



U.S. Citizenship
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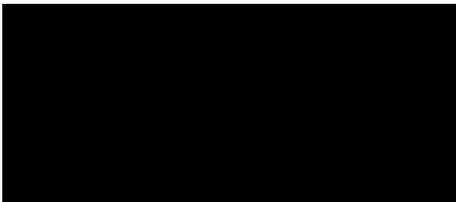


FILE: EAC 03 257 54879 Office: VERMONT SERVICE CENTER Date: NOV 15 2005

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

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 hotel that seeks to employ the beneficiary as a front office 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 a front office manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 coordinating front office activities and resolving problems arising from guests' complaints; handling reservation and room assignment activities, and unusual requests and inquiries; assigning duties and shifts and observing that employees follow policies and operating procedures; conferring and cooperating with department heads to coordinate activities; answering inquiring about policies and services; greeting guests; arranging private telephone lines and other special services; patrolling public rooms; investigating disturbances and warning troublemakers; interviewing and hiring job applicants; and receiving and processing advance registration payments. For the proposed position the petitioner requires a baccalaureate degree in hotel and restaurant management and related work experience.

The director denied the petition, finding that the petitioner failed to establish the relationship between the proposed position and the requirement of a baccalaureate degree in hotel management. The director stated that the letter from [REDACTED] reflecting that the mid-market hotel industry requires a baccalaureate degree in hotel/motel management or a related field for the proposed position, was not supported by the *Dictionary of Occupational Titles (DOT)* and the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), as they do not indicate that the proposed position requires a baccalaureate degree in a specific specialty such as hotel and restaurant management. The director discussed *Defensor v. Meissner*, 201 F. 3d 384 (5th Cir. 2000).

On appeal, counsel states that the petitioner has 172 rooms on 9 floors as well as meeting rooms to accommodate 50 people. According to counsel, the proposed duties are varied and complex, requiring specialized knowledge in accounting, business law, personnel administration, restaurant management, hotel supervisory training, food preparation, and hotel structure and maintenance. Counsel asserts that *Matter of Sun*, 12 I&N Dec. 535 (DD 1966) indicates that hotel management positions requiring a baccalaureate degree in hotel management are specialty occupations. Counsel refers to [REDACTED] letter to establish an industry standard of a baccalaureate degree, and a letter from the petitioner's regional director of operations of the limited partnership to establish that "most of the hotel management employees of the [p]artnership have bachelor[']s or master[']s degree in hotel and restaurant management or a related area." According to counsel, the *DOT* and *Handbook* reveal that a bachelor's degree in hotel management is required for the proposed position. Counsel asserts that the evidence shows that the petitioner is neither creating a position with a perfunctory bachelor's degree requirement, nor attempting to disguise the fact that the proposed position is not 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a 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.

Counsel's reference to and assertions about the relevance of information from the *O*Net* and the *DOT* are not persuasive. Neither the *DOT*'s specific vocational preparation (SVP) rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The 2004-2005 edition of the *Handbook* reveals that the proposed position is similar to a front office manager, an occupation that coordinates reservations and room assignments; trains and directs front desk staff; ensures that "guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out"; and adjusts charges posted on a customer's bill."

For a managerial position in the hotel industry, the *Handbook* indicates that employers do not require a baccalaureate degree in a specific specialty such as hotel and restaurant management. The *Handbook* states:

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.

The AAO notes that the 2004-2005 edition of the *Career Guide to Industries (CGI)* also shows that a baccalaureate degree in a specific specialty, such as hotel and restaurant management, is not required for a

managerial position in the hotel industry as employers accept baccalaureate degrees in the liberal arts¹ or other fields for those positions. The *CGI* states:

Traditionally, many hotels filled first-level manager positions by promoting administrative support and service workers—particularly those with good communication skills, a solid educational background, tact, loyalty, and a capacity to endure hard work and long hours. People with these qualities still advance to manager jobs but, more recently, lodging chains have primarily been hiring persons with 4-year college degrees in the liberal arts or other fields and starting them in trainee or junior management positions.

Counsel turns to *Matter of Sun* to establish that hotel management positions require a baccalaureate degree in hotel management. This is not persuasive. *Matter of Sun* discusses the duties a hotel manager as that occupation is depicted in the *DOT*; however, the AAO does not rely on the *DOT* when determining whether a position qualifies as a specialty occupation. Further, the facts of this case are distinguishable from *Matter of Sun*, as the position in that case involved the management of a large hotel. The petitioner in this case is reflected by its expert to be a mid-sized hotel.

The AAO's conclusion, from the evidence to which it has referred, is that the petitioner fails to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position.

To establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to a letter from Mr. Cruse, the chairman of the board of Best Western International, Inc. In the letter, Mr. Cruse asserted that the mid-market hotel industry requires a baccalaureate degree in hotel/motel management or a related field for the proposed position. While Mr. Cruse's letter is relevant, no independent documentary evidence in the record substantiates his assertion, however. Going on record without supporting documentary evidence is not

¹ As indicated 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.

sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the proffered position is so complex or unique that it can be performed only by an individual with a degree. Furthermore, as discussed earlier, the *Handbook* and *CGI* reveal that a baccalaureate degree in a specific specialty such as hotel and restaurant management is not required for a managerial position in the hotel industry. Thus, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), that the petitioner normally requires a degree or its equivalent for the position, counsel refers to a letter from the petitioner's regional director of operations of the limited partnership. The AAO observes that the director's request for additional evidence sought a statement from the petitioner:

[S]pecifying the number of employees currently working for your firm (or previously working for your firm) in the position of front office manager (with similar duties as those proposed for the beneficiary). Specify the educational attainment of each of your other front office manager(s).

In response, the regional director of operations' letter stated that "most of the hotel management employees of the [p]artnership have bachelor[']s or master[']s degree in hotel and restaurant management or a related area"; but the response did not address the director's request. Thus, the evidence in the record does not establish that the petitioner normally requires a baccalaureate degree in hotel and restaurant management for the proposed position of front office manager. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In this decision the AAO has already conveyed that the *Handbook* and the *CGI* reveal that managerial positions in the hotel industry do not require a baccalaureate degree in a specific specialty such as hotel and restaurant management; and no evidence in the record demonstrates that the proposed duties are so specialized and complex as to require a baccalaureate degree in hotel and restaurant management. For this reason, the petitioner fails to establish this last criterion at 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 on this ground.

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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.