

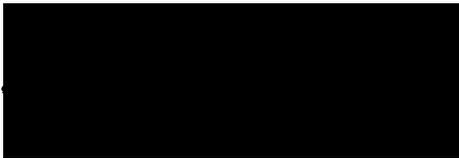
**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



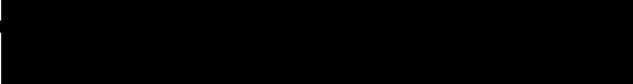
**U.S. Citizenship  
and Immigration  
Services**

**PUBLIC COPY**

*D2*

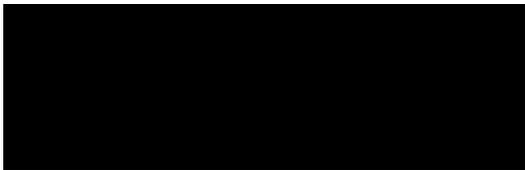


FILE: SRC 05 137 52211 Office: TEXAS SERVICE CENTER Date: **NOV 09 2005**

IN RE: Petitioner:   
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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*

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. In order to employ the beneficiary as its hotel operations manager, 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 petitioner had failed to establish that the proffered position meets the definition of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director's decision included a statement from the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* about hotels placing an increased emphasis upon specialized training for their managers and preferring to hire persons with post-secondary training in hotel or restaurant management.

On appeal, counsel contends that the decisive factor is not the *Handbook* information cited by the director but the fact that the petitioner "does require at least a Baccalaureate Degree (or its equivalent) for this particular position." Counsel also asserts that the director ignored the precedent decision *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966) that held that a hotel manager position was a profession.

The director's decision to deny the petition is correct. The AAO bases this decision upon its review of the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, styled "Memorandum in Support of the Petitioner's Appeal from the Decision of the Texas Service Center," and its enclosures.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation:

which [1] 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 [2] 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. (Italics added.)

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) has consistently interpreted 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. Applying this standard, 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 specific specialty 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.

Counsel’s April 13, 2005 letter of support filed with the Form I-129 provided the following information about the proffered position:

In this position, [the beneficiary] will use her education and experience to plan and coordinate the operations of the [hotel]. She will manage the daily operations, formulate policies, and plan the use of human resources. Since the operations manager position is new for [the petitioner], the company has not yet determined the optimal number of hours for the position. Therefore, at this time, the company intends to hire [the beneficiary] on a part-time basis to work approximately 20 hours a week. Should the need for additional hours arise, [the petitioner] will file an amended petition with the Immigration Service.

According to this letter of support, the petitioner, “a hotel company, locally owned and operated by [REDACTED] since 1975, when the hotel first opened its doors to customers,” currently employs “fourteen (10) [sic]” persons, and earned a gross annual income of \$997,000 in the previous year. The petitioner has not stated the number of rooms in the hotel, but the photographs in the brochure that it submitted, as well as the income figures and the number of employees, indicates that the hotel is relatively small.

The evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). This provision assigns specialty occupation status to a position with a normal minimum entry requirement of a baccalaureate or higher degree, or the equivalent, in a specific specialty directly related to the position’s duties.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of a wide variety of occupations. The proposed duties described in the record comport with those of the lodging manager occupation as described in the 2004-2005 edition of the *Handbook*. The following excerpt from page 54 of the 2004-2005 edition of the *Handbook*’s section on the lodging managers occupational category establishes that lodging managers’ employers do not normally stipulate a baccalaureate or higher degree, or the equivalent, in a specific specialty as a minimum entry requirement:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, although a college liberal arts degree may be sufficient when coupled with related hotel experience. Internships or part-time or summer work 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 bachelor’s degree programs include work-study opportunities.

Community colleges, junior colleges, and some universities offer associate’s, bachelor’s, and graduate degree programs in hotel or restaurant management. Combined with technical institutes, vocational and trade schools, and other academic institutions, over 800 educational facilities have programs leading to formal recognition in hotel or restaurant management. 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 is a two-year program offered to high school juniors and seniors, which 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.

