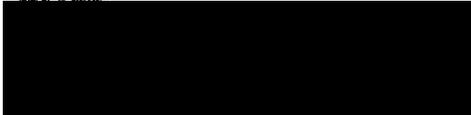


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U.S. Department of Homeland Security
Citizenship and Immigration Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



FILE: WAC 00 030 52801 OFFICE: CALIFORNIA SERVICE CENTER DATE: OCT 16 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)

ON BEHALF OF PETITIONER:



PUBLIC COPY

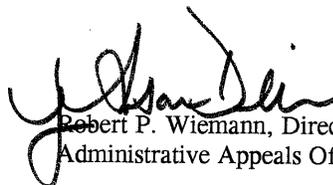
INSTRUCTIONS:

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 of the California Service Center and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is back before the AAO on a motion to reconsider. The motion is granted. The previous decisions of the director and the AAO are affirmed. The petition is denied.

The petitioner is a resort hotel that employs 245 persons and has a gross annual income of \$19,000,000. It seeks to employ the beneficiary as a director of housekeeping. The director and the AAO denied the petition on the basis that the proffered position did not meet the definition of a specialty occupation.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must:

state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [Citizenship and Immigration Services (CIS) policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

On motion, counsel asserts, in part, that the proffered position is a specialty occupation and that the AAO decision was made in error, in part, because: (1) not all of the proffered position's duties described were adequately considered; (2) the complexity of the duties described in the proffered position was inadequately considered in light of the nature of the petitioner's operations; (3) the petitioner always requires a bachelor's degree as the minimum entry requirement for assuming managerial and executive positions; and (4) the proffered position was mischaracterized as a hotel manager position instead of an executive housekeeping position.

With regard to the first issue raised by counsel, namely, that the AAO failed to consider the elaborated description of duties other than the description provided by the petitioner in its initial petition, this appears to be a reference to the adjudication of various criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). A review of the record of proceeding shows that counsel's assertion cannot be established.

The petitioner provided the following description of duties in its initial petition filing:

Assume all levels of responsibility for the condition and availability of resort hotel rooms[;] supervise 45 employees including several supervisors, each of whom

possess[es] a minimum of 4 years of experience. Responsible for executive decisions in all aspects [of] purchasing, staffing[,] and employment for the housekeeping department. Responsible for developing new staff. Responsible for Housekeeping computer programs.

The petitioner also provided a letter with an additional description of duties:

The Director of Housekeeping supervises a staff of 45 people. He or she is ultimately responsible for the condition of our rooms and suites, hiring, training, and supervision of staff[; and] purchasing and estimating room availability. The position also requires proficiency in the use of our computer programs for quality control staffing, maintaining supplies and cost analysis. The position requires executive decision making on a level that insures that our resort maintains its unique Five Star rating.

On appeal, the petitioner submitted a letter stating that the position "requires the minimum of a bachelor's degree as well as experience in the position and a background in hotel management." No further elaboration of the proffered position's duties and responsibilities was provided by the petitioner.

On appeal, counsel elaborated on the duties of the proffered position in his legal brief as follows:

- a. Overseeing a staff of 45 people requires the administration and control of all work performed by the staff to achieve objectives of the organizations. The position also requires the selection, training, supervision, conflict resolution, grooming, hiring, termination, and [review of] quality of performance. The duties also include the organization of work schedules, vacations, [sic] wages[; and] [sic] departmental training programs[;]
- b. Director of Housekeeping will oversee the budget, implement cutbacks if needed, allocate funds as needed, [and] prepare reports for management by specified deadlines[;]
- c. Prepare capital recommendations for capital improvement and operating budget for management approval[;]
- d. Conduct inventory control as scheduled, create purchase requisition[s,] and match purchase[s] with the highest quality and most timely suppliers of

- provisions needed[;]
- e. Maintain constant room inspection, evaluate the quality of each housekeeper and conditions of the room. Prepare inspection reports periodically[;]
 - f. Supervise and implement lost and found program[;]
 - g. Encourage and implement the image and quality of service and cleanliness[;]
 - h. Review, develop[,] and amend departmental policies and procedures and job descriptions according to labor standards[;]
 - i. Ensure all security policies and procedures are observed in all departments[;]
 - j. Handle guest complaints and specific needs[;]
 - k. Establish standards for performance, and maintain level of excellence required by the resort[;]
 - l. k.[sic] Organize monthly staff meeting, partake in management meetings, and assist in developing overall policy and procedure for the whole establishment[;]
 - m. l.[sic] Monitor and control[sic] labor costs so that forecasted room occupancy and labor ration are in line at all times[;]
 - n. m.[sic] Oversee and manage all areas of the resort including public areas, guestrooms, offices, exterior areas[,] etc.[;]
 - o. n.[sic] Allocate staff and organization to special events at the resort[;]
 - p. o.[sic] [Oversee c]omputer efficiency in keeping reports, cost analysis, inventory, scheduling, and billing up to date and organized[;]
 - q. p.[sic] Maintain good working relationship[s] with all department and division heads, and co-ordinate needs and event[s] the resort accordingly[; and]
 - r. q.[sic] Submit[sic] to management recommendations for painting, repairs, furnishings, relocation of equipment, and reallocation of space.

