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U.S. Citizenship
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Services

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FILE: EAC 03 253 51540 Office: VERMONT SERVICE CENTER Date: **JUN 12 2006**

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:

SELF-REPRESENTED

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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The 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 lodging 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 on the basis of her determination that (1) the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation and (2) that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's RFE response and supporting documentation; (4) the director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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 proposed position.

The petitioner stated, on the H Classification Supplement to Form I-129, that the duties of the proposed position would include daily income auditing; revenue forecasting; payroll; productivity-labor control; inventory control/par-level management; guestroom preparation and inspection; demographic research; and market analysis.

In her December 5, 2003 request for additional evidence, the director correctly noted that lodging manager positions do not normally qualify for classification as a specialty occupation, and requested evidence to establish that the petitioner's proposed position warranted such classification. The director also noted that the beneficiary did not appear qualified to perform the services of a specialty occupation, and requested evidence to demonstrate that the beneficiary was indeed qualified. The director further requested evidence regarding the petitioner and its business operations.

In its January 25, 2004 response, the petitioner did not address the issue of whether the position qualifies for classification as a specialty occupation, other than to repeat the duties that were listed on the H Classification Supplement to Form I-129. In regards to the beneficiary's qualifications to perform the duties of a specialty occupation, the petitioner submitted a statement from the Czech institution that awarded the beneficiary's degree, as well as a "Diploma Supplement." The AAO notes that the "Diploma Supplement" specifically states, at page 1, that the supplement "should be free from any value judgements [sic], equivalence statements or suggestions about recognition."

The director therefore denied the petition.

On appeal, the petitioner submits the Form I-290B and a letter, dated July 29, 2004. On the Form I-290B, the petitioner states the following:

Beneficiary has been able to learn our computer system thoroughly and has developed many software programs that we currently use at the front desk. It would be difficult, if not impossible, to replace him at this point in our summer season. Losing [the beneficiary] would be a hardship for our hotels and we would respectfully hope that you reconsider our request for a change of his visa status.

In its supplemental letter, the petitioner notes that the beneficiary participated in an 18-month internship with the petitioner, that he speaks several languages, that he has learned the petitioner's computer system, and that it would be difficult to replace him.

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.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly

specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* provides the following information regarding the educational background necessary for entry as a lodging manager:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel, restaurant, or hospitality management is preferred for most hotel management positions; however, a college liberal arts degree may be sufficient when coupled with related hotel experience or business education. Internships or part-time or summer work experience in a hotel are an asset to students seeking a career in hotel management. The experience gained and the contacts made with employers can greatly benefit students after graduation. Most degree programs include work-study opportunities.

Community colleges, junior colleges, and many universities offer certificate or degree programs in hotel, restaurant, or hospitality management leading to an associate, bachelor, or graduate degree. Technical institutes, vocational and trade schools, and other academic institutions also offer courses leading to formal recognition in hospitality management. In total, more than 800 educational facilities provide academic training for would-be lodging managers. Hotel management programs include instruction in hotel administration, accounting, economics, marketing, housekeeping, food service management and catering, and hotel maintenance engineering. Computer training also is an integral part of hotel management training, due to the widespread use of computers in reservations, billing, and housekeeping management.

Additionally, over 450 high schools in 45 States offer the Lodging Management Program created by the Educational Institute of the American Hotel and Lodging Association. This two-year program offered to high school juniors and seniors teaches management principles and leads to a professional certification called the "Certified Rooms Division Specialist." Many colleges and universities grant participants credit towards a post-secondary degree in hotel management.

These findings do not support the contention that a bachelor's degree is required for entry into the field, as it reports that postsecondary training is "preferred" by "many" employers. Employer preferences do not equate to employer requirements, and do not rise to the "normally required" standard imposed by the regulation. Nor does the fact that "many" employers prefer such training mean that such preferences are the norm. Moreover, such a preference for postsecondary "training" does not equate to a bachelor's degree or university coursework. As the *Handbook* notes, institutions offering hotel or restaurant management courses include technical institutes and vocational and trade schools, as well as community, junior, and four-year colleges.

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree

requirement is common to the industry in parallel positions among similar organizations. However, no evidence to satisfy this prong has been submitted.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to the positions discussed in the *Handbook*, which do not require a degree. The record contains no documentation to support a finding that the proposed position is more complex or unique than lodging managers at other, similar organizations.

Therefore, the petitioner has not established that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been presented. Therefore, the proposed position does not qualify as a specialty occupation under 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), which requires a demonstration that 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 of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4), and the petition was properly denied on this ground. Accordingly, the AAO will not disturb the director's denial of the petition.

The AAO also concludes, as did the director, that the petitioner has not demonstrated that the beneficiary qualifies to perform the duties of a specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), in order to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary earned his degree abroad, so he does not qualify under this criterion.

The second criterion requires a showing that the beneficiary earned a foreign degree determined to be equivalent to a United States baccalaureate or higher degree. However, no evidence has been submitted to demonstrate that the beneficiary's foreign degree is equivalent to a degree earned from a United States institution – no evaluation of educational credentials has been submitted and, as noted previously, the "Diploma Supplement" submitted by the petitioner specifically states that it "should be free from any value judgements [sic], equivalence statements or suggestions about recognition."

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so she does not qualify under the third criterion.

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a showing that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty.

Thus, it is the fourth criterion under which the petitioner seeks to classify the beneficiary's work experience.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under this criterion is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D), as no such evaluation has been submitted.

No evidence has been submitted to establish, nor has the petitioner contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under the third criterion, as the record does not establish foreign educational credentials that could be the subject of such an evaluation.

No evidence has been submitted to establish, nor has the petitioner contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; (2) that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and (3) that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record indicates that the beneficiary has worked for the petitioner, in another nonimmigrant visa classification, since 2001, and no information was submitted regarding any previous work experiences. Therefore, the record traces the beneficiary's work history from 2001 onward, for a period of two years (the petition was filed in 2003). The formula utilized by CIS is three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. A baccalaureate degree from a United States institution of higher education would require four years of study, so the beneficiary would need to demonstrate at least 12 years of work experience in order to qualify for its equivalency. The beneficiary cannot meet this threshold.² As such, he does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

Therefore, the beneficiary does not qualify to perform the duties of a specialty occupation, and the director was correct to deny the petition on this ground as well.

The petitioner's statements on appeal regarding the beneficiary's language skills, knowledge of its computer systems, and the difficulty it would have finding another candidate for the position do not address the criteria at issue on appeal. The petitioner has not demonstrated that its proposed position qualifies for classification as a specialty occupation, nor has it demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation. Accordingly, the AAO will 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.

and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

² Since the beneficiary does not qualify under this mathematical formula, the AAO did not analyze whether his previous experience satisfied the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i), (ii), (iii), (iv), or (v).