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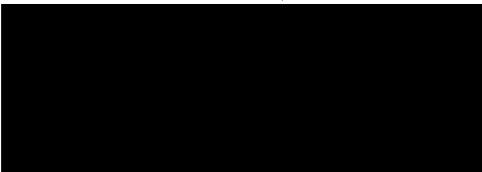


FILE: LIN 04 245 52121 Office: NEBRASKA SERVICE CENTER Date: OCT 18 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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 appeal will be dismissed. The petition will be denied.

The petitioner is a corporation engaged in the hotel business. In order to employ the beneficiary as its general 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 meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the director's decision disregarded evidence submitted by the petitioner that confirms that a hotel manager is a specialty occupation. In particular, counsel asserts that the director erred by: (1) disregarding the *Adjudicator's Field Manual* citation to *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966) as establishing hotel manager as a specialty occupation; (2) not explaining how he arrived at the conclusion that the duties of the proffered position do not appear to be so complex and specialized as to require a baccalaureate degree in the hospitality or management fields; and (3) not accepting the job vacancy advertisements of other employers as establishing that the employers in the petitioner's industry normally require a baccalaureate or higher degree for the proffered position.

The director's decision to deny the petition is correct. The AAO bases this decision upon its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documentation submitted with the brief, namely: the cover sheet and two pages of the February 2001 Freedom of Information Act version of the *INS Adjudicator's Field Manual*, published by the American Immigration Lawyers Association; the five-page memorandum from the Department of State's Bureau of Consular Affairs entitled "TN VISAS: Professionals Under NAFTA"; and the section on hotel and motel managers from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*.

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.

In the letter of support filed with the Form I-129, the petitioner’s president described the petitioner’s business and the proffered position as follows:

[The petitioner] is located in the metropolitan Chicago area. With 166 rooms, a restaurant on-site, room service, outdoor pool, meeting rooms, and many in-room amenities, our hotel is

dedicated to customer service. In order to provide the level of service we need a general manager. The General Manager manages [the] hotel to ensure efficient and profitable operation: Establishes standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit, food selection and service, and type of patronage to be solicited. Plans dining room, bar, and banquet operations. Allocates funds, authorizes expenditures, and assists in planning budgets for departments. Interviews, hires, and evaluates personnel. Answers patrons' complaints and resolves problems. Delegates authority and assigns responsibilities to department heads. Inspects guests' rooms, public access areas, and outside grounds for cleanliness and appearance. Processes reservations and adjusts guests' complaints. The position requires a bachelor's degree in a business discipline.

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This provision assigns specialty occupation status to a position with a normal minimum entry requirement of a baccalaureate or higher degree, or the equivalent, in a specific specialty directly related to the position's duties.

The AAO recognizes the DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. To the extent that they are described in the above excerpt and elsewhere in the record, the proposed duties comport with those of the lodging manager occupation as described in the 2004-2005 edition of the *Handbook*. The following excerpt from page 54 of the 2004-2005 edition of the *Handbook's* section on the lodging managers occupational category establishes that lodging managers' employers do not normally set a baccalaureate or higher degree, or the equivalent, in a specific specialty as a minimum entry requirement:

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.

Lodging managers must be able to get along with many different people, even in stressful situations. They must be able to solve problems and concentrate on details. Initiative, self-discipline, effective communication skills, and the ability to organize and direct the work of others also are essential for managers at all levels.

In the past, many managers were promoted from the ranks of front desk clerks, housekeepers, waiters, chefs, and hotel sales workers. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. Restaurant management training or experience also is a good background for entering hotel management, because the success of a hotel's food service and beverage operations often is important to the profitability of the entire establishment.

The *Handbook* only reports an employer preference for post-secondary training. Employer preferences do not equate to employers' normal requirements. Furthermore, a preference for post-secondary training does not equate to a preference for a college degree or, for that matter, university level coursework. 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.

