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U.S. Citizenship
and Immigration
Services

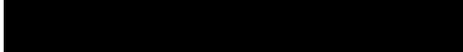
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File: LIN 02 121 52408 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: 
Beneficiary: 

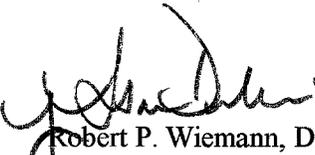
Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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 sustained. The petition will be approved.

The petitioner is a hotel services and management company that seeks to employ the beneficiary as a revenue manager. The petitioner endeavors to change the beneficiary's status and 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. In addition, the director found that the beneficiary failed to maintain a valid immigration status. 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 revenue manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's supporting letter; and counsel's response to the director's request for evidence. According to the February 12, 2002 letter submitted with the petition and the June 28, 2002 response to the request for evidence, the beneficiary would perform duties that entail, in part: examining, analyzing and evaluating inventory and sales; preparing reports summarizing findings about room rates, expenditures for food service and housekeeping operations; hiring, training and monitoring staff to collect, balance and report over 75 profit centers in the hotel; and ensuring accurate revenue reporting for a hotel which generates over \$12,000,000 per year.

The director found that the proffered position was not a specialty occupation.

On appeal, counsel states that the petitioner normally requires a degree for individuals in the proffered position, and submits documentation regarding a former revenue manager.

Upon review of the record, the petitioner has established that at least one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A) applies to the proffered position. Therefore, the proffered position is a specialty occupation.

The AAO turns to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2): 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The specific position of hotel revenue manager does not exist in the *Handbook*. The *Handbook* does, however, discuss Lodging Managers, and in the reference to assistant managers, states: "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." The proffered position is similar to an assistant manager designation. The *Handbook* states, "Hotels increasingly emphasize specialized training. Postsecondary training in hotel or restaurant manager is preferred for most hotel management positions." This falls short of stating a bachelor's degree is required, although the *Handbook* does also state, "College graduates with degrees in hotel or restaurant management should have the best job opportunities."

In the response to the director's request for evidence, counsel submitted letters from the general managers of two hotels, the Renaissance Airport Philadelphia North, and the Savannah Marriott Riverfront, both of whom state that a bachelor's degree is industry standard for revenue managers. In his decision, the director incorrectly stated:

It is noted that advisory opinion letters are not one of the four ways a petitioner may establish that a position qualifies as a specialty occupation as listed in Title 8, Code of Federal Regulations, Part 214.2(h)(4)(iii)(A). Nevertheless, neither of the authors of these letters has provided any credentials setting forth his ability to give expert testimony regarding the question of whether the

proffered position qualifies as a specialty occupation. The Service may, in its discretion, accept letters and advisory opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence.

The letters were submitted to establish that the degree requirement is common to the industry in parallel positions among similar organizations, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). There is no requirement that the persons be "experts" in making such an assessment. As stated above, CIS accepts letters or affidavits from firms or individuals in the industry to 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)).

The director does not state what evidence he would accept to establish industry standards. While the petitioner could have, perhaps, submitted position announcements from other hotels regarding the educational requirements for revenue managers, it is incorrect to state that the letters may be ignored. The letters establish that the proffered position is a specialty occupation.

The petitioner submitted a credentials evaluation from The Trustforte Corporation, as well as copies of the beneficiary's transcript and diploma, which established that the beneficiary has the equivalent of a bachelor's degree in hotel and tourism management. The beneficiary is qualified to perform the specialty occupation.

The director erred in his decision regarding the beneficiary's change of status. According to 8 C.F.R. § 248.1(b), "a change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed." The evidence in the record indicates that the beneficiary's J-1 status (which was issued for the duration of his stay) was valid at the time the H1B petition was filed. More importantly, however, the AAO does not have the authority to review an application for a change of status that has been filed on an I-129 petition. *See* 8 C.F.R. § 248.3(g).

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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.