



U.S. Citizenship
and Immigration
Services

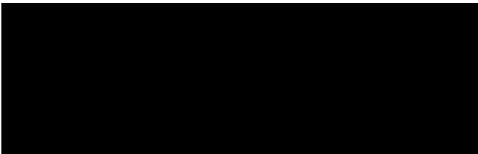


FILE: EAC 02 242 51492 Office: VERMONT SERVICE CENTER Date: OCT 08 2004

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.

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 motel that seeks to employ the beneficiary as a motel 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 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 motel manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 1, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: managing and operating the motel; hiring and training personnel; handling customer service issues; preparing a budget; deciding room rates; maintaining records; purchasing, and maintaining and repairing the premises. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in an unspecified field.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position of lodging 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 states that a bachelor's degree is the normal minimum entry requirement for the proffered position. Counsel also asserts that the petitioner normally requires a bachelor's degree or its equivalent for this position. Finally, counsel contends that the job duties are so complex that the knowledge required to perform them is usually associated with the attainment of a bachelor's degree. As counsel addresses the first, third, and fourth criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO will analyze the evidence in light of these provisions.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the *Handbook* states that a baccalaureate degree in hotel management is a minimum requirement for a motel manager job. The *Handbook* states that postsecondary training in hotel management is preferred, but a liberal arts degree and hotel work experience may also be sufficient. Additionally, some lower level hotel employees advance through the ranks to management positions by virtue of their experience alone. It must be emphasized that a preference on the part of some employers for a certain educational background does not mean that this is a minimum entry requirement for the position. The petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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. In support of this criterion, counsel submits a copy of the petitioner's owner's college diploma. This document shows that the petitioner's owner/operator holds a foreign bachelor of science degree in chemistry. The job duties of the owner/operator are not detailed in the record, so it cannot be determined if they are the same as those pertaining to the hotel manager's position. Also, a degree in chemistry is not related to a degree in hotel management; thus, this information does not indicate that the petitioner normally hires individuals who hold degrees in hotel management for the instant position.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. The duties are those normally associated with any hotel manager position. 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.