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U.S. Citizenship
and Immigration
Services

D2



FILE: WAC 04 067 51410 Office: CALIFORNIA SERVICE CENTER Date: JUN 10 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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 that seeks to employ the beneficiary as a human resources manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and additional evidence, including the petitioner's job advertisements.

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 a human resources manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 26, 2003 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the

beneficiary would perform duties that entail: supervising and overseeing several departments, each headed by subordinate professional employees, including "Recruitment & Training, Compensations & Benefits, and Guest Service Administration"; managing the organization of internal and external recruitment efforts to search for qualified job applicants for new and vacant positions within the company; overseeing job-outreach programs in educating external network and community-based organizations on job openings and requirements; overseeing and analyzing job-training programs to ensure its adherence to company's employee guidelines and policies; developing and supervising compensation and benefits programs; administering employer-provided health benefits and pension programs; conducting job performance evaluations; overseeing job placement of personnel in Guest Service Administration; and firing subordinate employees under direct supervision, as needed. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business, public administration, business management, or a related field.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree in a specific specialty. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the *Handbook* clearly states that a bachelor's degree is normally the requirement for entry into the position of human resources manager. Counsel states further that the petitioner submitted numerous job postings for various management positions within the hotel industry, including a human resources manager position, that require a bachelor's degree. Counsel also states that the proposed duties are so specialized and complex as to require a bachelor's degree.

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 turns first to 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. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position, which is that of a human resources manager, is a specialty occupation. A review of the *Handbook*, 2004-2005 edition, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a human resources, training, and labor relations manager or specialist. Employers usually seek college graduates from a variety of educational backgrounds in filling entry-level jobs. Many employers prefer applicants who have majored in

human resources, personnel administration, or industrial and labor relations. Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for human resources related positions. One of the advertised positions does not require a degree in a specific specialty. Another advertisement for a recruiter/employment specialist indicates that a bachelor's degree in a related field is preferred rather than required. Another advertisement for a recruiter indicates that a bachelor's degree is preferred; no field of study is specified. Another advertised position is that of a guest services administrator for the Las Vegas Valley Water District. There is no evidence, however, to show that the employer issuing that posting is similar to the petitioner, or that the advertised position is parallel to the instant position. In view of the foregoing, the advertisements have no relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states, in part, that its past job postings for a human resources manager shows that the petitioner normally requires a bachelor's degree for the proffered position. As the record indicates that the proffered position is a new position, however, the petitioner has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.