

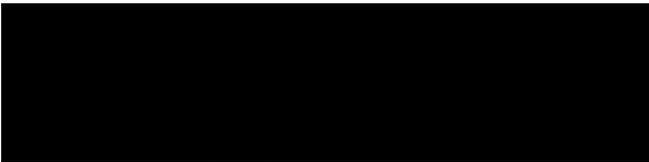


U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

32

PUBLIC COPY



FILE: EAC 04 190 50129 Office: VERMONT SERVICE CENTER Date: JAN 30 2006

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 is a country club that seeks to employ the beneficiary as an assistant clubhouse manager. 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 ground that the beneficiary is not qualified for the offered position. On appeal, counsel submits memoranda and additional and previously submitted evidence.

The record of proceeding before the AAO contains, in part: (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; and (5) Form I-290B and additional and previously submitted evidence and memoranda in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States 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.

The petitioner's June 2, 2004 letter indicated that the educational requirement for the assistant clubhouse manager is a baccalaureate degree, or its equivalent, in business administration, office administration, hospitality management, or a related field.

The denial letter stated that the beneficiary's education, training, and work experience is not equivalent to a baccalaureate degree in hotel management or travel/tourism, which is the general educational requirement for this kind of occupation.

To establish that the beneficiary is qualified for the proposed position, counsel refers to the beneficiary's associate's degree, educational evaluation, resume, affidavit, certificates, and letters from previous employers, and a letter from the petitioner.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified for the offered position.

Based on the evidence in the record, the beneficiary holds a national certificate in business studies in office information systems awarded by the National Council for Educational Awards in Ireland. The certificate does not establish one of the first three criteria under 8 C.F.R. § 214.2(h)(4)(iii)(C). The petitioner must therefore demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a U.S. baccalaureate or higher degree in a field related to the proposed position requires one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training

and experience.

The petitioner submitted no evidence to establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), (2), or (4).

To establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D), counsel points to an educational evaluation from e-ValReports. This evaluation states that the beneficiary holds the educational equivalent of an associate's degree in business with a concentration in office business systems from an accredited community college in the United States. It further states that the beneficiary's education and work experience are the educational equivalent to a bachelor's degree in hospitality management from an accredited college in the United States. Because the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D) indicates that a credentials evaluation service is limited to evaluating foreign educational credentials, the beneficiary's evaluation, which includes the beneficiary's work experience may not be considered to establish that the beneficiary holds the equivalent of a baccalaureate degree in hospitality management from an accredited college in the United States.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation<sup>1</sup>;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions

---

<sup>1</sup> Recognized authority means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

to the field of the specialty occupation.

The evidence in the record fails to establish the beneficiary is qualified for the proposed position pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The beneficiary holds the educational equivalent of an associate's degree in business with a concentration in office business systems, has two certificates in tourism, and has employment verification letters from [REDACTED] and Wine Bar, Brandon Hotel [REDACTED] Car Sales, Comhairle [REDACTED] and the petitioner. The beneficiary's prior work experience with [REDACTED] or Car Sales and [REDACTED] involved working for organizations that are not in the hospitality industry; thus, this experience did not include the theoretical and practical application of specialized knowledge required by the specialty, which in this case is hospitality management or a related discipline. The employment with [REDACTED] and Wine Bar was for one year, the employment with the petitioner has been for one year and four months according to the beneficiary's affidavit, and the employment with [REDACTED] Hotel, Conference and Leisure Center, was from April 1995 to March 1996 and from April 1997 to October 1999. The letters from [REDACTED] and [REDACTED] and Wine Bar submitted on appeal do not describe the duties establishing that the beneficiary's work experience included the theoretical and practical application of a body of highly specialized knowledge. The letters from the [REDACTED] Hotel, Conference and [REDACTED] and [REDACTED] and Wine Bar do not indicate that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. In addition, there is no evidence in the record that the beneficiary has recognition of expertise as no evidence shows the e-ValReports evaluator as a "recognized authority" in the hospitality industry. Based on the evidence in the record, the petitioner fails to establish the beneficiary's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the AAO finds that the proposed duties are not sufficiently described to establish that the proposed position qualifies as a specialty occupation.

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.