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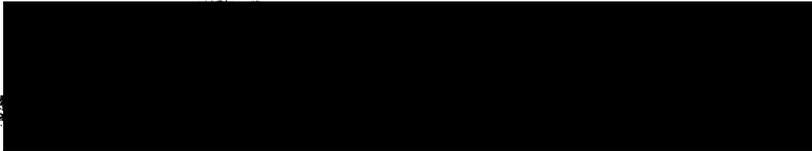
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U.S. Department of Homeland Security  
20 Mass. Ave. N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

D2



FILE: EAC 03 244 55341 Office: VERMONT SERVICE CENTER

Date: JUN 10 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 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 that seeks to employ the beneficiary as an assistant executive housekeeper. 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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:

- (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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and appellate brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a hotel. It proposes to hire the beneficiary as an assistant executive housekeeper. The Form I-129 described the duties of the proposed position as the “[m]anagement of housekeeping staff and department.” The petitioner offered an expanded listing of the duties in its letter of support:

As Assistant Executive Housekeeper, [REDACTED] will supervise the activities of cleaning personnel, which includes assigning duties, inspecting work, investigating complaints regarding housekeeping service and equipment, and taking corrective action. He may also supervise payroll, take periodic inventories, screen applicants, train new employees, and recommend dismissals. [REDACTED] will be expected to accept all responsibilities that come with a management position in this department.

The director denied the petition, finding that the petitioner had “not provided sufficient documentary evidence to establish that the proffered position qualifies as a specialty occupation as described in the regulation.” As such, the director found that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established the proposed position as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

In determining whether a proposed 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 *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* discusses the duties and educational qualifications of executive housekeepers within its discussion of lodging managers. The *Handbook* offers the following information:

A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for both vacationing families and business travelers. While 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. In full-service hotels, lodging managers help their guests have a pleasant stay by providing many of the comforts of home, including cable television, fitness equipment, and voice mail, as well as specialized services such as health spas. For business travelers, lodging managers often schedule available meeting rooms and electronic equipment, including slide projectors and fax machines.

Lodging managers are responsible for keeping their establishments efficient and profitable. In a small establishment with a limited staff, the manager may oversee all aspects of operations. However, large hotels may employ hundreds of workers, and the general manager usually is aided by a number of assistant managers assigned to the various departments of the operation. In hotels of every size, managerial duties vary significantly by job title.

*Executive housekeepers* ensure that guest rooms, meeting and banquet rooms, and public areas are clean, orderly, and well maintained. They also train, schedule, and supervise the work of housekeepers, inspect rooms, and order cleaning supplies.

The *Handbook* provides the following information regarding the educational background necessary for entry into the field:

Hotels increasingly emphasize specialized training. 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. Internships or part-time or summer work are an asset to students seeking a career in hotel management. The experience gained and the contacts made with employers can greatly benefit students after graduation. Most bachelor's degree programs include work-study opportunities.

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. Hotel management programs include instruction in hotel administration, accounting, economics, marketing, housekeeping, food service management and catering, and hotel maintenance engineering. Computer training also is an integral part of hotel management training, due to the widespread use of computers in reservations, billing, and housekeeping management.

Additionally, over 450 high schools in 45 States offer the Lodging Management Program created by the Educational Institute of the American Hotel and Lodging Association. This is a two-year program offered to high school juniors and seniors, which teaches management principles and leads to a professional certification called the "Certified Rooms Division Specialist." Many colleges and universities grant participants credit towards a post-secondary degree in hotel management.

Thus, the *Handbook's* findings do not support counsel's contention that a bachelor's degree is required for entry into the field, as it reports that postsecondary training is "preferred" by many employers. Employer preferences do not equate to employer requirements, and do not rise to the "normally required" standard imposed by the regulation. Such a preference for postsecondary "training" does not equate to a bachelor's degree or even college courses. As the *Handbook* notes, institutions offering hotel or restaurant management courses include technical institutes and vocational and trade schools, as well as community, junior, and four-year colleges.

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has

reviewed the job postings submitted by the petitioner, which counsel contends establish the petitioner's degree requirement as the normal minimum entry into the position. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

First, there are too few postings in the record to prove an industry-wide standard. Also, while these companies certainly seem to operate in the same general business as the petitioner, the record does not demonstrate that they are substantially similar to the petitioner. For example, there is no evidence that the advertisers are similar to the petitioner in size and scope of operations, business efforts, and expenditures.

Moreover, the information regarding the duties and responsibilities of both the advertised positions and the position proposed in this petition are general and do not support a meaningful comparison of their actual performance and specialty knowledge requirements. Also, several of the postings indicate that equivalent work experience is acceptable for the positions.

Thus, while relevant to this proceeding, the job postings submitted by the petitioner are insufficient to establish its degree requirement as an industry norm, and they do not satisfy the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO also concludes that the record does not establish the proposed position as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is very similar to the executive housekeeper position as described in the *Handbook*.

Accordingly, the petitioner cannot establish its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

The submitted evidence fails to establish the third criterion. The petitioner has submitted a letter, in which it states the following:

It is Hyatt Hotels Corporation practice to make efforts to hire candidates with higher[-]level education degrees for management positions. A minimum GPA of 2.8 and nine months experience is required for our entry level management positions . . .

Efficient management of a hotel department requires formalized training and understanding that can only be acquired by taking coursework in the field, as well as having a well-rounded knowledge of their division (in this case Rooms Division). The sophisticated and complex nature of the Rooms Manager & Assistant Managers [sic] duties requires [sic] an individual that has been through a full, four-year curriculum in hospitality management or business administration. In the rare case where the individual lacks the four-year degree, we require substantial industry experience, and/or a

combination of advanced level schooling in the Hospitality Management field and industry experience. Currently, all six of our Assistant level managers have [a] Bachelor's Degree or higher.

However, no supporting evidence has been supplied to verify these statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the assertion that the petitioner normally requires a degree for the position is undermined by the petitioner's own statement regarding the acceptability of work experience in the "rare case where the individual lacks the four-year degree."

Thus, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) has not been satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a 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. A review of the duties of the proposed position does not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of executive housekeepers in other, similar organizations.

Thus, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, counsel cites *Matter of Sun*, 12 I&N Dec. 535 (BIA 1966), and asserts that "[i]t has previously been determined that hotel management positions are considered specialty occupations for the purposes of issuing an H-1B visa." However, counsel's citation of the *Sun* case is misplaced. *Sun* did not find that all hotel managers are members of the professions, but rather that some hotel managers, under certain circumstances, qualify for professional status. In addition, that decision dealt with membership in the professions, not membership in a specialty occupation. While the terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act, and that statutory language effectively supersedes *Sun*.

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will 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.