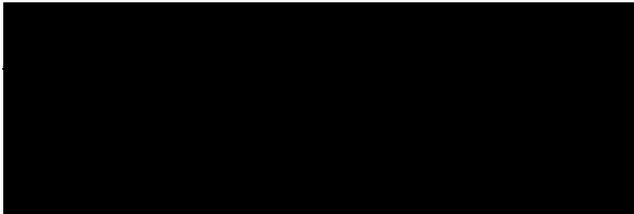




U.S. Citizenship  
and Immigration  
Services

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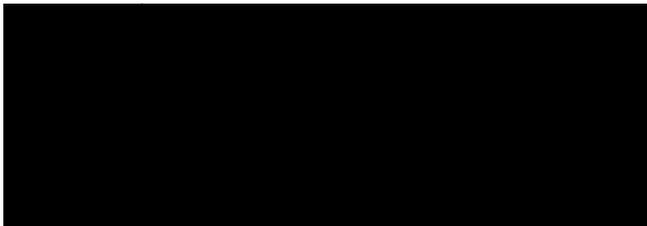
FILE: SRC 02 144 52811 Office: TEXAS SERVICE CENTER Date:

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 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 and resort that seeks to employ the beneficiary as an assistant front desk manager/lodging manager. 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 states that the proffered position qualifies as a specialty occupation.

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 an assistant front desk manager/lodging manager. Evidence of the beneficiary's duties includes the Form I-129; the attachments 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 coordinating all stages of a guest's stay; determining a guest's reservation status to complete registration and assign a room; keeping current room status reports and coordinating maintenance and repairs; training front desk staff; resolving complaints; adjusting charges on a bill; establishing standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit, food selection and service, and the kind of patrons to target; planning, overseeing, and coordinating special events; supervising and directing up to 60 employees; and using EXCEL software. The petitioner stated that a candidate must possess "at least the equivalent of a [b]achelor's degree for this position," though the petitioner implicitly suggested that the degree should be in the field of hospitality management.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director found that employers prefer, but do not require, postsecondary training in hotel or restaurant management for the proffered position. The director stated that the petitioner failed to establish that a baccalaureate or higher degree is a prerequisite for its position or for the industry. According to the director, the submitted evidence did not establish that the position requires a candidate possessing a bachelor's degree and that the mere requirement of a college degree for the sake of general education or to obtain what an employer perceives to be a higher caliber employee does not establish eligibility as a specialty occupation.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel contends that the duties of the proffered position are very specialized and are more complex than a similar position at a smaller, less prestigious hotel chain. Counsel states that the petitioner is a four-star hotel with 613 rooms and over 600 visitors each day. The beneficiary, counsel states, must coordinate and supervise up to 60 employees to keep the hotel operating properly to meet the hotel's standard of quality and professionalism. Counsel contends that the *Handbook* and the *Occupational Information Network (O\*Net)* fail to consider that the hotels which merely prefer postsecondary training are not four star hotels such as the petitioner. To establish that a baccalaureate degree or its equivalent is a common industry requirement in parallel positions, counsel submits advertisements for managerial positions with three and four-star hotels. Counsel claims that the director erroneously overlooked the petitioner's complete job description which shows that the proffered position is so complex or unique that it can be performed only by a person with a degree. Finally, counsel states that the petitioner normally requires at least a bachelor's degree or its equivalent for the position.

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 first considers 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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the 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 the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

A careful review of the *Handbook* discloses that the duties of the proffered position are indeed a combination of those performed by front office and assistant managers. Front office managers coordinate reservations and room assignments, as well as train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. Front office managers may adjust charges posted on a customer's bill. 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.

The *Handbook* reports that hotels increasingly emphasize specialized training. Employers prefer postsecondary training in hotel or restaurant management for most hotel management positions, although 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 front desk clerks, housekeepers, waiters, chefs, and hotel sales workers. Some employees still advance to hotel management positions without education beyond high school, though employers prefer postsecondary education. Consequently, the petitioner fails to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

Counsel's contention that the *Handbook* and the *Occupational Information Network (O\*Net)* fail to consider the employers who prefer, but do not require, postsecondary training are not four-star hotels is not convincing. The *O\*Net* provides 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 *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 the occupation. The *Handbook's* report includes large and small hotels, traditional hotels and motels, and other

lodging establishments, such as camps, inns, boardinghouses, dude ranches, and recreational resorts. In addition, as we will discuss next, there is no evidence in the record that would support counsel's contention that a degree requirement is common to the industry in parallel positions among four-star hotels. The statements of counsel on appeal are not evidence and thus are not entitled to any evidentiary weight. See *INS vs. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

To establish that a baccalaureate degree or its equivalent in a specific specialty is a common industry requirement in parallel positions, counsel submits advertisements for managerial positions with three and four-star hotels. Nonetheless, this evidence is not persuasive. Of the 21 advertisements, only 4 employers required a baccalaureate degree in a specific specialty. Some employers accepted either a bachelor's degree in hotel management or equivalent work experience. The AAO wishes to note that educational equivalency is considered by CIS when a specific degree does not exist in an occupational field. *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000). According to the *Handbook*, there are degree programs specifically related to the hospitality field; thus, educational equivalency is not applicable in this instance. Accordingly, the petitioner fails to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

Although the director's denial letter did not elaborate on the job duties of the proffered position, there is no evidence in the record that would support counsel's claim that the proffered position is so complex or unique that it can be performed only by a person with a degree. As previously discussed, the *Handbook* plainly reveals that employers do not require a specific baccalaureate degree for front office and assistant managers. Moreover, the evidentiary record fails to support counsel's claim about the uniqueness and complexity of the position. For example, the organizational chart merely showed the various departments in the hotel and that the proffered position is in the "Rooms Division;" the Internet pages simply described the hotel; and the petitioner's job description reflects the duties performed by front office and assistant managers. Consequently, the petitioner cannot establish that the proffered position is complex or unique.

Counsel claims that the petitioner satisfies the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) because it normally requires a degree or its equivalent for the position. All of the petitioner's management positions, counsel avers, require at least a bachelor's degree or its equivalent. Counsel furthermore contends that prior employees who have occupied the position have held at least a bachelor's degree or its equivalent in hotel/hospitality management: one held a bachelor's degree in hospitality administration and a master's degree in business administration with a specialty in hospitality administration, the other held a bachelor's degree in an unrelated field and a diploma from the American Hotel and Lodging Educational Institute which counsel claims is equivalent to a baccalaureate degree in hotel management. The current employee, counsel states, holds an associates degree in hotel and restaurant management, and combined with her experience, has the equivalent of a bachelor's degree in hotel and restaurant management. Counsel points to the petitioner's requisition/interview form to confirm that it requires a BA/BS degree.

Counsel's claims are not persuasive in establishing the third criterion. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position

qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. In addition, there is no independent corroborating evidence in the record that would confirm counsel's statements that former and current employees held bachelor's degrees. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, although counsel claims that the current employee and one of the former employees hold the equivalent to a bachelor's degree in the field, the record does not contain evaluations from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

The evidentiary record fails to establish the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner establish that the nature of the specific duties 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. As previously stated, the duties of the proffered position are performed by front office and assistant managers, positions which do not require a bachelor's degree in a specific specialty.

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.

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.