detailed information concerning the petitioners, the job titles and descriptions, and proof of each individual's credentials. It is noted that counsel objects to having to produce such evidence; however, the burden of proof in these proceedings rests solely with the petitioner and case law also sets forth the requirement of documentary corroboration. Section 291 of the Act, 8 U.S.C. § 1361 and *Matter of Treasure Craft of California, supra*. There is no evidence in the record to show that a degree requirement is common to the industry in parallel positions among similar organizations. Thus, the petitioner has not established the second criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

Additionally, there is no evidence that the petitioner normally requires a degree or its equivalent for the position. The petitioner provided a list of "Managers with Bachelor's Degree," with a Best Western facsimile stamp. However, the record contains no evidence concerning verified actual employment, the job titles or description of duties of the positions held by them, or their credentials. Additionally the list does not indicate if it is a comprehensive list of all managers employed by the petitioner. As noted above, 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, supra*. Thus, the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h) (4) (iii) (A).

Finally, there is no evidence to show 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 petitioner's operations are similar to the employers described in the *Handbook* for lodging managers. Thus, there is nothing to differentiate the petitioner from other employers involved in the hospitality industry. Additionally, the position, as described in the petitioner's initial job description, involves communication with hotel personnel and customers to facilitate adherence to service standards, handling customer complaints, stocking supplies, overseeing the front desk, coordinating hotel activities, and receiving payments. These are not complex duties requiring specialized knowledge. Counsel, in her appellate brief, states, "[t]he petitioner specifically requests that [the beneficiary] be able to utilize his bachelor's degree to begin turning around the profitability of the Days Inn in Alexandria, Minnesota and then move these policies and procedures onto the other hotels within this group." However, this was never an assertion made by the petitioner. Counsel made this assertion in her response to the director's request for evidence but, as noted above, her testimony cannot be evidence of the proffered position's complexity. Counsel

also states in her appellate brief that the marketing responsibilities of the position alone establish its complexity. As noted above, the assertions of counsel do not constitute evidence. *Matter of Obaigbena, supra; Matter of Ramirez-Sanchez, supra.* However, out of the petitioner's lengthy support letter submitted with its initial nonimmigrant visa petition, five-pages of which are designated to describing the position, one sentence states: "[h]e will be responsible for marketing and promotions strategies to ensure the profitability of all of these hotels." No additional details are provided concerning this responsibility. There is no other information concerning the scope of marketing responsibilities envisioned by the petitioner, but it must be minimal considering that it was only briefly mentioned in the petitioner's support letter. Thus, the petitioner has not established the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, there is no itinerary in the record to accompany the certified labor condition application that indicates the beneficiary would work at two locations. Pursuant to 8 C.F.R. § 214.2(h)(2)(i)(B), a petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations or the services or training.<sup>4</sup> Since such an itinerary was not provided, the petition fails for this reason.

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. The petition is denied.

---

<sup>4</sup> 8 C.F.R. § 214.2(h)(2)(i)(B) states the following: *Service or training in more than one location.* A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the [CIS] office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.