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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

NOV 12 2003

File: LIN 02 219 55239 Office: NEBRASKA 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 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 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, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hotel and convention center. It has 65 employees and a gross annual income of approximately $5,000,000. The petitioner seeks to employ the beneficiary as an assistant hotel manager for a period three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief. Counsel states, in part, that: the I-129 petition is a continuation of previously approved employment and, accordingly, the petition should be approved; the proffered position is a specialty occupation; and that similar positions have been approved by Citizenship and Immigration Services (CIS) as specialty occupations.

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 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)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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.

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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

> The position requires the beneficiary to plan, direct, and coordinate financial activities of the [h]otel. This includes participating and providing input for the development of the hotel's budget, including revenues, expenses and profit goals. The beneficiary is also responsible for developing marketing products and concepts amid culturally diverse markets and workforces. The beneficiary is also responsible for administrative duties, implementing company programs, developing and managing property programs and supervising the operations of various departments within the hotel. Because of the highly specialized nature of the position it is required that the incumbent possess at least a Bachelor's [D]egree in Business Administration or equivalent.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner submit evidence that: a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position; the degree

requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree; the employer normally requires a degree or its equivalent for the position; or 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 response to that request, the petitioner stated that the proffered position had been previously approved in an I-129 petition for the time frame 11/18/99 - 7/1/02, and that it was merely asking that the beneficiary's stay be extended for an additional three years. The petitioner further indicated that the duties of the position can only be performed by an individual with a bachelor's degree in hotel management, business administration, accounting or a related field. The following job description was submitted:

> **Financial Management (50%):** Development of the hotel's budget; establish [sic] of profit goals; supervision of bookkeeping and general accounting activities; forecasting of revenues and expenses.
>
> **Marketing (25%):** Development of marketing plans; design and implement special advertising campaigns for the diverse markets; document and report to the management the effectiveness of various promotional campaigns.
>
> **Administrative duties (25%):** Supervise the operations of various departments; hire and discharge department supervisors; resolve customers uncommon complaints; make sure the property is maintained according to the highest standards required by the management; secure and enhance the company assets.

As additional evidence supporting its I-129 petition, the petitioner provided: copies of job advertisements; reference to the Department of Labor's (DOL) *Dictionary of Occupational Titles;* an affidavit from a Ramada Inn franchise holder stating that it required a minimum of a bachelor's degree for the position of assistant accounting manager; and a printout of DOL's "Career Guide to Industries" indicating that hotel chains primarily hire managers with college degrees.

The director determined that the proffered position failed to meet any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the position was, therefore, not a specialty occupation. On appeal, counsel discussed the evidence previously submitted into the record, and asserts that all of the above mentioned criteria have been established.

Counsel further asserts that the proffered position had already been determined by CIS to be a specialty occupation, and to deny an extension of the beneficiary's status constitutes error.

The petitioner has failed to qualify the offered position as a specialty occupation. In the *Occupational Outlook Handbook*, 2002-03,(*Handbook*) at 70-71, the Department Of Labor describes, in part, the duties of lodging managers:

> 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. . . .
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> . . . .
>
> *Assistant managers* help run the day to day operations of the hotel. In large hotels, they may be responsible for activities such as personnel, accounting, office administration, marketing and sales, purchasing, security, maintenance and pool, spa, or recreational facilities. In smaller hotels, these duties may be combined into one position. Some hotels allow an assistant manager to make decisions regarding hotel guest charges when a manager is unavailable.

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 petitioner has, therefore, failed to establish that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement fro entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has failed to establish that the degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In

support of this proposition, the petitioner submitted an affidavit from a Ramada Inn franchise holder, copies of various job advertisements, and made reference to the DOL's *Dictionary of Occupational Titles*. First, the affidavit submitted simply indicates that the affiant's hotel required a bachelor's degree for its Assistant Accounting Manager. The proffered position in this instance is not for an Assistant Accounting Manager, but an Assistant Manager with varied duties. Second, the affiant does not indicate that it requires a degree for its Assistant Accounting Manager in any specific specialty. The affidavit is, therefore, of little evidentiary value. Third, the six job advertisements provided are not sufficient in scope to establish an industry standard for the education required of hotel assistant managers. The degree requirements set forth in the advertisements also vary. They range from unspecified degrees from a hotel or business school, to a bachelor's degree in hotel restaurant management. Finally, counsel's assertion that the proffered position qualifies as a specialty occupation because it was assigned a specific SVP rating in the DOL's *Dictionary of Occupational Titles* (DOT) is unpersuasive.

The Department of Labor has replaced the DOT with the Occupational Information Network (O*Net). Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the AAO is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating.

The petitioner has failed to establish that the employer normally requires a degree or its equivalent for the offered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The record does not indicate how many assistant managers are employed by the petitioner, or what the educational backgrounds are of any such assistant managers. Even if the petitioner only employed degreed assistant managers, however, the offered position would still fail to qualify as a specialty occupation because the position does not require the theoretical and practical application of a body of highly specialized knowledge.

The petitioner has failed to establish that the nature of the proffered positions specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The duties are common in the industry and fall within those listed above in the *Handbook*.

Finally, counsel asserts that the I-129 petition should be approved because it is a continuation of employment in a previously approved I-129 petition, and that similar unrelated petitions have also been approved by CIS. Each nonimmigrant petition is a separate proceeding with a separate record. 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS 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 approval was granted in error, no such determination may be made without review of the original record in its entirety. If the prior petition was 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 petition would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated. *See, e.g., Matter of Church of Scientology International,* 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS 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. It is, therefore, 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.