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FILE: SRC 05 144 51953 Office: TEXAS SERVICE CENTER Date: MAR 06 2007

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 operates franchise 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 described as follows: interviewing, selecting, training and supervising staff; organizing and conducting pre-shift and departmental meetings, communicating information to the staff such as the house count, the menu, banquet schedules, and schedules and work assignments; training managers to visually monitor and ensure food quality and service standards are met for food, beverage, and banquet services; overseeing staff, food and beverage, and pre-banquet meetings so that information is communicated to departmental staff; reviewing the checklists of rooms to ensure cleanliness, maintenance, and safety standards are met; maintaining profitability of departments to support overall hotel operations; controlling payroll and equipment costs; ensuring stock levels are maintained by calculating inventory; ordering and retrieving supplies; evaluating the cost effectiveness of division operations and developing and implementing cost savings and profit enhancement measures; interacting positively with customers promoting facilities and services; resolving problems to the satisfaction of parties; maintaining rapport with departments; communicating with foreign guests in English, Spanish, and French; utilizing computer-aided techniques to create forecast and revenue reports for the owner's review and approval. For the proposed position the petitioner requires work experience and a bachelor's degree or its equivalent in hotel management, tourism, or a related field.

The director denied the petition. She stated that the submitted job postings fail to establish that the petitioner normally requires a baccalaureate degree *in a specific academic field* for the proposed position, as required by section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and that a specific baccalaureate degree is common to the industry in parallel positions among similar organizations to the petitioner. The letter from Ms. [REDACTED] failed to persuade the director to find that Red Roof Inn managers must hold a baccalaureate degree in a specific specialty. According to the director, the proposed position involves a range of duties that do not require specialization in a particular area. The director stated that the proposed position has general managerial duties and citing *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (Comm. 1988), she stated that "[g]eneral [m]anagerial occupations are normally not considered to be professional endeavors requiring specific academic degrees." The director concluded that the proposed position does not satisfy the statutory requirement for a specialty occupation.

On appeal, counsel states that the proffered position is a specialty occupation since CIS previously approved a petition "involving the same occupation, same parties, and the same underlying facts as the petition at issue here."¹ Counsel submits a memorandum from William R. Yates, Associate Director for Operations, *The*

¹ It is noted that the referenced approval pertaining to the beneficiary was not filed by the petitioner; it was filed by Diplomat Hotel Corporation, and that the petitioner is the successor-in-interest to that corporation.

Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity, HQOPRD 72/11.3, (April 23, 2004), and states that it indicates that an adjudicator should not reverse a prior determination if there is no material change in the underlying facts in the petition, and no material error, or changed circumstances, or new material information. Counsel asserts that the job duties in the two petitions filed by the petitioner on behalf of the beneficiary are the same, and that the director did not articulate a material error, changed circumstances, or new material information in her decision. Thus, counsel contends that the instant petition should be approved. Further, counsel asserts that CIS had approved a petition filed by the petitioner² for another beneficiary for a hotel operations manager position, which is subordinate to a hotel manager. Counsel states that the beneficiary's duties mirror those of the hotel manager in *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966), a case that establishes a hotel manager as a professional occupation.

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.

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.

Factors often considered by CIS when determining whether a position is a specialty occupation includes: whether the 2006-2007 edition of the Department of Labor's *Occupational Outlook Handbook* (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)).

The AAO will first consider the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. A review of the *Handbook* reveals that the proposed duties are encompassed within the classification "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 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.

² Counsel states that the approved petition for [REDACTED] was filed by the petitioner as the successor-in-interest to Diplomat Hotel Corporation.

For the qualifications of lodging managers the *Handbook* conveys the following:

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 *Handbook* indicates that employers do not require lodging managers to hold a baccalaureate degree in a specific academic field. The record reflects that the proposed duties are encompassed within the description of a typical lodging manager. 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 first alternative prong 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, the petitioner submits job postings and a letter from [REDACTED], general manager, R [REDACTED]. The job postings do not establish a common degree requirement in the industry as none of the companies in the postings (Red Roof Inn, RM Hospitality, and The Ashford Club) require a baccalaureate degree in a specific academic discipline for their positions.