Counsel's reference to the *Adjudicator's Manual* citation of *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966), is not persuasive. *Matter of Sun* is not controlling here, as it was decided in 1966 before the enactment of the law in 1990 defining specialty occupation for H-1B visa classification. Accordingly, *Matter of Sun's* holding that a hotel management position at a large hotel qualified as a profession does not establish that position as a specialty occupation. Further, *Matter of Sun* is distinguishable from the instant case: *Matter of Sun* confined its finding to a hotel management position in "a large hotel," *id.* at page 536; according to the Form I-129 filed in the present case, the petitioner's hotel has 15 employees and produces a gross annual income of "\$1.5 million." It is also noted that the *Adjudicator's Manual* does not have the force of law or regulation.

The *DOT* has little relevance for specialty occupation determinations. In contrast to the *Handbook*, it does not identify particular degrees that employers require for specific occupations. The Specific Vocational Preparation (SVP) ratings do not establish whether a position requires the minimum of a bachelor's degree, or its equivalent, in a specific specialty.

Counsel correctly states that the *DOT* assigns an SVP rating of 7 to the occupational category "Manager, Hotel or Motel." However, this rating does not establish that the proffered position is a specialty occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. This fact is implicit in counsel's explanation of an SVP of 7 as "generally requiring 2-4 years of college preparation." (Brief, at page 1.)

As the petition in question is for an H-1B visa, the director was correct to discount as irrelevant the fact that the aforementioned State Department memorandum lists Hotel Manager among the professionals entitled to TN visas under NAFTA.

As the evidence of record does not establish the proffered position as one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

The first prong assigns specialty occupation status to positions for which there is a degree requirement which is common to the industry in positions which 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 an industry-wide standard, 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 already discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The Internet job advertisements that the petitioner submitted into the record do not substantiate that the proffered position is one for which the petitioner's industry normally requires at least a bachelor's degree or the equivalent in a specific specialty. The information about the proffered position and about the positions advertised by the other employers is too generalized for a conclusion that the positions are parallel. Furthermore, the four advertisements are not indicative of a common industry requirement of at least a bachelor's degree in a specific specialty. Extended Stay America requires only a "four year college degree." Springhill Suites by Marriot specifies only "a BA or equivalent experience." The Drury Hotels advertisement requires only a "4 Year Degree," and Harrah's likewise identifies no specific specialty in its requirement for "College degree or equivalent experience in Hotel Operations." This documentary evidence is consistent both with the aforementioned information from the *Handbook* and with the information highlighted on page 9 of the excerpt which the petitioner submitted from DOL's *Career Guide to Industries* in response to the RFE, to wit: "lodging chains have primarily been hiring persons with 4-year college degrees in the liberal arts or other fields."

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong provides that "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." The evidence of record about the proffered position and its requirements has not established that the proffered

position is unique in comparison to hotel manager positions in general, nor has the petitioner shown that the position is more complex than hotel manager positions in general. As already discussed, these positions do not normally require a degree in a specific specialty.

Next, as this is the first time that the petitioner has proffered the position in question, it is unable to provide a hiring history to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for positions for which the employer normally requires a degree or its equivalent.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The evidence of record, limited as it is to generalized descriptions of the proposed duties, does not establish that the duties are more specialized and complex than those that should be expected in the hotel management occupation in general, an occupation for which the *Handbook* does not indicate a degree in a specific specialty as a normal requirement.

Because the proffered position does not meet any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb the director's denial of the petition on the specialty occupation ground.

Parenthetically, the AAO disagrees with this statement from the closing paragraph of counsel's brief:

The examiner improperly suggests that the petitioner's size, income and scope are relevant to the determination of whether the occupation is a specialty occupation.

It is noted that *Matter of Sun*, upon which counsel partly relies, explicitly noted the size of the petitioner's operations as a factor in its determination on the merits of the petition. Because a beneficiary's specific duties and the educational requirements necessary for their proper execution depend upon the actual operational requirements of a petitioner's business, matters such as "the petitioner's size, income, and scope" are not irrelevant to adjudication of the specialty occupation issue.

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.