

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



**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY

D2



FILE: EAC 03 068 52696 Office: VERMONT SERVICE CENTER Date: FEB 28 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 materials have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner provides management services to hotel facilities, in this case a Ramada Inn located in Salisbury, Maryland. It seeks to employ the beneficiary as a night manager and to classify him 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 on the ground that the proffered position did not qualify 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; (5) Form I-290B, counsel's appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner, a 156-room hotel with a pool, restaurant, lounge and business center, seeks the beneficiary's services as a night manager for the midnight to 8:00 a.m. shift. The duties of the job were described in the petition as follows:

[S]et up conference room(s) for events for next morning meetings and order supplies for future meetings; inspect the hotel, restaurant and bar to ensure they are cleaned and ready for the next day's scheduled opening; in charge of reservations and room assignments; address customers' complaints; draft plans and/or proposals/contracts for coordinating large events, such as weddings; evaluate and verify balances and entries, calculations, and postings recorded by bar and restaurant managers. Debit or credit accounts from the previous day shift; process checks and vouchers; review past day records for accuracy of balances, postings, calculations, and other records, and note discrepancies.

In response to the RFE the petitioner provided additional details about the proffered position, breaking down its duties, and the amount of time spent on each, into six categories:

1. Front Desk – training programs for guest service agents, studying the clientele and competing hotels in the area, and handling customers – 1-2 hours per night.
2. Housekeeping – inventory management and scheduling employee work shifts – 1-2 hours per night.
3. Food Service – ensuring that restaurant, lounge, kitchen and banquet facilities meet health requirements and are appropriately arranged for next day's events.
4. Security – scheduling security personnel – 1 hour per night.
5. Accounting/Audit – balancing the daily postings from the restaurant, lounge, banquet events, and front desk, resolving any discrepancies, overseeing payment of employees – 2-3 hours per night.
6. Sales & Marketing – reviewing local market trends, assisting sales department in drafting plans or proposals for large events – 1-2 hours per night.

The petitioner declared that a bachelor's degree was required for the proffered position, as it is for all other management positions in the hotels it operates. The beneficiary earned a bachelor of science degree specializing in chemistry from Gujarat University in Ahmedabad, India, on December 31, 1986.

The director determined that the proffered position was not a specialty occupation. Quoting an excerpt from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* about the training and other qualifications of lodging managers, which indicated that a variety of educational backgrounds and work experience could lead to a hotel management position, the director found that a baccalaureate degree in a field related to the proffered position is not required to perform the duties of the job. The director noted that other employees of the petitioner in management positions, at the Ramada Inn as well as other hotels, were not required to have baccalaureate degrees in a related field. Nor did the petitioner's

job posting for the managerial position at issue here require the applicant to have a baccalaureate degree in a related field. The director concluded that the record failed to establish the proffered position qualified as a specialty occupation under section 101(a)(15)(H)(i)(B) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the *Handbook, supra*, as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, id.*, at 1165-66.

On appeal counsel asserts that the director erred in determining that a hotel manager does not meet the statutory definition of a specialty occupation. Numerous schools in the United States offer degree programs in hotel management, counsel notes, which demonstrates in counsel's view that hotel management positions require the theoretical and practical application of a body of highly specialized knowledge. Counsel argues that the proffered position in this case qualifies as a specialty occupation under three of the four regulatory criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel asserts that the proffered position meets the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) based on an excerpt from the *Handbook* reading as follows:

Hotels increasingly emphasize specialized training. Post-secondary 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. [emphasis added by counsel].

Though the above quoted language does indicate that a degree in hotel management is increasingly favored by hotels looking for managers, it also affirms that a non-specific liberal arts degree may also suffice in many cases. Moreover, the *Handbook* also explains that post-secondary training in hotel management does not necessarily mean a four-year baccalaureate degree:

Community colleges, junior colleges, and some universities offer associate's, bachelor's, and graduate degree programs in hotel or restaurant management. Combined with technical institutes, vocational and trade schools, and other academic institutions, over 800 educational facilities have programs leading to formal recognition in hotel or restaurant management.

Handbook, 2004-05 edition, at 54. Thus, degrees in hotel management are at many levels, including two-year associate, four-year baccalaureate, and graduate master's degrees. In addition, degrees or diplomas in hotel management can be earned from institutions outside the college and university framework. Accordingly, it is clear that a baccalaureate or higher degree in the specific specialty is not the normal

minimum requirement for entry into a hotel management position. Therefore, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Counsel does not assert that the proffered position meets the second alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). There is no evidence in the record that a baccalaureate degree in a specific specialty is common to the industry in parallel positions among similar organizations. Nor does the record establish that the restaurant manager position is so complex or unique that it can only be performed by an individual with a specialty degree.

Counsel asserts that the position meets the third alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) because the petitioner has previously required its managerial employees to have college degrees. Counsel refers to a list previously submitted by the petitioner of seven other managerial employees at the Ramada Inn and other hotels it operates, all of whom had baccalaureate degrees. The list does not indicate a specific specialty for five of the degrees, however, while the other two were in “liberal arts” and nursing. Thus, none of the degrees was in a specific specialty directly related to the subject managerial position. Furthermore, the petitioner’s own job announcement, dated December 10, 2002, stated that a “bachelor’s degree” and “at least 5 to 7 years of work experience” was required for the proffered position. The announcement did not state that the degree had to be in a specific specialty. Therefore, the record does not establish that the petitioner normally requires a specialty degree or its equivalent for the position of hotel manager, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, counsel asserts that the proffered position meets the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The AAO does not agree. The petitioner has not demonstrated that the duties of the hotel manager position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. The duties of the position, as described by the petitioner, do not exceed the scope of those performed by a typical hotel manager – an occupation which the *Handbook* clearly indicates does not require a baccalaureate degree or equivalent knowledge in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation.

For the reasons discussed above, the hotel manager position does not meet any of the criteria in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director’s decision denying the petition.

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