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FILE: WAC 03 202 51982 Office: CALIFORNIA SERVICE CENTER Date: AUG 01 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:
[Redacted]

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 The director's decision is withdrawn, and the petition remanded to the director for entry of a new decision.

The petitioner is a residential hotel/restaurant that seeks to employ the beneficiary as a management consultant (hotel and restaurant). 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 beneficiary is not qualified to perform the proffered position. On appeal, counsel states that the beneficiary is qualified for the proffered position and submits additional evidence.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record of proceeding before the AAO contains, in part: (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. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management consultant (hotel and restaurant).

The director concluded that based on information in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) about a management analyst position, which is analogous to the proposed position, the beneficiary's education and experience are not sufficient to qualify him for the proposed position. Also, the director observed that the petitioner did not demonstrate that it made an effort to prevent the displacement of a U.S. worker.

Counsel states that the beneficiary qualifies for the proposed position in that he holds a bachelor's degree that is specific to the field in which he will provide consulting service, and has over 10 years of progressively responsible experience in hotel management. Counsel asserts that although the director denied the petition based on an excerpt in the *Handbook*, this does not conclusively indicate that a master's degree is required for a management analyst position; the *Handbook* indicates that a bachelor's degree is sufficient for particular positions. Furthermore, counsel asserts that the *Handbook* states that it should not be used as a guide for determining formal job evaluations, and counsel refers to an unpublished case to contend that it indicates that standardized government classification systems such as the *Handbook* should not be relied upon without fully considering an employer's evidence. Counsel asserts that the employers in the submitted job advertisements, which are similar to the proposed position, require a bachelor's degree that is relevant to the nature of their business. Counsel maintains that the director failed to consider the submitted evidence.

Upon review of the record, the petitioner has established that the beneficiary qualifies to perform the proposed position, which the AAO determines to be parallel to a food/lodging manager.

The petition may not be approved however, as the evidence contained in the record is insufficient to demonstrate whether the proposed position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A).

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the proposed position is a specialty occupation, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's March 22, 2004 decision is withdrawn. The petition is remanded for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.