Lodging managers must be able to get along with many different people, even in stressful situations. They must be able to solve problems and concentrate on details. Initiative, self-

discipline, effective communication skills, and the ability to organize and direct the work of others also are essential for managers at all levels.

In the past, many managers were promoted from the ranks of front desk clerks, housekeepers, waiters, chefs, and hotel sales workers. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. Restaurant management training or experience also is a good background for entering hotel management, because the success of a hotel's food service and beverage operations often is important to the profitability of the entire establishment.

The *Handbook* only reports an employer preference for post-secondary training. Employer preferences are not normal hiring requirements. Furthermore, a preference for post-secondary training does not equate to a preference for a college degree or, for that matter, for university level 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.

Counsel's reference to *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966), is not persuasive. *Matter of Sun* is not controlling here, as it was decided in 1966 before the enactment of the law in 1990 defining specialty occupation for H-1B visa classification. Accordingly, *Matter of Sun*'s holding that a hotel management position at a large hotel qualified as a profession does not establish the proffered position as a specialty occupation. Further, *Matter of Sun* is distinguishable from the instant case. *Matter of Sun* confined its finding to a hotel management position in "a large hotel," *id.* at page 536. By contrast, according to the record in the present case, the petitioner's hotel has 10 employees, and it produces a gross annual income of \$997,000 and a net annual income of \$87,563.

The job vacancy announcements submitted into the record are too few to establish normal recruiting and hiring practices for an occupation, and too few to rebut the information that the DOL has published in the *Handbook* to the effect that a bachelor's degree or its equivalent in a specific specialty is not a normal minimum requirement for entry into the hotel management occupation. No authority on the hotel industry endorses any of these advertisements as representing a common recruiting and hiring requirement for managers in the hotel industry. Furthermore, these job advertisements do not reflect a requirement for degrees in a particular specialty: For instance, of the four employers issuing the advertisements,<sup>1</sup> three state a bachelor's degree requirement but do not specify any major or academic concentration.

As the evidence of record does not establish the proffered position as one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

---

<sup>1</sup> There are five advertisements in the record, but two were issued by one employer, American Cruise Lines.

The first prong assigns specialty occupation status to positions for which there is a degree requirement which is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

In determining whether there is such an industry-wide standard, factors often considered by CIS 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)).

As already discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry. For the reasons already discussed, the Internet job advertisements that the petitioner submitted into the record do not establish that the proffered position is one for which the petitioner's industry normally requires at least a bachelor's degree or the equivalent in a specific specialty.

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This criterion provides that "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." The evidence of record about the proffered position and its requirements has not established that the proffered position is unique in comparison to hotel manager positions in general, nor has the petitioner shown that the position is more complex than hotel manager positions in general. As already discussed, these positions do not normally require a degree in a specific specialty.

The record does not include evidence that the normally requires a degree or its equivalent for the proffered position, as required to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). This is the first time that the position has been offered.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has provided no details about the proposed duties beyond the generalized statements that the beneficiary will "plan and coordinate the operations of the [hotel]," and that she "will manage the daily operations, formulate policies, and plan the use of human resources." Such generalized descriptions of the proposed duties do not establish that they are more specialized and complex than those that should be expected in the hotel management occupation in general, an occupation that the *Handbook* does not indicate as one normally requiring a bachelor's or higher degree in a specific specialty.

Because the proffered position does not meet any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

Beyond the decision of the director, it is noted that the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). The educational equivalency evaluation upon which the petitioner relies depends partly upon an assessment of the beneficiary's work experience. However, there is no evidence that the evaluator is an official authorized by a U.S. college or university to grant college-level credit for training or experience, as required by 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(I). CIS will not accept a faculty member's opinion as to the college credit equivalence of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes *both* that the college or university has a program for granting college credit in the pertinent specialty *and* that the official is authorized to grant such academic credit for that institution. Furthermore, the evaluation of the beneficiary's experience contains no analysis of that experience to support the evaluator's conclusion as to its educational equivalency. For these reasons also, the petition must be denied.

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.