Michelle Lassiter's letter is not convincing in establishing the proposed position as a specialty occupation. Her letter states:

I am the [REDACTED] GA. . . . One of the prerequisites for this General Manager position was that I had achieved a [b]achelor's [d]egree. . . . In the type of work that General Managers are responsible for it is imperative

that we understand the entire scope of business. Our responsibilities range from payroll, marketing, sales, to housekeeping.

The record contains the bachelor's degree in business administration held by the general manager; it does not contain a transcript describing the courses that comprise the degree. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that 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 with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). Thus, the fact that the general manager holds a baccalaureate degree in business administration fails to establish the proposed position as a specialty occupation. It is noted that even if the general manager's baccalaureate degree had been in a specific field related to the proposed position, it would have been insufficient to establish that there is an industry-wide requirement of a baccalaureate degree in a specific academic field for a general manager position. One example does not establish an industry-wide degree requirement. 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 first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 record contains the beneficiary's H-1B approval notice and the approval for [REDACTED]. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F.3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.³ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. Here, the evidence in the record reflects that the proposed position is that of a typical lodging manager, which does not require a baccalaureate degree in a specific academic field. Furthermore, the postings from Red Roof Inn⁴ fails to establish a past practice of normally

³ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

⁴ The petitioner operates a franchise of the Red Roof Inn.

requiring a degree or its equivalent for the position as none of the positions in the postings require a baccalaureate degree in a specific academic field. It is for these reasons that the evidence fails to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The 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 the duties 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, an occupation that does not require a baccalaureate degree in a specific specialty. The letter from [REDACTED] does not state that a general manager must hold a baccalaureate degree in a specific academic field. The *Handbook's* information and the evidence of record, including the letter from [REDACTED], fail to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since it has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in those records of proceeding, the documents submitted by counsel are not sufficient to enable the AAO to determine whether the position offered in the prior cases were similar to the position in the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original record in its entirety. If the prior petition was approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petition would have been materially erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The prior approvals do not preclude CIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

The memorandum from William R. Yates is not persuasive in establishing the proposed position as a specialty occupation. The memorandum states, in part, the following:

In matters relating to an extension of nonimmigrant petition validity involving the same parties (petitioner and beneficiary) and the same underlying facts, a prior determination by an adjudicator that the alien is eligible for the particular nonimmigrant classification sought should be given deference. A case where a prior approval of the petition need not be given deference includes where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place . . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

A material error involves the misapplication of an objective statutory or regulatory requirement to the facts at hand. . . .

As stated above, a material error, a substantial change in circumstances, or new material information must be clearly articulated in a request for evidence or decision denying the benefit. The Deputy Center Director (or designated Acting Deputy Center Director in situations where the Deputy Center Director is absent) should review and clear in writing, prior to the issuance of an RFE or final decision, any case involving an extension of stay of petition validity in a nonimmigrant classification where the parties and facts involved have not changed, but where the current adjudicating officer determines nonetheless that it is necessary to issue an RFE or deny the application for extension of petition validity.

The AAO notes that the approved petition filed on behalf of the beneficiary was not filed by the petitioner: it was filed by [REDACTED]. Although the petitioner asserts in its April 3, 2005 letter that it acquired the [REDACTED] and is its successor-in-interest for immigration purposes, no documentary evidence in the record substantiates its assertion. The record contains no corporate documents evidencing the restructure, such as contracts and other legal instruments containing a description the acquisition, corporate literature, or copies of documents filed with the government of the state of incorporation. Thus, the parties are not the same in the two petitions. The *Handbook's* information reveals that the beneficiary's duties mirror those of a typical lodging manager, which does not require a specific baccalaureate degree. Thus, the record as constituted does not establish that the beneficiary's duties would require a baccalaureate degree in a specific academic field.

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.