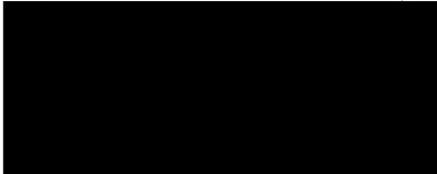




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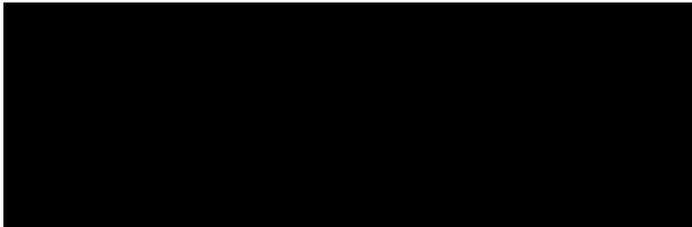
02

FILE: EAC 05 190 52045 Office: VERMONT SERVICE CENTER Date: **DEC 05 2008**

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, Chief
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 owns and manages hotels. It seeks to employ the beneficiary as a hotel 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 proffered position fails to qualify as a specialty occupation. Counsel submitted a timely appeal.

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) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) the 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 hotel manager. Evidence of the beneficiary's duties includes: the Form I-129 petition and the attachments accompanying the Form I-129 petition, the petitioner's support letter, and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties that are described as follows: manage and direct all aspects of hotel operations; set room rates; allocate funds to departments and approve expenditures; establish personnel administration and performance standards; take responsibility for services to guests, décor, housekeeping, food quality, and banquet operations; and hire, train, schedule and supervise workers. The petitioner's May 19, 2005 letter indicates that it requires at least a bachelor's degree or equivalent experience and training in business administration/management for the proposed position.

The director denied the petition. He stated that the proposed duties resemble those of a hotel manager as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), which does not indicate a requirement of a baccalaureate degree in a specific field. The director noted that although the petitioner claims to have two employees with baccalaureate degrees or the equivalent in hotel management or general business administration, it failed to describe their positions and submit supporting evidence of their degrees and position. The director stated that the duties of supervising employees and having involvement in the "complex business of the hotel and operation of the real estate dimensions of the hotel" fail to establish the position as a specialty occupation. The director found no evidence in the record of similarly situated hotels with comparable positions having the same requirements as the proposed position.

On appeal, counsel states that the petitioner grossed \$5 million in 2004 from its four hotels. Counsel asserts that the beneficiary will work at the Best Western Inn, an establishment of 30 employees. Counsel maintains that the proposed position was previously described in detail and she states that the response to the RFE explains that based on the petitioner's expansion it requires "an increasing level of professional management." Counsel states that the *Handbook* acknowledges that a bachelor's degree is the preferred minimum educational requirement for most hotel management positions. To establish the proposed position as a specialty occupation counsel refers to a letter from Professor Shah, who is employed by the School of Hospitality Management at Widener University, and job postings. Counsel states that although the job postings do not describe the field of the baccalaureate degree it is appropriate to conclude that the degree must be hospitality management or a related field, which is consistent with the *Handbook* and Professor Shah. Counsel states that the evidence on appeal shows that two of the petitioner's employees are based at the Best Western Delaware Inn, and that both of the employees hold baccalaureate degrees that are consistent with their managerial positions. Counsel states that universities and colleges offer baccalaureate degree programs in hospitality management due to the industry's growth. Counsel asserts that the analysis of whether a hotel manager position is a specialty occupation should include the complexity of the duties involved, the scope of the businesses' enterprise, and where the position is placed in the organizational hierarchy. Counsel maintains that the petitioner is a large enterprise and the proposed position should be analyzed in the context of its expansion. Counsel states that the beneficiary is qualified to perform the duties of the proposed position.

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 2006-2007 edition of 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 occupations.

The AAO agrees with counsel that the proposed duties are encompassed within the *Handbook's* classification entitled "lodging managers." This classification includes general managers who have overall responsibility for the operation of the hotel such as setting room rates, allocating funds to departments, approving expenditures, and ensuring expected standards for guest service, decor, housekeeping, food quality, and banquet operations. The classification also includes resident or hotel managers who are responsible for the day-to-day operations of the property and assistant managers who help run the day-to-day operations of the hotel.

