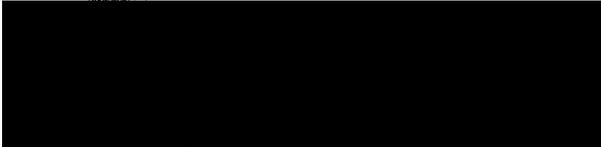




U.S. Citizenship
and Immigration
Services

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DZ

FILE: EAC 03 001 53755 Office: VERMONT SERVICE CENTER

Date: APR 14 2004

IN RE: Petitioner:
Beneficiary:



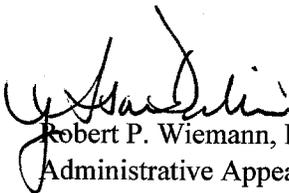
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a lodging resort, and seeks to employ the beneficiary as a sales manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition on the basis that the proffered position was not a specialty occupation, and that the beneficiary was not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief.

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

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.

Section 214(i)(1) of the Immigration and Nationality Act (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:

[A]n 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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with the petitioner's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a sales manager. Evidence of the beneficiary's duties includes: the I-129 petition with attachment; and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: coordinate with the general manager and other department heads to ensure all sales needs of the property are being met; solicit and secure private dining and guest room business; make outside sales calls to generate business and respond to all incoming inquiries; generate new and personalized sales contracts; demonstrate superior telephone and communication skills; generate new prospects through cold calls, file solicitations, sales blitzes, and special promotions; follow-up on leads; assist accounting in billing; maintain communications between the food and beverage staff and hotel staff to ensure departments are prepared to meet client needs; generate and distribute private dining orders and status changes/10 day forecast; administer the sales support system including an efficient filing system, policies and procedures and an effective paper flow for correspondence; train and counsel staff on a continuing basis; target sales in specific markets and ensure that sales calls meet the needs of potential clients; evaluate sales progress including an annual written plan and budget; evaluate sales procedures; actively work the account base of preferred clients and group clients; conduct site inspections for perspective clients; be the public relations point of contact for the hotel; coordinate sales trips to generate business; conduct site inspections for travel writers and distribute press kits; entertain potential clients in the hotel; participate in selected associations; participate in the manager on duty program; type resumes, contracts, general correspondence and memos; greet each group contact personally booked in the hotel; review and correct daily reports; conduct the weekly sales meeting; attend staff, owners, and sales meetings on scheduled days; prepare the booking pace report and loss business report each month and forward to the general manager; assist the food and beverage manager with special projects; assist in determination and preparation of any new or existing catering menus; and perform additional duties as needed. It is the petitioner's position that the minimum education required for the offered position is a bachelor's degree in hotel and restaurant management, or a related field.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submits a brief, stating that the proffered position qualifies as a specialty occupation as it meets the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the *Handbook* for information about the duties and educational

requirements of particular occupations. The duties of the proffered position are varied, but essentially those noted for marketing and sales/promotions managers, with some additional operational managerial responsibilities. The *Handbook* further notes that a wide range of educational backgrounds is suitable for entry into these positions, but that many employers prefer those with experience in related occupations plus a broad liberal arts background. A bachelor's degree in sociology, psychology, literature, journalism, or philosophy, among other subjects, is acceptable. For marketing, sales, and promotions managers, some employers prefer a bachelor's or master's degree in business administration with an emphasis in marketing. The proffered position does not, therefore, satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), since a bachelor's level education **in a specific specialty** is not the minimum requirement for entry into the offered position. (Emphasis added.) A degree in any number of educational disciplines will suffice.

The petitioner has also failed to establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion, the petitioner submitted a statement from Dr. [REDACTED] an assistant professor of food and beverage management at Cornell University. Dr. [REDACTED] states that expertise necessary to perform the duties of the offered position is taught in bachelor degree programs in Hospitality, Lodging, and Tourism Management. He further opines that prospective employers would "seek and/or prefer" a person with such a degree for the position of sales manager, "and may well consider a candidate with such a degree as a standard in the industry." The statement of Dr. [REDACTED] does not state, however, that a degree requirement is common to the industry in parallel positions among similar organizations, but that employers "may" consider a degree requirement as standard in the industry. Indeed, Dr. [REDACTED] states that employers "seek and/or prefer" degree holders for the offered position, not that such a degree is a minimum requirement for entry into the position. Further, it should be noted that the duties of the offered position are routine for sales/promotions managers in the industry. Thus, they are not so complex or unique that they can only be performed by an individual with a degree, or so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). The petitioner does not assert that it normally requires a degree or its equivalent for the offered position as the position is new with the petitioner's organization. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

The beneficiary's qualifications to perform the duties of a specialty occupation shall not be addressed as it has been determined that the proffered position is not a specialty occupation.

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. The petition is denied.