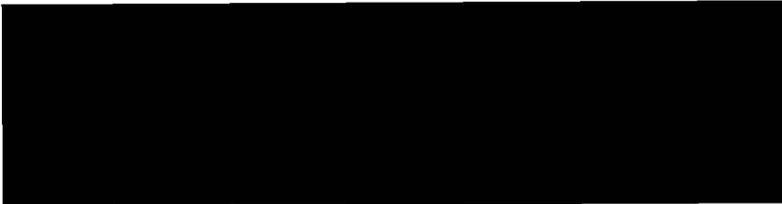




U.S. Citizenship
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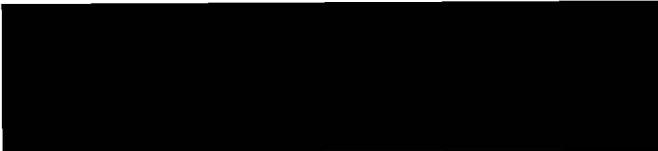
FILE: EAC 02 242 51492 Office: VERMONT SERVICE CENTER Date: JUN 01 2006

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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reconsider. The motion to reconsider will be granted. The prior decision of the AAO will be affirmed. The petition will be denied.

The petitioner is a motel. It reports that it has 3 employees and a gross annual income of \$370,277. It seeks to employ the beneficiary as a motel manager and endeavors to classify him 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 ground that the proffered position does not qualify as a specialty occupation. The AAO affirmed the director's findings and dismissed the appeal, denying the petition on the ground that the proffered position did not qualify as a specialty occupation. The petitioner then filed a motion to reconsider stating that the proffered position qualifies as a specialty occupation. The motion to reconsider meets the requirements of a motion. The motion shall accordingly be granted and a decision will be made on the merits of the motion.

A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or CIS policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

The petitioner states in its motion that:

1. The *Occupational Outlook Handbook (Handbook)* indicates that a minimum of a bachelor's in hotel management is required for the proffered position;
2. 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 bachelor's degree in a specific specialty;
3. The SVP rating of the offered position (SVP of 8) indicates that a bachelor's degree is the minimum educational requirement for the position;
4. The proffered position qualifies as a specialty occupation because it was determined in *Matter of Sun*, 12 I&N Dec. 535 (DD 1966) that a hotel management position qualifies as a member of the professions;
5. Previous AAO decisions have determined that a hotel manager's position requires a bachelor's degree; and
6. The petitioner normally requires a degree for the offered position.

The assertions of the petitioner will be addressed in the order noted above.

The *Handbook* does not indicate that a minimum of a bachelor's degree in hotel management is required for entry into the proffered position. The *Handbook* reports that hotels increasingly emphasize specialized training for lodging managers. 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. While postsecondary training in hotel or restaurant management is preferred for most hotel management positions, a baccalaureate level education in a specific specialty is not the normal educational requirement for entry into the position.

The petitioner states that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a bachelor's degree in a specific specialty. The AAO does not agree. The duties of the offered position are routine for hotel management positions in the industry. They are not so unique, specialized or complex that knowledge required to perform them is usually associated with attainment of a bachelor's degree in a specific specialty. They are routinely performed in the industry by individuals with less than a baccalaureate level education. As noted in the *Handbook*, hotel management positions are regularly staffed by individuals who have obtained their positions through on-the-job training, or with post secondary training available in community colleges and vocational institutions. The duties to be performed by the beneficiary in the petitioner's business environment do not require the theoretical and practical application of a body of specialized knowledge.

The petitioner states that the SVP rating of the proffered position indicates that the minimum educational requirement of the position is a bachelor's degree. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP classification does not describe how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require. The petitioner's assertions in this regard are unpersuasive.

The petitioner cites *Matter of Sun*, 12 I&N 535 (DD 1966) for the proposition that a hotel management position qualifies as a member of the professions, and therefore, as a specialty occupation. In *Sun*, it was determined that a hotel management position in a large hotel could be considered as a profession. The case does not stand for the proposition that all hotel management positions qualify as specialty occupations under current law. This record does not contain a listing of the duties of the hotel management position in the cited case so that a comparison of the duties can be made with the duties of the offered position. The petitioner also indicates that past AAO decisions have determined that hotel manager positions require a bachelor's degree. Again, the record of the present proceeding does not contain the entire record of the referenced AAO decisions so that a comparison of the positions can be made. Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, the AAO is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). It warrants noting that Congress intended this visa classification for aliens who are to be employed in occupations that require the theoretical and practical application of a body of highly specialized knowledge. Congress specifically stated that such occupations would require, as a *minimum* qualification, a

baccalaureate or higher degree in the specialty. CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category. In the present matter, the petitioner has offered the beneficiary a position as a motel manager. For the reasons discussed above, the proffered position does not require attainment of a baccalaureate or higher degree in a specific specialty as a minimum for entry into the occupation, and approval of a petition for another beneficiary based on identical facts would constitute material error, gross error, and a violation of 8 C.F.R. § 214.2(h).

Finally, the petitioner indicates that the beneficiary normally requires a degree for the offered position, and the position does, therefore, qualify as a specialty occupation. The present manager holds a foreign bachelor's degree in chemistry. The petitioner states that the chemistry degree plus the manager's job experience are equivalent to a bachelor's degree or higher in hotel management. The petitioner did not, however, submit equivalency evidence of the manager's foreign degree. Nor did it submit an experiential evaluation of the manager's past work history. The record does not establish that the present manager's education is equivalent to a bachelor's degree in hotel management or a related field from an accredited college or university in the United States. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.¹ To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id* at 388.

The petitioner has not established by pertinent precedent decision that the AAO's previous decision was based on an incorrect application of law or CIS policy, or that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The record reflects, and the prior decision correctly states, that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A). The prior decision of the AAO shall accordingly be affirmed. The petition will be denied.

¹ The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

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As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The decision of the AAO is affirmed. The petition is denied.