

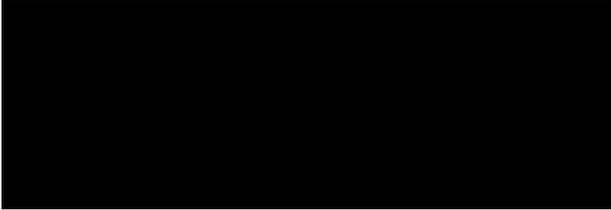
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
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U.S. Citizenship
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Services

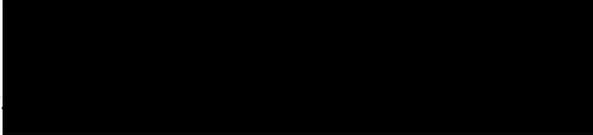
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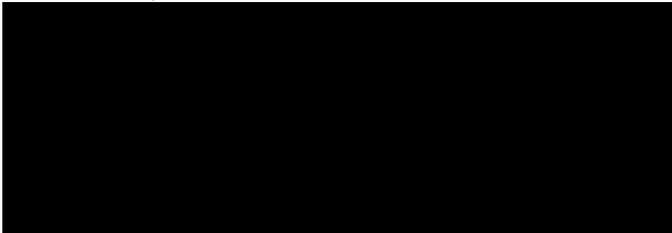
FILE: LIN 02 240 52055 Office: NEBRASKA SERVICE CENTER Date: NOV 01 2005

IN RE: Petitioner:
Beneficiary



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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the service center denied the nonimmigrant visa petition and certified his decision to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be denied.

The petitioner is in the hospitality industry. It seeks to employ the beneficiary as an assistant manager trainee. 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 grounds that (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. Counsel submitted an untimely appeal and brief and the AAO remanded the case to the director to treat as a motion. On motion, the director again denied the petition, finding that the previous grounds of denial had not been overcome. The director certified that decision to the AAO.

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; (5) Form I-290B and supporting documentation; and (6) the director's certification. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an assistant manager trainee. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary will perform duties that entail greeting guests, hosting conventions and parties, managing the front desk, overseeing housekeeping, entertaining guests, taking reservations, handling guest complaints and grievances, and managing ethnic parties. In response to the request for evidence, the petitioner described additional job duties.

The director stated that no evidence shows that the proposed position normally requires a baccalaureate degree; or that the proposed duties have such a complexity as to require a baccalaureate degree. The director noted that the job description submitted in response to the request for evidence included computer support duties not previously described by the petitioner. The director found that the evidence did not reflect that the beneficiary qualified for the proposed position, as he did not have training or experience in hotel management. The director stated that the petitioner failed to provide the requested copy of the beneficiary's transcripts.

On appeal, counsel asserts that the proposed position is similar to an assistant manager, not a trainee as determined by the director. According to counsel, the beneficiary will work as a trainee during a probationary period, and will become an assistant manager after gaining experience in the work environment, which counsel states is a common practice in the industry. Counsel conveys that the petitioner retracts the term "trainee" in the proposed job title, if necessary. Counsel contends that the director never requested the beneficiary's college transcripts, and submits the transcripts on appeal. Counsel discusses the beneficiary's qualifications for the proposed position. Referencing the *Handbook*, counsel states that it reveals that the restaurant business is becoming more complex, and that it is increasingly desirable for employers to seek persons with degrees. Counsel states that people in the computer science and business fields are well known even though they do not hold a formal degree.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria 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)).

In determining whether a 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 *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* reveals that the proposed duties are a combination of those of an assistant manager and a network or computer systems administrator, which are occupations that the *Handbook* reports do not require a baccalaureate degree in a specific specialty. The *Handbook* describes assistant managers as helping to run the day-to-day operations of the hotel. It conveys that employers prefer postsecondary training in hotel or restaurant management, and that a college degree in liberal arts coupled with hotel experience may be sufficient for employment. A preference for postsecondary training in hotel or restaurant management does not establish that employers require a baccalaureate degree in a specific specialty for an assistant manager, however. Furthermore, as indicated in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

The *Handbook* reports that a college degree in the liberal arts is sufficient for an assistant manager; nonetheless, as indicated in *Matter of Michael Hertz Assocs.* this educational requirement fails to establish that the proposed position is a specialty occupation.

The *Handbook* describes network or computer systems administrators as follows:

Network or computer systems administrators design, install, and support an organization's LAN (local-area network), WAN (wide-area network), network segment, Internet, or intranet system. They provide day-to-day onsite administrative support for software users. . . . They maintain network hardware and software, analyze problems, and monitor the network to ensure its availability to system users.

Systems administrators are the information technology employees responsible for the efficient use of networks by organizations. They ensure that the design of an organization's computer site allows all of the components, including computers, the network, and software, to fit together and work properly. Furthermore, they monitor and adjust performance of existing networks. . . . Administrators also troubleshoot problems as reported by users and automated network monitoring systems and make recommendations for enhancements in the implementation of future servers and networks.

The beneficiary's duties of managing the local area network, providing computer support services, installing and maintaining software, and providing internet connectivity fall within the *Handbook's* description of network and systems administrators, which are occupations that the *Handbook* conveys do not require a baccalaureate degree in a specific specialty. The *Handbook* reports:

Due to the wide range of skills required, there are many paths of entry to a job as a computer support specialist or systems administrator. While there is no universally accepted way to prepare for a job as a computer support specialist, many employers prefer to hire persons with some formal college education. A bachelor's degree in computer science or information systems is a prerequisite for some jobs; however, other jobs may require only a computer-related associate degree. For systems administrators, many employers seek applicants with bachelor's degrees, although not necessarily in a computer-related field.

For the reasons discussed above, the petitioner cannot establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, computer support specialist.

The petitioner submits no evidence to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. As discussed earlier in this decision, the proposed duties are an amalgam of those of an assistant manager and a network or computer systems administrator, which are occupations that the *Handbook* discloses do not require a baccalaureate degree in a specific specialty. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

No evidence in the record establishes the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific 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. The AAO has conveyed that the proposed duties resemble those of an assistant manager and a network or computer systems administrator, which are occupations that the *Handbook* reports do not require a baccalaureate degree in a specific specialty. Accordingly, the petitioner fails to establish this last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

The director also determined that the beneficiary was not qualified to perform the services of a specialty occupation. As the position is not a specialty occupation, the beneficiary's qualifications are inconsequential and will not be addressed.

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 director's decision is affirmed. The petition is denied.