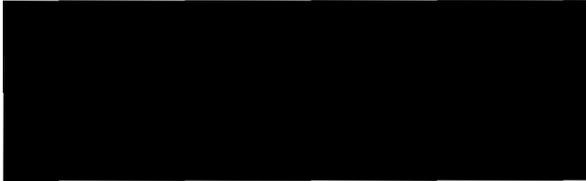




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IN RE: Petitioner:
Beneficiary:



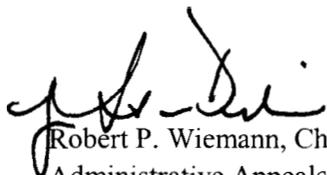
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is in the hospitality industry operating seven hotels and resorts. It seeks to employ the beneficiary as a hotel management trainee. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On May 24, 2007, the director denied the petition, determining that the petitioner had not established that the position is a specialty occupation within the meaning of the regulations. On appeal counsel submits a brief and documentation.

The issue before the AAO is whether the petitioner has established that the job it is offering to the beneficiary meets the statutory and regulatory requirements for a specialty occupation as follows:

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 are 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 filed April 6, 2007 and supporting documentation; (2) the director's April 17, 2007 request for evidence (RFE); (3) counsel's May 9, 2007 response to the director's RFE and supporting documentation; (4) the director's May 24, 2007 denial letter; and (5) the Form I-290B with counsel's brief and other documentation submitted in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a hotel management trainee. In an April 5, 2007 letter appended to the petition, the petitioner provided an overview of the occupation of a hotel management trainee and indicated that it normally required a candidate for the position to have a bachelor's degree in hotel, catering, or tourism management or its equivalent to fulfill the duties of the position. The petitioner provided a job description listing the responsibilities of the position as:

- Candidates will be trained for the overall management of the hotel that may include front office, food and beverage, banquet and kitchen, housekeeping services and management.
- Coordinates with various departments to ensure an environment in which high standards of comfort, service, and quality exist for our guests.
- Maintains positive guest relations and presents an image through our employees which reflects the philosophy.
- Answers inquiries pertaining to hotel policies and services, and resolves guests' complaints.
- Coordinates activities of hotels and resolve problems.
- Confers and cooperates with other managers to ensure coordination of hotel activities.
- Manages and maintains temporary or permanent hotel facilities.

The petitioner also provided an excerpt from the Department of Labor's *Occupational Outlook Handbook (Handbook)* regarding the occupation of lodging manager.

In a May 7, 2007 response to the director's RFE, the petitioner listed four individuals it had hired for the position of hotel management trainee and noted that it had begun the program in 2000. The petitioner also noted that a "person who did not attain the minimum equivalent of a Bachelor's Degree would never be able to supervise the various departments within the hotel and make the fast-paced managerial decisions." The petitioner reiterated that its policy was to hire individuals with a bachelor's degree or its equivalent for the position of hotel management trainee. The petitioner submitted the resumes of the four individuals previously hired in the position of hotel management trainee to show the education and experience of the four employees. The resumes showed that: one individual held a bachelor of arts degree in sociology with a

business concentration and had held summer jobs as a property tax buyer, an expediting division intern, an audit and compliance department intern, a bid and control center intern, and a small business unit intern; a second individual held an associate of arts degree in business administration and had worked as a chef, a marketing intern, and a supermarket assistant manager over a four or five year period; a third individual held a bachelor of arts degree in political science and had worked as a waiter, a legislative aide in the Virginia State Assembly, an intake worker for Legal Aid, a painter, and a basketball coach; and, a fourth individual held a bachelor of science degree in hospitality management and had worked in managerial positions for different restaurants.

The petitioner also submitted excerpts from brochures or websites of four different hotel chains referencing a management training program including: (1) an excerpt from Hyatt Hotels website indicating that applicants for their management training program must have a bachelor's degree in a related field; (2) an excerpt from the "Hilton 'Leader-in-Training' Program" brochure indicating qualifications for the program included a bachelor's degree within "hospitality" as preferred; (3) an excerpt from Starwood's (Sheraton) website indicating that it offered a management training program for graduates and that it recruited at specific U.S. colleges; and (4) an excerpt from Marriott's website indicating that every year it recruited a diverse range of college-prepared candidates for local, regional, and national opportunities.

The director denied the petition on May 24, 2007. The director determined that even if the submission of the resumes of the individuals previously hired for the proffered position would be acceptable evidence, the resumes did not reflect that all the individuals previously hired had bachelor's degrees in disciplines directly related to hotel management. The director also found that the information submitted from the four hotels did not demonstrate that a bachelor's degree in a specific field would be required for positions in hotel management. The director further determined that the evidence of record did not support a finding: that the duties of a hotel management trainee at the petitioner's hotel/resort are so specialized and complex as to require the attainment of a bachelor's degree in a specific field; that a degree requirement is the industry standard; that the attainment of a bachelor's degree is the normal minimum requirement; or that the petitioner normally required a bachelor's degree in a specific specialty as a prerequisite for the position.