The *Handbook* states the following about the qualifications of lodging managers:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel, restaurant, or hospitality management is preferred for most hotel management positions; however, a college liberal arts degree may be sufficient when coupled with related hotel experience or business education. Internships or part-time or summer work experience in a hotel 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 degree programs include work-study opportunities.

Community colleges, junior colleges, and many universities offer certificate or degree programs in hotel, restaurant, or hospitality management leading to an associate, bachelor, or graduate degree. Technical institutes, vocational and trade schools, and other academic institutions also offer courses leading to formal recognition in hospitality management. In

total, more than 800 educational facilities provide academic training for would-be lodging managers. 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.

The AAO concurs with the director's conclusion that the *Handbook* conveys that employers do not require lodging managers to hold a baccalaureate degree in a specific academic field. Consequently, based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a degree requirement is common to the industry in parallel positions among similar organizations; or in the alternative, that a particular position is so complex or unique that it can be performed only by an individual with a degree, the petitioner submits job postings and a letter from Professor Shah. The job postings do not establish a common degree requirement in the industry: none of the companies in the postings (Sterling Hotels Corporation, Extended Stay Hotels, and Omni Severin Hotel) indicate a requirement of a baccalaureate degree in a specific academic discipline for their position. No evidence in the record supports counsel's assertion that it is appropriate to deduce that these companies require a baccalaureate degree in hospitality management or a related field. 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).

Professor Shah's letter is not convincing in establishing the proposed position as a specialty occupation. The letter from Professor Shah states:

In my experience, most of the larger hospitality businesses, hotels, motels and even casinos require a [b]achelor's [d]egree for management positions. Typically, the degree is in hospitality management. However, a business degree or a liberal arts degree with hospitality industry experience would be sufficient as well. The threshold educational requirement would still be a [b]achelor's [d]egree for a management position in a larger enterprise in the hospitality industry.

I am aware of [REDACTED] and I consider it to be a larger and established business in the hospitality industry. I have reviewed the job duties for the [h]otel [m]anager position which is the basis of their petition. I also reviewed the supporting letters prepared by the company. This is clearly a position on the management team of an established enterprise. It is my opinion that it is appropriate to require a bachelor's degree for the [h]otel [m]anager position in that case. Additionally, a [b]achelor's degree is consistent with the industry standard for businesses of the caliber of [REDACTED]

The professor asserts that the duties of the proposed position require the beneficiary to hold a degree, which is typically in hospitality management or business or is a liberal arts degree with hospitality industry experience. It is noted that the professor stated that he is aware of [REDACTED] and that he considers it as a larger established business in the hospitality industry. However, the professor did not note that the beneficiary would work as a hotel manager at the Best Western Inn, an establishment of 30 employees. No evidence in the record suggests that a hotel of 30 employees is considered a large establishment. The *Handbook* implies that such a hotel is not considered "large" as it states: "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." The professor did not indicate that he reviewed company information about the petitioner, visited the site, or interviewed the petitioner. While some hotel manager positions may require a bachelor's degree in hospitality management or a related field, the professor fails to give sufficient details about the complexity of the duties in relation to the Best Western Inn to substantiate his conclusions. There is thus an inadequate factual foundation established to support his opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The record establishes that the proposed duties do not exceed the scope of a typical lodging manager. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical lodging manager and that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in hospitality management or a related field. The opinion of the professor is not sufficiently specific to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is set forth below in this decision.

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires that the petitioner establish a past practice of normally requiring a degree or its equivalent for the position. The petitioner on appeal submits a document entitled "Addendum," which shows that its assistant general manager holds a U.S. bachelor's degree in hotel/motel management and its sales director holds a master's of business administration degree in marketing and advertising from an institution in Pakistan. The Addendum is insufficient to establish that the petitioner has a past practice of normally requiring a baccalaureate degree in hospitality management or a related field for a lodging manager. A sales director's duties are not the same as a lodging manager's. The duties and work location of the assistant general manager are not described in the Addendum, and the petitioner failed to submit a copy of the degree to corroborate the degree held by the assistant general manager. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). For these reasons, the evidence fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires the petitioner to 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 in a specific specialty. The *Handbook* discloses that the proposed position is similar to a lodging manager, which is an occupation that does not

require a baccalaureate degree in a specific specialty. The AAO has already discussed the opinion of Professor Shan and how it is not sufficiently specific to establish the last criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Accordingly, the petitioner fails to establish this criterion.

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 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.