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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, DC 20536

[redacted]

File: LIN 02 096 54706 Office: NEBRASKA SERVICE CENTER Date: JAN 27 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 that 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, Texas Service Center, 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 Newton, Iowa hotel with fifteen to twenty employees and a gross annual income of $500,000. The petitioner seeks to temporarily employ the beneficiary as a lodging manager. The director determined that the petitioner had not established that the proffered position was a specialty occupation. On appeal, counsel submits a brief and copies of documents already on record. Counsel states, in part, that the proffered position is 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 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 is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation.

In the original petition, the petitioner stated that the beneficiary's duties would include planning, directing, and coordinating hotel activities, including responsibility for personnel matters, budget assistance, guest relations, and the overall efficiency and profitability of the facility. The original petition included documents attesting to the beneficiary's qualifications.

On March 6, 2002 the director issued a request for evidence to establish that the proffered position met one of the above-noted regulatory criteria to qualify as a specialty occupation. The petitioner responded, through counsel, with a letter and several Internet and newspaper job postings in the hospitality field.

On July 27, 2002 the director denied the petition. The director pointed out that the submitted vacancy announcements illustrated employers' willingness to hire candidates with less than a baccalaureate degree. The director concluded that a baccalaureate or higher degree is not the minimum requirement for entry into the position of hotel manager, nor is the degree requirement common to the industry. The director found that the documentation submitted did not establish any of the regulatory criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserts that the proffered position is unique and more complex than that of an average hotel manager; hence, the position requires an incumbent with a minimum of a bachelor's degree in the specific specialty.

A review of the entire record in this case does not support a finding that the proffered position qualifies as a specialty occupation. With respect to the criterion described in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the petitioner has failed to provide any documentation to this effect. The Department of Labor's *Occupational Outlook Handbook* (*Handbook*) 2002-2003 edition at page 71 discusses the educational requirements for lodging managers. The *Handbook* states:

> Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, although a college liberal arts degree may

> be sufficient when coupled with related hotel experience. . . .Community colleges, junior colleges, and some universities offer associate, bachelor's, and graduate degree programs in hotel or restaurant management.

Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the proffered position.

In order to support the criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted several Internet and newspaper job postings. These announcements requested a variety of educational backgrounds; there was no consensus that a bachelor's degree in a specific specialty was a requirement. Nor has the petitioner made the alternative showing that this particular position is so complex or unique that it can be performed only by an individual with a degree.

Turning to the criterion found at § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position, the record contains information in reference to two of the petitioner's current or former lodging managers. The resume of Pamela M. Evenson shows that she holds baccalaureate degrees in hotel, motel, and restaurant management and in psychology. The copy of Surendra Singh's diploma attests that she holds a bachelor of science degree in an unspecified field. These documents are not sufficient evidence to establish that the employer normally requires a degree in hotel management or a related field for this position. This criterion has, thus, not been established.

Finally, regarding 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) that the job duties of the food service manager are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree, the record contains no evidence to support this criterion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The petitioner has failed to establish that any of the four criteria enumerated above are present in this proceeding. 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 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. Accordingly, the

director's decision will be affirmed.

ORDER: The appeal is dismissed. The director's decision denying the petition is affirmed.