On appeal, counsel for the petitioner asserts that the petitioner has established that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and that the petitioner normally requires a degree or its equivalent for the position. Counsel explains that the petitioner began requiring bachelor's degrees for the proffered position in the year 2000. The petitioner notes that although it had hired an individual with an associate's degree, in 2006, the individual had a "four-year Associates Degree" plus four years of experience in business which is the equivalent to a four-year bachelor's degree and that a degree in business is closely related to hospitality management. Counsel and the petitioner also assert that a bachelor's degree with a business concentration is closely related to hospitality management because it provides the same level of business administration and management skills. Counsel and the petitioner further note that the individual hired in 1996, although the petitioner did not require a bachelor's degree at that time, had a bachelor's degree in political science and also had food and beverage experience.

Counsel also asserts that the duties of the proffered position are so specialized and complex that a bachelor's degree in a specific field of study is required to fulfill the duties of the position. In support of this assertion,

counsel submits a June 6, 2007 letter from the Assistant Director, Career Services, The Rosen College of Hospitality Management, University of Central Florida. The assistant director states that "a number of major hotel companies offer management trainee programs to college students" and that "[a]t minimum the requirement for entry into these programs is a Bachelor's Degree in hotel management or its related field." The assistant director lists 11 companies offering management training programs and indicates that these companies require a bachelor's degree in hotel management or its related field for college placement. Counsel contends that this information is indicative of an industry standard. Counsel also references the Department of Labor's *Dictionary of Occupational Titles (DOT)* and asserts that the *DOT* reports that a hotel management trainee requires a bachelor's degree as the four years of specific vocational preparation is equivalent to the requirement of a bachelor's degree.

Counsel's assertions are not persuasive. The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), whether a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. The AAO routinely consults the Department of Labor's *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* specifically discusses the education and training necessary for management trainees at large upscale hotel chains. In that regard, the *Handbook* reports:

Management trainees for larger upscale hotel chains almost always need a bachelor's or master's degree, preferably in hospitality or hotel management. If not coming directly from college, experience working at a hotel is generally required to get a position as a lodging manager.

Education and training. Most large, full-service hotel chains usually hire people who have a bachelor's degree in business, hotel, or hospitality management for management trainee positions; however, a liberal arts degree coupled with experience in the hospitality field may be sufficient. At other hotels, especially those with fewer services, employers look for applicants with an associate degree or certificate in hotel, restaurant, or hospitality management along with experience. Formal internships or part-time or summer work in a hotel are an asset. Most degree programs include work-study opportunities.

The petitioner in this matter asserts that it has engaged in the hospitality industry for over 30 years; that it owns and operates seven properties in Central Florida; that it has two subsidiaries, an insurance company and a technologies group; that it employs approximately 4,000 employees at the hotels, resorts, and two subsidiaries; and that it is a mega size organization. The record contains brochures and printouts of the resort where the beneficiary would be employed. The record does not include the petitioner's federal tax records or other evidence to support the petitioner's size and substantiate its number of employees. The petitioner does not distinguish between its "hotel employees" and those employed in its technology and insurance subsidiaries. The petitioner does not provide sufficient evidence for the AAO to determine that it is a "larger upscale hotel chain." Going on record without supporting documentary evidence is not sufficient for purposes 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)). In the instant matter, whether the petitioner is part of a large hotel chain is important as the *Handbook* recognizes that most such

hotel chains usually hire management trainees with a bachelor's or master's degree, preferably in hospitality or hotel management. However, as the record is deficient in establishing that the petitioner is similar to the hotel chains described in the *Handbook*, the AAO must consider the *Handbook's* recognition that at other hotels employers look for applicants with an associate degree or certificate in hotel, restaurant, or hospitality management along with experience and that even when a bachelor's degree is required, a liberal arts degree coupled with experience in the hospitality field may be sufficient.

The AAO finds that when a job, like that of hotel management trainee, may be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As the *Handbook* reports that the position of a hotel management trainee may be filled by a bachelor's degree of generalized title, such as a liberal arts degree, the AAO concludes that the petitioner has not met the requirements of the first criterion. The AAO also observes that the petitioner in this matter has hired individuals with a range of degrees, suggesting that its management trainees do not need a bachelor's or higher degree in a specific discipline to perform the duties of the occupation.

The AAO acknowledges counsel's reference to *DOT* and the four years of specific vocational preparation needed for the position of a hotel management trainee. However, the AAO does not consider the *DOT* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. 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. An SVP rating indicating an occupation requires four years of specific vocational preparation is not equivalent to the requirement of a bachelor's degree. Again, the record does not demonstrate that the occupation of hotel management trainee in this matter would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

For these reasons, the petitioner has not established that the proffered position is a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position under the second criterion, whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by CIS when determining the industry standard include: 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 observed above, the *Handbook* differentiates

between the type of hotels and hotel chains that would require a bachelor's degree or higher for employment as a management trainee in the hotel hospitality industry. Also as observed above, the petitioner has not established it falls within the category of hotel chains that usually require a bachelor's or higher degree for management trainees.

