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

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



OCT 21 2003

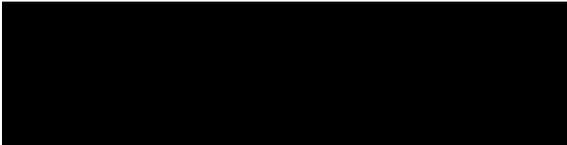
File: LIN-00-159-52132 Office: NEBRASKA SERVICE CENTER Date:

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:



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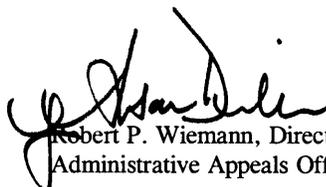
INSTRUCTIONS:

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 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. A subsequent motion was granted, and the director affirmed his previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a hotel with 50 employees and a gross annual income of \$5 million. It seeks to employ the beneficiary as an 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:

The Appellant submitted the list of other employees in fourteen other locations where all Housekeeping Managers have at least bachelor' [sic] degrees in Hospitality Tourism Management, Hotel, and Restaurant except three employees.

Counsel's statement on appeal is not persuasive. The AAO 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 AAO considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

The alien will direct [the] Housekeeping program to ensure clean, orderly and attractive condition of Courtyard Marriott. Also her duties include to [sic] establish standards and procedure [sic] for work of Housekeeping staff and plan work schedule and evaluate and submit recommendation to the [sic] management. In addition to this[,] she will read trade journals to ensure improved new methods. The alien will also direct departmental training program and coordinate with other departments.

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 AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in hospitality management or a related field. 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 an REH, as described herein. Furthermore, in a letter dated January 9, 2001, the petitioner's director of career development states that the Courtyard Marriott in Louisville already has an "Executive Manager - Housekeeping and Operation." She does not explain why a second such position is needed. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is the minimum requirement for entry into the occupation.

Second, although the petitioner has submitted a list of employees with baccalaureate degrees, not all of their degrees are related to executive housekeeping. For example, one employee has a degree in Spanish and psychology and another employee has a degree in mathematics. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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.