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U.S. Citizenship and Immigration Services

[redacted]

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FILE: WAC 01 067 52696 Office: CALIFORNIA SERVICE CENTER Date: JUN 02 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 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.

Mari Johnson
for 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 and seeks to employ the beneficiary as a management trainee. 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 was not a specialty occupation. On appeal, counsel submits a brief and additional information.

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

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.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(l), 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 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 proceedings before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management trainee. Evidence of the beneficiary's duties included the I-129 petition with attachment, and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would: (20 per cent of the time) assist the general manager in directing and coordinating activities in the various departments in finance, accounting, food and beverage, sales, marketing and operations; (30 per cent of the time) review and analyze financial information, prepare financial reports to summarize current and projected financial positions of the company, plan budgets, authorize expenditures, and establish, coordinate, and implement the accounting and budget procedure; (20 per cent of the time) review and implement marketing plans, develop research methodology and gather and review customers' data to increase profitability of the company through increased sales; (20 per cent of the time) review, hire, train, and fire employees, assist human resources department in making strategic policies on employment related issues, and establish standards in personnel administration/employee dispute resolution; and (10 per cent of the time) review procedure to ensure the highest standards of customer relations through generation of customer feedback and inspection of goods and services offered to customers. The petitioner requires a minimum of a bachelor's degree for entry into the offered position. The petitioner did not, however, designate a degree in any specific specialty.

The director found that the offered position did not qualify as a specialty occupation and failed to meet any of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On appeal, counsel submits a brief, stating that the proffered position qualifies as a specialty occupation.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. Factors often considered by CIS when determining this criterion include: whether the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) reports that the industry requires a degree; whether an industry 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. Min. 1999) (quoting *Hird/Baker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for lodging managers and assistant managers. The *Handbook* notes that hotels increasingly emphasize specialized training for these positions. 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. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*). Educational qualification for the offered position exists from baccalaureate level liberal arts degrees, to education earned in junior colleges or vocational and trade schools.

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 proposition, the petitioner submitted several job advertisements. The majority of those advertisements were for industries that were not similar to the petitioners. Furthermore, most of the advertisements required degrees in unspecified disciplines, or indicated that degrees were "desired" or "preferred", not required. The advertisements submitted are insufficient in nature and scope to establish this regulatory criterion. It should further be noted that the duties of the offered position are routine in the industry for manager, assistant manager and/or management trainee positions. They are not so complex or unique that they can only be performed by an individual with a degree in a specific specialty.

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*). The petitioner submitted documentation indicating that it has other managers with college degrees. Only one of the managers supplied a copy of a diploma, and it indicated that she possessed an associate's degree. The other managers submitted resumes, but no proof of educational background. This type of documentation is insufficient to establish that the petitioner normally requires a degree or its equivalent for the offered position. Even assuming that the petitioner normally requires a degree or its equivalent for the offered position, the position still does not qualify as a specialty occupation. The performance of the duties of the position must still involve the theoretical and practical application of a body of highly specialized knowledge. *Cf. Defensor v. Meissner,* 201 F.3d 388 (5th Cir. 2000). This position does not. As noted above, the duties of the position are routinely performed in the industry by individuals with educational backgrounds in a wide range of educational disciplines, and at less than a baccalaureate level.

The petitioner has also failed to establish that the duties of the offered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*). As previously noted, the duties of the proffered position are routine in the industry and performed by those with less than a baccalaureate level education in a specific specialty.

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director's denial of the petition.

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. The petition is denied.