



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 020 50900 Office: TEXAS SERVICE CENTER Date:

JUN 24 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:

[Redacted area]

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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy.

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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 hospitality management company that seeks to employ the beneficiary as 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and other documentation.

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 manager. Evidence of the beneficiary's duties includes the I-129 petition. According to this evidence, the beneficiary would perform duties that entail: planning, directing, and coordinating the activities of various departments; overseeing daily operations; managing the budget; scheduling; and handling customer support issues. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hospitality management.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position of hotel manager was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel provides a list of job duties that include tasks not previously ascribed to the proffered position. Counsel also characterizes the job as general manager and chief operating officer. Counsel asserts that the proffered position is so complex that it can only be performed by an individual with a bachelor's degree. The evidence on the record, however, fails to establish the criterion outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), nor does the evidence support any of the other statutory criteria mentioned above. Therefore, the proffered position is not a specialty occupation.

On appeal, counsel greatly expands the duties of the proffered position. Examples of responsibilities not mentioned previously include: strategic planning to maximize the profitability of the hotels; system-wide analyses to better coordinate the properties as part of one management group; evaluation and direction of individual hotel and department managers; supervision of accountants, engineers, and banking personnel involved in hotel projects; overall financial responsibility for company-wide operations; responsibility for marketing and advertising; and planning the investment financing and strategy for a new hotel and subsequently directing the development of the new hotel. The job described on appeal barely resembles the position portrayed in the original I-129 petition.

Subsequent to the initial filing of the petition, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed is a specialty occupation. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. Inasmuch as the job duties listed on appeal differ from those included in the original filing of the petition, they will not be included in this analysis of the nature of the proffered position.

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 *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. A review of the lodging manager job description in the *Handbook* reveals no evidence that a baccalaureate or higher degree, or its equivalent, is required for the proffered position. Although the *Handbook* notes that post-secondary specialized training is increasingly preferred, it is also possible to enter the proffered position with a bachelor's degree in liberal arts, or by rising through the ranks within a hotel. In addition, the mentioned post-secondary training may be obtained through vocational schools, technical institutes, and community colleges; in other words, certificates and associates degrees provide suitable bases for entry into the position of lodging manager.

Even if the proffered position is characterized as that of a top executive, the *Handbook* states that the formal education and experience requirements to enter into such a position vary widely. According to the *Handbook*, many top executive positions are filled by promoting workers from within the organization; thus, even individuals who do not possess a college degree may attain a top position. Other individuals enter top executive positions with a bachelor's or higher degree in business or liberal arts. There is no evidence in the *Handbook* that a bachelor's degree in a specific specialty is a minimum requirement for entry into the position of top executive.

Regarding parallel positions in the petitioner's industry, the petitioner submitted two Internet job postings for lodging managers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. In addition, the advertisements state that a four-year degree is required, but no specific field is requested. Thus, the advertisements have little relevance.

On appeal, counsel submits a letter from Professor Michael C. Sturman of Cornell University, who states that, in his opinion, the duties of the proffered position require bachelor's level educational training in hotel and restaurant management. The AAO notes, however, that Professor Sturman bases his opinion on the expanded list of job duties, and he analyzes the position of "senior-most officer responsible for the day-to-day and long-term operation of the company." As previously mentioned, inasmuch as the job description provided on appeal differs from that which was included in the initial filing, it will not be used for the purposes of this analysis. Moreover, Professor Sturman's opinion does not constitute evidence from a professional association regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not established this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. § 1361. The petitioner has not sustained that burden.

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