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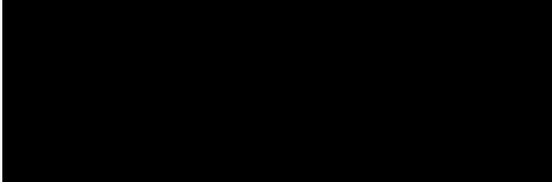


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: APR 05 2005

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

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The appeal will be dismissed. The petition will be denied.

The petitioner is a hotel resort that seeks to employ the beneficiary as an administrative services manager. The director denied the petition on the basis that the proffered position is not a specialty occupation.

On motion to reconsider, counsel states that baccalaureate degrees in hotel, resort, and tourism management, which are specialized areas of study, are common in the industry; that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) reports that over 800 educational facilities have programs that lead to recognition in hotel management; and that the *Handbook* reveals "A college degree is preferred and considered as sufficient for the position of hotel managers." The AAO misconstrued the *Handbook*, counsel asserts, in interpreting that a bachelor's degree is not the norm. Counsel states that the *Handbook's* discussion about the 800 educational institutions offering a baccalaureate degree in hotel management shows that the postsecondary degree is the "norm" for a lodging manager because "if something is preferred it is normally the minimum requirement, but an exception can be made if other qualifications can sufficiently replace the minimum requirement." Counsel states that because the proposed position's accounting duties necessitate an elevated duty of care, and the managerial responsibilities involve discretionary decision making, the position requires a baccalaureate degree. Counsel claims that the proposed position's duties exceed those of the basic lodging manager because the beneficiary will oversee upscale accommodations and resort amenities.

The AAO grants the motion to reconsider.

Counsel asserts that a baccalaureate degree in hotel management is common in the industry because the *Handbook* discloses that over 800 educational institutions offer programs that lead to recognition in hotel management. This is not persuasive. Degree programs offered by educational institutions do not dictate the educational requirements that employers expect of candidates, though such programs may influence their requirements. In fact, the *Handbook* explains that the over 800 educational facilities that offer programs leading to formal recognition in hotel or restaurant management include technical institutes, vocational and trade schools, community colleges, junior colleges, and some universities. Thus, many of the 800 educational institutions do not offer a baccalaureate degree in hotel management: they offer programs leading to "formal recognition in hotel or restaurant management." Accordingly, the fact that over 800 educational facilities offer such programs does little to establish that a bachelor's degree in hotel management is common in the petitioner's industry for parallel positions.

To support the assertion that "if something is preferred it is normally the minimum requirement, but an exception can be made if other qualifications can sufficiently replace the minimum requirement," counsel points to the *Handbook's* statement:

Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, although a college liberal arts degree may be sufficient when coupled with related hotel experience.

The crux of this passage is the term "preferred." 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* theoretical and practical application of a body of highly specialized knowledge, and the 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 *Handbook* relays that "postsecondary training in hotel or restaurant is *preferred* for most hotel management positions." The terms "prefer" and "require" are not synonymous; they do not express a similar meaning. In *Roget's II, The New Thesaurus*, the term "prefer" means to show partiality toward (someone); the term "require" means to have as a need or prerequisite. In light of the material differences between the terms, a *preference* for postsecondary training in hotel or restaurant management would not satisfy the Act's definition of a specialty occupation, which is an occupation that *requires* the attainment of a bachelor's degree in the specific specialty (or its equivalent). Consequently, the *Handbook's* passage about the preference of a bachelor's degree in hotel or restaurant management is insufficient to establish that such degrees are normally the minimum *requirement* for the proposed position.

Counsel states that the proposed position's accounting duties necessitate an elevated duty of care; that the managerial responsibilities involve discretionary decision making; and that the proposed position's duties exceed those of the basic lodging manager because they involve overseeing upscale accommodations and resort amenities. Counsel's statement is not convincing. The *Handbook* reveals that a lodging manager's duties, level of care, and decision making correspond to those of the proposed position. General managers are portrayed in the *Handbook* as having overall responsibility for the operation of the hotel. The *Handbook* states:

Within guidelines established by the owners of the hotel or executives of the hotel chain, the general manager sets room rates, allocates funds to departments, approves expenditures, and establishes expected standards for guest service, decor, housekeeping, food quality, and banquet operations. Managers who work for chains also may organize and staff a newly built hotel, refurbish an older hotel, or reorganize a hotel or motel that is not operating successfully.

The *Handbook* also states "[w]hile most lodging managers work in traditional hotels and motels, some work in other lodging establishments, such as camps, inns, boardinghouses, dude ranches, and recreational resorts." Thus, the beneficiary's overseeing of resort amenities are also encompassed within the description of a general manager.

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.