Counsel states that the AAO failed to consider the comprehensive list of duties provided in his appellate brief. However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1998); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not contain a statement by the petitioner that specified the duties for the executive housekeeping position as presented by counsel in his brief. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Thus, with respect to the duties of the proffered position, the AAO correctly interpreted the evidence in the record.

With regard to the second and third issues raised by counsel, namely that that the AAO failed to consider the nature of the petitioner's business and that the petitioner hires only individuals with a baccalaureate or higher degree or equivalent into its executive positions, this is apparently another reference to the adjudication of various criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). A review of the record of proceeding and the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* shows that counsel's assertion cannot be established.

In his motion, counsel states that the petitioner is:

a large resort and gold club located in Carmel Valley on the Monterey Peninsula. The resort has for the past twenty year[s] received the Mobils[sic] Guide['s] Five Star Award. [The p]etitioner employs approximately 245 employees, and has a \$19 million dollar gross income. [The p]etitioner does not employ anyone in an executive position without a degree. Therefore [the] petitioner would 'normally' use a professional to fill the duties.

As noted above, the assertions of counsel do not constitute evidence. *Matter of Obaigbena, supra* at 534; *Matter of Ramirez-Sanchez, supra* at 506. To date, the record does not contain any evidence from the petitioner of the names and positions of individuals who have held the director of housekeeping position, or any management or executive position, and copies of their resumes and academic credentials. Thus, with respect to the petitioner proving it hires only degreed individuals, the AAO correctly interpreted the evidence on the record. The petitioner failed to establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, considers the varying calibers of hotels when describing duties or training requirements for managerial or executive positions in the hospitality industry. The *Handbook* makes no distinction that resorts require degreed individuals to assume its management or executive positions because they are of higher caliber than other lodging establishments. Finally, there is no evidence on the record that a degree requirement is common to the industry in parallel positions among similar organizations. Thus, with respect to the nature of the petitioner's operations, the AAO correctly interpreted the evidence on the record. The petitioner failed to establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

With regard to the fourth issue raised by counsel, namely that the proffered position is an executive housekeeping position and

the AAO mischaracterized the position as a hotel manager in its 2001 decision, this is apparently a reference to the adjudication of various criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Even if the proffered position is characterized as an executive housekeeping position, however, the position is still not a specialty occupation because the *Handbook* states that a degree in a specific area is not required for entry into an executive housekeeping position.

The *Handbook* provides information under "Lodging Managers" at page 70, with respect to the petitioner's proffered position and its nature of operations. "Lodging Managers" were previously characterized as "Hotel Managers" in the *Handbook* edition utilized in the AAO's 2001 decision. The current edition of the *Handbook* at page 70, states the following:

While most lodging managers work in traditional hotels and motels, some work in other lodging establishments, such as camps, inns, boardinghouses, dude ranches, and recreational resorts. . . .

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.

. . . .

Executive housekeepers ensure that guest rooms, meeting and banquet rooms, and public areas are clean, orderly, and well maintained. They also train, schedule, and supervise the work of housekeepers; inspect rooms; and order cleaning supplies.

The *Handbook* includes recreational resorts in its description of the lodging manager occupation. It further defines general managers and those assuming special areas of management. The duties described in the *Handbook* for general managers or executive housekeepers all reflect the description of duties provided by the petitioner. Thus, the AAO properly categorized the position as hotel manager in its 2001 decision.

The *Handbook* provides guidance at page 71 on training and educational requirements for assuming hotel/lodging manager or executive housekeeper positions 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/hotel manager or executive housekeeper position does not require a bachelor's degree in a specific field of study to enter into the position. 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/hotel manager or executive housekeeper position.

Thus, with respect to its characterization of the position, the AAO did not misinterpret evidence on the record. Even if the position is characterized as an executive housekeeper position, it is still not a specialty occupation. The petitioner failed to establish that the proffered position is a specialty occupation requiring a bachelor's degree in a specific specialty under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Finally, counsel asserts that the complexity of the duties described in the proffered position was inadequately considered in light of the nature of the petitioner's operations. However the description of duties provided by the petitioner reflects duties described by the *Handbook* for a lodging/hotel manager or executive housekeeper position. In its petition, the petitioner described the duties of the position to include supervision of housekeepers and some supervisory housekeepers, personnel administration, purchasing decisions, and oversight of housekeeping computer programs. These are not complex duties requiring the application of a body of highly specialized knowledge. As noted above, the *Handbook* does not distinguish among the caliber of resorts and hotels with respect to the level of complex duties and responsibilities undertaken by managerial or executive staff in the hospitality industry. Thus, the AAO did not misinterpret evidence on the record and the petitioner has not established the criterion found at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) for proving the proffered position is a specialty occupation.

The remainder of issues raised by counsel on motion to reconsider

will not be discussed here, as counsel did not cite to any new legal precedent or evidence, or assert that the AAO misinterpreted evidence.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Upon review of the issues raised in the motion to reconsider, the petitioner has not sustained the burden of overcoming the legal basis for the initial decision.

ORDER: The motion is granted. The previous decision of the AAO, dated May 24, 2001, is affirmed. The petition is denied.