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DA

FEB 06 2004

FILE: SRC 02 204 50658 Office: CALIFORNIA SERVICE CENTER Date:

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:
[Redacted]

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center 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 hotel that seeks to employ the beneficiary as a director of housekeeping and in-house services. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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.

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) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a director of housekeeping and in-house services. Evidence of the beneficiary's duties includes: the Form I-129; the letter accompanying the Form I-129; and

the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part: inspecting the physical condition of the hotel; scheduling housekeeping staff and establishing their work standards and procedures; organizing and directing training; handling all personnel matters such as performance and hiring; maintaining records and preparing reports; forecasting and budgeting for personnel; maintaining inventory; keeping abreast of improvements in the industry improvements; conducting staff meetings; and ensuring guest satisfaction. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree with experience in housekeeping or the equivalent of a bachelor's degree.

The director found that the proffered position was not a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director stated that the petitioner failed to establish that the proffered position requires a bachelor's degree in chemistry - the degree held by the beneficiary. With respect to the submitted job announcements, the director found that the document from the Department of the State of Virginia, dated August 16, 1988, was not an actual job announcement, and that the other two job announcements required a bachelor's degree.

On appeal, counsel states that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook* (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." See *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)).

Counsel claims that the petitioner satisfies the criteria found at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2) because the *Handbook* and the DOL's *Dictionary of Occupational Titles (DOT)* report that any college degree is sufficient for the proffered position when coupled with related hotel experience.

This claim is without merit. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL 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 DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within an occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply by relying on the *DOT*.

CIS looks beyond the title of the proffered position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by Section 214(i)(1) of the Immigration and Nationality Act (the Act). The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. After reviewing the *Handbook*, the AAO concurs with counsel in that the *Handbook* discloses that lodging managers perform the duties of the proffered position. However, no evidence is in the *Handbook* that reports that employers require candidates to possess a bachelor's degree in a specific specialty. The DOL states that although employers prefer postsecondary training in hotel or restaurant management, a college liberal arts degree may be sufficient when coupled with related hotel experience. The DOL also explains that although some employees advance to hotel management positions without education beyond high school, postsecondary education is preferred. A preference for a bachelor's degree is not synonymous with an employer requiring a degree for entry into an occupation. Moreover, counsel confirms the DOL's finding: on appeal, counsel states that the job requirement for the proffered position is not limited to a degree in a specific specialty.

Counsel also states that, for national franchise hotels with over 100 rooms, employers in the industry require a bachelor's degree for director of housekeeping and in-house services positions, and counsel refers to the submitted evidence, exhibits A-C, to claim:

Furthermore, these [e]mployers, [sic] do not specify a specific major for the position, thereby supporting the [p]etitioner's position that as long as the candidate has a [b]achelor's degree and related experience, he/she has met the industry standard. In fact, to limit the job requirement of a specific degree can well be interpreted by the Department of Labor as tailoring the position to accommodate the alien's credentials.

As previously mentioned, the Act requires that the bachelor's degree be in a specific specialty for a position to qualify as a specialty occupation. Based on counsel's claim and exhibits A-C, the petitioner's industry does not require a bachelor's degree in a specific specialty; thus, the petitioner fails to satisfy the second criterion found at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2).

No evidence in the record establishes that the proffered position is unique and can be performed only by an individual possessing a bachelor's degree.

The position is newly created; therefore, the petitioner fails to establish that it normally requires candidates to possess a bachelor's degree in a specific specialty. 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3).

Finally, counsel states that the criterion found at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) is met because the nature of the duties, such as preparing budgets, preventing loss and theft, developing policies, ordering inventory, supervising personnel, and ensuring customer satisfaction, 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. This statement is without substance. As previously discussed, the DOL reports that a bachelor's degree in a specific specialty is not required for the position, and counsel concurs with this statement. Accordingly, the petitioner fails to satisfy this criterion.

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As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.