

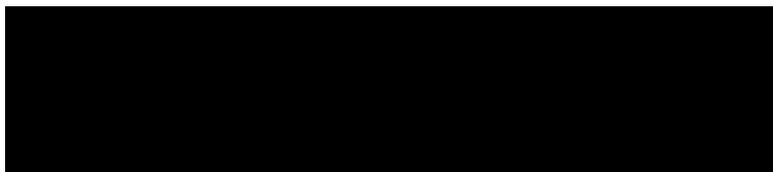
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U.S. Department of Homeland Security
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U.S. Citizenship
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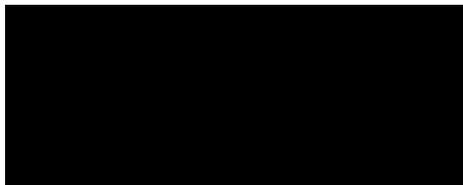
FILE: LIN 03 186 50335 Office: NEBRASKA SERVICE CENTER Date: FEB 25 2005

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, Director
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 is a national hotel that seeks to employ the beneficiary as an administrative services manager. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

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) 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) 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 an administrative services manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail strategic planning, analysis, policy development; evaluating work for compliance with goals and policies; forecasting and budgeting; monitoring quality and customer service; recordkeeping and preparing reports; communicating with outside vendors, service providers, and the corporate office; obtaining customer feedback; and training staff. The petitioner's job description stated that a candidate for the proffered position must possess a baccalaureate degree or its equivalent in "hospitality management or a degree in business administration with extensive hospitality experience and knowledge of hotel operations."

The director determined that the proffered position was not a specialty occupation. According to the director, the evidence from the Department of Labor (DOL) about job zone four indicates that some occupations do not require a baccalaureate degree. The director stated that neither the petitioner nor the submitted job postings require a baccalaureate degree in a specific specialty, and that the petitioner does not always enforce its educational requirement of a hospitality management degree. The director found unpersuasive the list describing nine employees and their titles and degrees because the petitioner failed to submit documentary evidence to corroborate the information. Further, the director stated that no evidence showed whether any of the positions are parallel to the proffered position. According to the director, persons usually advance to management postings after obtaining substantial experience and, therefore, a baccalaureate degree is not required.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel contends that two of the five submitted job postings require a specific baccalaureate degree, and the other three implicitly require a baccalaureate degree in a related field. Counsel asserts that the regulations do not require a specific field of study. Counsel concedes that some of the zone four jobs do not require a baccalaureate degree, but maintains that this should result in the blanket denial of the petition. Counsel stated that for reasons of confidentiality the petitioner did not submit documentary evidence about its employees, and the submitted information about the employees should have been sufficient. The petitioner has nine management positions, counsel states, which usually require a baccalaureate degree with an emphasis in hotel, hospitality, or resort management, and further states that the proffered position is managerial in nature, and has a degree requirement that is congruous with the other nine positions. Counsel disagrees with the director's statement that advancement to managerial positions is based on experience. Citing to *Matter of Sun*, 12 I&N Dec. 535 (DD 1966), counsel states that the court found that hotel management is a specialty 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.

The AAO first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. Factors often considered by CIS when determining these criteria include: whether 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

On appeal, counsel asserts that the regulations do not require a specific field of study. As previously mentioned, 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. Furthermore, Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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.

In the job description submitted in response to the request for evidence, the petitioner indicated that a candidate for the proffered position must possess a baccalaureate degree or its equivalent in "hospitality management or a degree in business administration with extensive hospitality experience and knowledge of hotel operations." This educational requirement fails to establish that the proffered position qualifies as a specialty occupation. As stated by the court in *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

Here, because the petitioner accepted candidates possessing a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent *in a specific specialty* is the normal minimum requirement for entry into the particular position, accountant. 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As already discussed, the petitioner accepted a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration. Thus, the petitioner cannot establish the

criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that its specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

Nor can the petitioner establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) which requires that the petitioner establish that it normally requires a degree or its equivalent in a specific specialty for the proffered position. Again, the petitioner accepted candidates holding a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration.

The petitioner fails to establish the fourth criterion under 8 C.F.R. § 214.2(h)(4)(iii)(A) whereby it is required to show 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. Because the petitioner accepted candidates with a baccalaureate degree of generalized title, business administration, without indicating a specific field of concentration, it cannot establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

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.