PUBLIC COPY

D2

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[redacted]

File: WAC 02 110 50915 Office: CALIFORNIA SERVICE CENTER Date: JAN 05 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a [redacted] It has 16 employees and a gross annual income of $1,200,000. The petitioner seeks to employ the beneficiary as an administrative services manager for a period of three years. The director determined that the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel asserts that the proffered position qualifies as a specialty occupation in that: a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the position; a degree requirement is common to the industry in parallel positions among similar organizations; the duties of the position are so complex or unique that it can only be performed by an individual with a degree; and the nature of the position's duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as 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.

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 field 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 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 determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

> The resort requires the services of a business manager to perform the following functions:
>
> - Manage [a] staff of 9 employees, with regard to human resource matters, payroll, vacation time, medical aid, sick leave, and staff scheduling of working hours[;]
>
> - Perform general bookkeeping functions such as payroll, bank statements, accounts receivable, accounts payable, and all aspects of net ledger functions[;]
>
> - Manage all aspects of guest relations and concierge duties, included are check [ins], check[]outs, reservations, complaints, travel

arrangements, city information guide [;]

- Manage housekeeping staff[,] general functions related to housekeeping[,] manage timesheets, payroll and schedules of hours[;]

- Manage breakfast staff including purchasing of goods costing and schedule of breakfast menu[;]

- Daily auditing functions, including auditing reports on all activities such as general ledger profit and loss statement, ledger entries, revenue related agents commission, future rental reports, daily revenue reconciliation, payments and deposits received, revenue parameters and stay over[; and]

- Manage and see to it that this establishment is as successful as it has been and even more.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. Specifically, the director asked that the petitioner provide: a detailed job description; evidence that the proffered position qualified as a specialty occupation; copies of the petitioner's past and present job announcements for the offered position; and evidence of the beneficiary's current immigration status.

In response to that request, the petitioner provided the following:

> The position of an "Administrative Manager Resort" requires the skills and knowledge of a person with a college degree in management or equivalent relevant experience. The employer has very specific reasons for seeking an individual with a bachelor's degree as the position is not simply that of a manager but a person to manage a recreational resort who can perform the related tasks as mentioned in the H-1B job description including[,] but not limited to have:
>
> Strong verbal and written communication skills with in depth knowledge of all the hotel operations, financial administration and solid managerial track record for consideration. Daily auditing functions including furnishing reports on all activities such as general ledger, profit & loss statement, ledger entries, commission disbursement, rental reports, daily, weekly and monthly revenue reconciliation, payments made and deposit received, administering payrolls, keeping stay-over records, overseeing and

supervising staff and staff activities.

> Administration manager's other responsibilities are to[:] set High Standards of Performance[;] Persists despite obstacles and/or opposition in order to get results, as the business in reference is a Gay Resort[;] Committed to and accountable for department performance[;] Makes decisions based upon a mixture of analysis and judgment focusing on the end customer[;] Uses customer's information for improvements in productivity and service[;] Exceed customer's expectations by using well defined goals, objectives, and strategies[;] Provides support for decisions made by the upper management[;] Evaluates customer feedback and uses it for improvement in product and service[; and] Identifies ways to maximize relationship potential.
>
> The level of responsibility will be in line of [sic] the General Manager and to assist the top management in administering the affairs of this esteemed gay resort in the heart of the [sic] West Hollywood, CA. The alien will also be responsible for supervising the line of maintenance staff such as housekeeping, cleaning staff, front desk staff and back office staff, etc. An estimated 40 hours of work per week is required to perform such duties.

The petitioner also provided: excerpts from various job advertisements; copies of full text job advertisements; and a copy of the petitioner's job advertisement for the proffered position that was placed approximately two months before the petitioner's response to the director's request for evidence.