The AAO has reviewed the brochures and websites of four different hotel chains that have management trainee programs. Two of the hotel chains, Hyatt Hotels and Hilton Hotels, indicate that a bachelor's degree is required for their management training program; however, Hilton Hotels indicates that a bachelor's degree in a specific discipline, hospitality, is preferred while Hyatt Hotels makes a general reference to a bachelor's degree in a related field. Although Starwood references graduates and indicates it recruits at specific U.S. colleges, it does not specify that a bachelor's degree in a specific discipline is required. Similarly, Marriott indicates that it recruits a diverse range of college-prepared candidates but does not indicate that a bachelor's degree in a specific discipline is required. The AAO has also reviewed the letter submitted by the assistant director of the Rosen College of Hospitality Management listing hotel companies that offer management training programs that require a bachelor's degree in hotel management or its related field for college placement. The assistant director does not provide documentary evidence substantiating that the list of companies require such a degree. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Thus, the record does not present information establishing that the industry or professional associations within the hospitality industry require a bachelor's or higher degree in a specific discipline for employment as a management trainee or that hotels "routinely employ and recruit only degreed individuals," in a specific discipline for the proffered position. Moreover, as observed above, the petitioner has not established that it falls within the same category as the various hotel chains listed. The petitioner has not established that the degree requirement in a specific field is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner's description of the daily duties of the position does not establish that the proffered position would involve duties seen as either unique or complex. The petitioner has not distinguished the proffered position from a typical management trainee position in a similarly sized hotel/resort. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) which provides that an employer establish that it normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas to assist in assessing this criterion. To establish this criterion, in response to the director's RFE, counsel for the petitioner listed four employees hired by the petitioner for the position of management trainee. The petitioner provided copies of the resumes of these four individuals. Preliminarily, the AAO finds that resumes alone are not sufficient to establish that these individuals hold the degrees claimed or have performed the work listed as their prior employment. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Nevertheless, the AAO has reviewed the resumes and counsel and the petitioner's assertions regarding the degrees held by these individuals. The petitioner indicates that it has previously employed an individual with a bachelor's degree in sociology, an individual with a bachelor's degree in political science, as well as an individual with a bachelor's degree in hospitality in the management trainee position. The petitioner also acknowledges its recent employment of an individual with an associate's degree for this position. The AAO notes the petitioner's claim that this individual's associate's degree is a "four-year associate's degree" but the petitioner has not supplied evidence clarifying how or what university has transformed an associate's degree into a four-year bachelor's degree. The AAO also acknowledges counsel's assertion that the previous jobs held by the individuals whose degrees did not relate to the hospitality industry transformed the unrelated degrees to degrees directly related to hospitality management. In this matter, however, the AAO does not have sufficient information regarding the prior employment of these individuals to substitute their work experience for university-level coursework in a specific discipline. 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 Obaigbena*, 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).

The record in this matter, rather than showing that the petitioner normally employs individuals with a bachelor's degree in a specific discipline for its management trainee program, demonstrates that the petitioner does not require its management trainees to have a bachelor's degree in a specific discipline. The AAO finds that the petitioner has failed to submit evidence establishing that its past employment practice is to employ only individuals with a bachelor's degree in a specific field for the proffered position. Further, while a petitioner may believe that a proffered position requires a degree, its opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, than any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) which requires that the petitioner establish that 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. When assessing whether the petitioner has met its burden with regard to this criterion, the AAO considers the duties of the position, not the occupation, or the industry-wide standard associated with the occupation. The petitioner has not detailed the particular duties of the position that contain elements that are complex and specialized. The petitioner has not provided evidence that its hotel management trainee position would require the beneficiary to have a unique set of skills beyond those of a typical hotel managerial employee. Without a meaningful list of duties related to the petitioner's specific business operations and evidence of the complexity of the petitioner's specific business operations, the petitioner has not established that the duties of the position are either specialized or complex. The petitioner has not described how the duties of the proffered position are elevated beyond what is normally required for an individual in any hotel managerial position. The record does not offer adequate evidence distinguishing the duties of the proffered position from those duties performed by hotel managerial employees at small or medium sized hotels similar to the petitioner, employment that the *Handbook*

indicates does not impose a degree requirement for those seeking entry-level employment. Accordingly, the petitioner has failed to demonstrate that the duties of the position are so specialized and complex that their performance is usually associated with the attainment of a baccalaureate or higher degree as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Upon review of the totality of the record, the record fails to reveal any evidence that the offered position requires a bachelor's degree, or its equivalent, in a specific discipline. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. The burden of proof in this proceeding 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