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U.S. Citizenship
and Immigration
Services



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FILE: LIN 01 034 51228 Office: NEBRASKA SERVICE CENTER Date: JUN 02 2004

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:



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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was dismissed by the Director, Nebraska Service Center. A timely appeal was filed by the petitioner. That appeal was dismissed by the Administrative Appeals Office (AAO) on September 5, 2002, holding that the petitioner had failed to establish that the offered position qualified as a specialty occupation. This matter is now before the AAO on the petitioner's motion to reconsider pursuant to 8 C.F.R. § 103.5. The motion to reconsider shall be granted. The prior decision of the AAO will be affirmed. The petition will be denied.

A motion to reconsider must: (1) 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 CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5 (a)(3). The motion and supporting documentation satisfies the regulatory requirements for a motion pursuant to 8 C.F.R. § 103.5, and the merits of the motion shall be addressed.

The petitioner operates a hotel and seeks to employ the beneficiary as a resident 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 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 proceedings 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; (5) the Form I-290B with supporting documentation; and (6) counsel’s motion to reconsider with attachments. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary’s services as a resident manager. Evidence of the beneficiary’s duties was submitted in support of the I-129 petition. According to this evidence the beneficiary would: be responsible for the overall profitable management of the business facility and supervision of employees engaged in room rental, restaurant operation, gift shop management, food and beverage operations, banquet operations, gasoline operations; be responsible for marketing, community relations, record keeping, bookkeeping, employee staffing and training, inventory control, and maintaining the physical premises; assist the general manager to ensure that all reports of revenue, expenses, business volume, labor, personnel, payroll, and assets are maintained to DIA specifications; participate in site sales and marketing activities, including sales action plans, sales letters, sales appointments, etc.; plan, direct, and implement restaurant promotions, specials, employee incentive contests and other sales activities; hire, oversee, and fire employees in all areas of business operation; and ensure that all policies and procedures comply with federal, state, and local laws in regard to safety, accounting, security, guest relations, and management. The petitioner requires a minimum of a bachelor’s degree in hotel management or a closely related field for entry into the offered position.

The AAO 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). Counsel asserts in his motion to reconsider that the proffered position qualifies as a specialty occupation and that the AAO should reverse its prior decision.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, as asserted by counsel. Factors often considered by CIS when determining this criterion include: whether the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, reports that the industry requires a degree; whether an industry 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/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for lodging managers:

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. . . .

. . . .

Assistant managers help run the day to day operations of the hotel. 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. In smaller hotels, these duties may be combined into one position. Some hotels allow an assistant manager to make decisions regarding hotel guest charges when a manager is unavailable.

The *Handbook* further notes that hotels increasingly emphasize specialized training for lodging managers. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, but a college liberal arts degree may be sufficient when coupled with related hotel experience. In the past, many managers were promoted from the ranks of hotel staff. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. There are over 800 educational facilities that have programs leading to recognition in hotel or restaurant management. They include community colleges, junior colleges, universities, vocational and trade schools. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Educational qualification for the offered position exists from baccalaureate level liberal arts degrees, to education earned in junior colleges or vocational and trade schools.

The petitioner has failed to establish that the degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this proposition, the petitioner submitted copies of six job advertisements. Six advertisements are insufficient in scope to establish an industry standard for a degree requirement. Indeed, the *Handbook*, a much more comprehensive source of information for educational requirements in the lodging/hotel industry clearly refutes the petitioner's contention. It should further be noted that the duties of the offered position are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty. The duties are, in fact, routine for the offered position.

The petitioner has failed to establish that the employer normally requires a degree or its equivalent for the offered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The petitioner does not assert this as a basis for qualifying the offered position as a specialty occupation as the business is newly established for the petitioner and no previous individuals have been hired in the position.

Finally, the petitioner has failed to establish that the duties of the offered position are 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)(4). In support of this assertion the