The director determined that the proffered position failed to meet any of the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A), and that the position was, therefore, not a specialty occupation. On appeal, counsel asserts that the offered position is that of a recreation or resort manager and qualifies as a specialty occupation. Counsel further asserts that the position offered is complex due to the varied nature of the required duties - making reference to the Department of Labor's *Dictionary of Occupational Titles (Dot)*SVP codes, and the fact that the San Vicente Inn caters to a gay clientele.

The petitioner has failed to qualify the offered position as a specialty occupation. The duties of the proffered position fall within those of lodging managers. In the *Occupational Outlook Handbook*, 2002-03,(*Handbook*) at 70-71, the Department Of Labor describes, in part, the duties of lodging managers:

> [W]hile most lodging managers work in traditional hotels

and motels, some work in other lodging establishments, such as camps, inns, boardinghouses, dude ranches, and recreational resorts. In full-service hotels, lodging managers help their guests have a pleasant stay by providing many of the comforts of home, including cable television, fitness equipment, and voice mail, as well as specialized services such as health spas. . . .

Lodging managers are responsible for keeping their establishments efficient and profitable. In a small establishment with a limited staff, the manager may oversee all aspects of operations. However, 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. In hotels of every size, managerial duties vary significantly by job title.

The *general manager*, for example, has overall responsibility for the operation of the hotel. Within guidelines established by the owners of the hotel or executives of the hotel chain, the general manager sets room rates, allocates funds to departments, approves expenditures, and establishes expected standards for guest service, décor, housekeeping, food quality, and banquet operations. Managers who work for chains also may organize and staff a newly built hotel, refurbish an older hotel, or reorganize a hotel or motel that is not operating successfully. In order to fill low-paying service and clerical jobs in hotels, some managers attend career fairs.

. . . .

Assistant managers help run the day-to-day operations of the hotel. In large hotels, they may be responsible for activities such as personnel, accounting, office administration, marketing and sales, purchasing, security, maintenance and pool, spa, or recreational facilities. In smaller hotels, these duties may be combined into one position. Some hotels allow an assistant manager to make decisions regarding hotel guest charges when a manager is unavailable.

The *Handbook* further notes that hotels increasingly emphasize specialized training for lodging managers. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, but a college liberal arts degree may be sufficient when coupled with related hotel experience. In the past, many managers were promoted from the ranks of hotel staff. Although some employees still advance to hotel management positions without education beyond high school, postsecondary

education is preferred. There are over 800 educational facilities that have programs leading to recognition in hotel or restaurant management. They include community colleges, junior colleges, universities, vocational and trade schools. *Id.* at 71. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has failed to establish that the degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this criterion, the petitioner submitted excerpts from various job advertisements, copies of full text job advertisements, and a copy of an advertisement it placed when seeking to fill the offered position. The excerpts submitted did not detail the duties of the advertised positions, or the specific education required for the position and are of little evidentiary value. The majority of the full text job advertisements offered by the petitioner do not indicate that a degree in a specific specialty is required for the position, or that the duties of the positions are similar to the offered position. Indeed, the advertisement placed by the petitioner for the proffered position does not indicate that a degree is required. The advertisement simply states that an applicant must have a minimum amount of experience in various areas of expertise. Finally, the duties of the proffered position are not so complex or unique that they can be performed only by an individual with a degree. They are duties common in the industry for lodging managers.

It should also be noted that counsel's reference to a specific SVP rating in the DOL's *Dictionary of Occupational Titles* (DOT) does not establish that the offered position qualifies as a specialty occupation. The Department of Labor has replaced the DOT with the Occupational Information Network (O*Net). Both the *DOT* and *O*Net* provide 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. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the AAO is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating.

The petitioner has failed to establish that the employer normally requires a degree or its equivalent for the offered position

under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Again, reference is made to the petitioner's advertisement for the offered position, which does not mention any degree requirement.

Finally, the petitioner has failed to establish that the nature of the proffered position's specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The duties are common in the industry and fall within those listed above in the *Handbook*.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.