

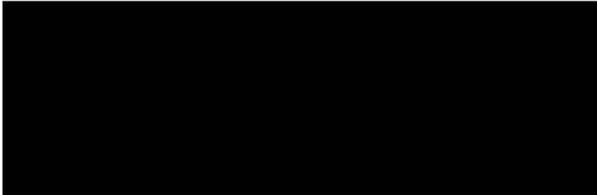


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FILE: LIN 04 243 53155 Office: NEBRASKA SERVICE CENTER Date: MAR 30 2006

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.

*for Michael T. Kelly*  
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 hotel that seeks to employ the beneficiary as manager and to classify him 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 proposed position is not a specialty occupation and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first address the director's conclusion that the position is not a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality Act (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 bachelor's 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 further evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) 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 I-129 petition; the petitioner's August 26, 2004 letter in support of the petition; and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties that entail: directing and coordinating activities of the organization to obtain optimum efficiency and economy of operations and to maximize profits; planning and developing organization policies and goals and implementing goals through subordinate personnel; directing and coordinating the promotion of products and services performed to develop new markets; and analyzing budget requests to identify areas in which reductions can be made and allocating the operating budget. The petitioner indicated that a qualified candidate for the job would possess at least a bachelor's degree in business administration.

The director found that the proposed position was not a specialty under the first criterion despite the fact that the Department of Labor's (DOL) Dictionary of Occupational Titles (DOT) gave the position an SVP7 rating. The director found that there was no documentation to establish that an SVP7 rating requires a bachelor's degree in a specific specialty. The director found that the submitted job announcements did not establish an industry-wide requirement of a specific bachelor's degree or its equivalent for hotel managers, only that other hotels require non-specific bachelor's degrees for these positions. The director found that the duties of the proposed position were not sufficiently specialized and complex to satisfy the fourth criterion. The director further found that the petitioner failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director improperly relied on the DOT and that the DOL's *Occupational Outlook Handbook (Handbook)* establishes that the position of hotel manager is a specialty occupation under criterion one. Counsel asserts that the submitted job announcements establish an industry-wide requirement for a specialized bachelor's degree for the proposed position. Finally, counsel asserts that the director improperly ignored the credentials evaluator's own credentials.

Upon a thorough 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 proposed position is not a specialty occupation.

To determine whether or not 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 bachelor's degree in a specific field of study 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 of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO agrees with the petitioner and the director that the duties of the proposed position reflect those of a hotel manager, or a lodging manager.

To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree, or its equivalent, in a specific field of study is normally the minimum requirement for entry into the particular position. The *Handbook's* discussion of the educational requirements for hotel or 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. . . .

Persons wishing to make a career in the hospitality industry may be promoted into a management trainee position sponsored by the hotel or a hotel chain's corporate parent. Typically, trainees work as assistant managers and may rotate assignments among the hotel's departments—front office, housekeeping, or food and beverage—to gain a wide range of experiences. . . .

Work experience in the hospitality industry at any level or in any segment, including summer jobs or part-time work in a hotel or restaurant, is good background for entering hotel management. Most employers require a bachelor's degree with some education in business and computer literacy, while some prefer a master's degree for hotel management positions. However, employees who demonstrate leadership potential and possess sufficient length or breadth of experience may be invited to participate in a management training program and advance to hotel management positions without the education beyond high school.

The *Handbook* indicates that jobs in this area do not require specific bachelor's degrees for entry into the field. Employers consider those with liberal arts degrees and relevant work experience suitable for these jobs. The *Handbook* also notes that many employers fill lodging manager positions by promoting experienced assistant managers. As no specific course of study is required for entry into these occupations and those without specific bachelor's degrees or without bachelor's degrees at all can be promoted into the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position.

The AAO turns next to the first alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) - a specific degree requirement is common to the industry in parallel positions among similar organizations.

To determine if a position is a specialty occupation under this criterion, CIS generally considers whether or not letters or affidavits from companies or individuals in the industry attest that such companies "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)). The *Handbook* indicates that, in hotels of every size, managerial duties vary significantly and that there is no industry-wide requirement for a business or hotel management-related bachelor's degree for manager positions. The petitioner did not submit a letter from a national association, survey results, or other such documents to establish an industry-wide requirement for a bachelor's degree in a business or hotel management-related field. The 13 job announcements the petitioner submitted with the RFE do not establish an industry requirement for parallel front office manager positions among similar-sized hotels. Going on record without supporting documentation is not sufficient to meet the burden of proof in these proceedings. See *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)).

First, the job announcements are unsupported by the documentary evidence necessary to establish that the advertised positions are parallel to the proposed position and that the employers are similar in size to the petitioner. Moreover, nine of the announcements do not support the proposition that the hotels of the petitioner's size require a business or hotel management-related bachelor's degree for their front office manager positions. The announcements indicate that the employers require bachelor's degrees, but not in

any specific field of study. One of the employers states that it prefers a bachelor's degree in business or hotel management but does not require it. Two of the announcements are for front office manager positions at luxury hotels and do require bachelor's degrees in hotel administration. The petitioner did not submit documentary evidence to establish that the advertised positions were at hotels similar in size to the petitioner's and that the duties of the advertised positions were similar in scope to the proposed duties. These two announcements do not establish an industry-wide requirement for bachelor's degree in business or hotel management for parallel manager jobs among similar hotels. On appeal, counsel asserts that a specialized degree requirement is "common to the industry." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, the proposed position does not qualify as a specialty occupation under the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) - the employer normally requires a degree or its equivalent for the position. In the instant case, this criterion is not a factor as the petitioner has not submitted evidence to establish a consistent history of hiring individuals with specialized degrees for similar positions.

Finally, the AAO turns to the criteria related to the complexity, uniqueness, or specialized nature of the proposed position. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific field of study. On appeal, counsel asserts that the nature of the specific duties of the proposed position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree or its equivalent. Counsel did not submit evidence necessary to establish that the proposed position is a specialty occupation based on its complexity, uniqueness, or specialized nature. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighena*.

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

The AAO does not find that the beneficiary is qualified to perform the duties of a specialty occupation because the evaluation of work experience was not prepared by 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. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) and (3). However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

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.