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U.S. Citizenship
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Services

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FILE: EAC 02 167 50131 Office: VERMONT SERVICE CENTER Date: MAR 03 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 service center 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 operates a motel. In order to employ the beneficiary as an administration manager, the petitioner 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 proffered position met the Act's requirements for a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation

which [1] requires *theoretical and practical application of a body of highly specialized knowledge* in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires *the attainment of a bachelor's degree or higher in a specific specialty*, or its equivalent, as a minimum for entry into the occupation in the United States. (Italics added.)

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) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

Upon consideration of the entire record of proceeding, including counsel’s brief on appeal, the AAO has determined that the director’s decision to deny the petition was correct.

According to the petitioner’s December 6, 2002 letter in response to the director’s request for additional evidence, the beneficiary would be “overseeing all aspects of the operations” of the petitioner’s 50 room motel, which would include:

- a) Forecasting and maintaining a rate structure
- b) Handling all accounting, front office and back office
- c) Establishing and maintaining sales plans
- d) Following up on all sales claims
- e) Maintain[ing] franchise agreement
- f) Direct[ing] interaction with guests
- g) Resolv[ing] all customer complaints
- h) Managing all employees
- i) Overseeing quality of the rooms

- j) Overseeing maintenance of the rooms
- k) Handling all purchasing for property (maintenance and upgrades)

Counsel's primary argument is that the information about motel managers and assistants in the 1995-1996 edition of the Department of Labor's *Occupational Outlook Handbook (Handbook)* compels CIS to find that the proffered position is a specialty occupation. Thus, counsel's main focus is upon the specialty-occupation qualifying criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This is for positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties.

As it recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations, the AAO consulted the current, 2004-2005 edition of the *Handbook*, and the *Handbook* references herein are to that edition.

Contrary to counsel's interpretation, the *Handbook* does not indicate that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or the equivalent. According to the *Handbook's* section on lodging managers, post-secondary training in hotel management or restaurant management is preferred. However, this post-secondary training is only a preference, not a minimum requirement. Furthermore, this preferred training includes the attainment of associate degrees at community and junior colleges and certificates of completion of training programs at vocational and trade schools. The *Handbook* also reports the hiring of persons with college liberal arts degrees coupled with some related experience.

As neither the *Handbook* nor any other evidence of record substantiates counsel's contention that the proffered position is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree in a specific specialty that is common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the *Handbook* reports that the industry requires a degree; 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)). As just discussed, the *Handbook* reports no such degree requirement; and the evidence of record contains no submissions from individuals, firms, or professional associations attesting to the industry's routine recruitment and employment practices.

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). There is no evidence of record that distinguishes the proffered position by requirements so unique or more complex than normal motel management positions that they can be performed only by an individual with at least a bachelor's degree in a specific specialty.

As the petitioner has not established a history of routinely recruiting and hiring only persons with a degree in a specific specialty, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4), for the evidence of record does not demonstrate that the proposed duties are so specialized and complex as to require the highly specialized knowledge that is usually associated with a baccalaureate or higher degree in a specific specialty. Counsel's assertion of such specialization and complexity is not substantiated. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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. Accordingly, the appeal will be dismissed.

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