

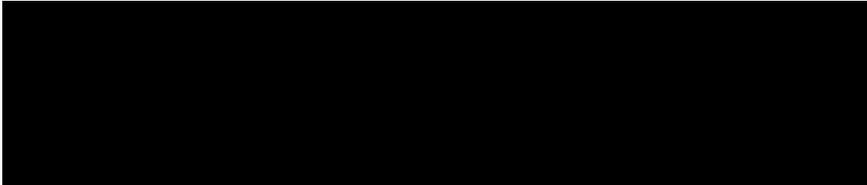
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U.S. Citizenship
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Services



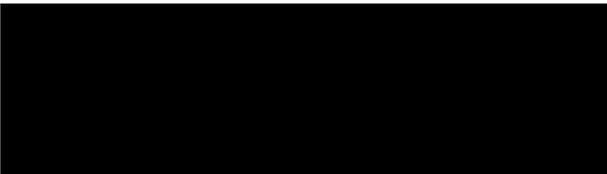
DA

FILE: LIN 04 083 52537 Office: NEBRASKA SERVICE CENTER Date: JUN 09 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 service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the matter will be remanded to him for further consideration.

The petitioner is a motel that seeks to employ the beneficiary as a management trainee. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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.

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 management trainee. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 27, 2003 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: training all departments, such as guest services, housekeeping, basic maintenance, sales and marketing, and restaurant and banquet service; and supervising departments after completion of her training. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hotel or sales/marketing management.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further 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, in part, that the evidence in the record demonstrates that the proffered position requires a baccalaureate degree in a specific specialty. Counsel states further that the record contains the resumes of eight of the petitioner's current or former management trainees who hold a baccalaureate degree in hotel management or an equivalent field. Counsel also states that the record contains evidence that the director previously approved an H-1B petition for the petitioner for the same position. Counsel cites the *Handbook*, the *Dictionary of Occupational Titles (DOT)*, and various decisions including *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966), as supporting documentation.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the Lodging Manager job description in the *Handbook*, 2004-2005 edition, finds that although a college liberal arts degree may be sufficient when coupled with related hotel experience, postsecondary training in hotel or restaurant management is preferred for most hotel management positions.

It is noted that not all lodging manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. Furthermore, the petitioner has demonstrated that it normally requires a bachelor's degree in hotel management or an equivalent field for its management trainee positions. The petition may not be approved, however, because the director has not determined whether the beneficiary is qualified to perform the duties of the specialty occupation. It is noted that the record does not contain any academic transcripts for the beneficiary. Accordingly, the matter will be remanded to the director to make such a determination and to review all relevant issues. The director may request any additional evidence he deems necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

As always, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The decision of the director is withdrawn. The matter is remanded to him for further action and consistent with the above discussion and entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.