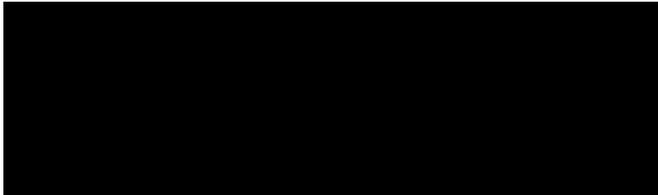


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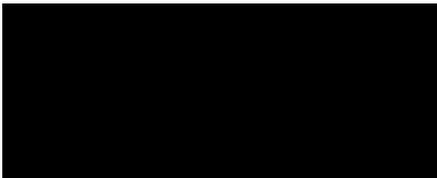
Date: SFP 19 2005

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 materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a hotel management company. It seeks to employ the beneficiary as a front desk or hotel manager and 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 record did not establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

On Form I-129 and an accompanying letter the petitioner describes itself as a hotel management company formed in 1997, with 142 employees and gross annual income of approximately \$14.5 million, that maintains franchises with several hotel chains such as Sheraton, Hampton Inn, Holiday Inn, Quality Inn, and Comfort Inns. The petitioner stated that it intends to hire the beneficiary as front desk manager of its Quality Inn located in Lexington, North Carolina. The duties of the job are described as follows:

Manages hotel or motel to ensure efficient and profitable operation. Establishes standards for personnel administration and performance, service to patrons, room rates, advertising, publicity, credit, food selection and service, and type of patronage to be solicited. Plans dining room, bar and banquet operations. Allocates funds, authorizes expenditures, and assists in planning budgets for departments. Interviews, hires, and evaluates personnel. Answers patrons' complaints and resolves problems. Delegates authority and assigns responsibilities to department heads. Inspects guests' rooms, public access areas, and outside grounds for cleanliness and appearance. Processes reservations and adjusts guests' complaints when working in small motels or hotels.

The petitioner stated that the minimum educational requirement for the position is a bachelor's degree in hotel management, business, or a related field. The beneficiary qualifies for the job, the petitioner indicated, by virtue of his bachelor of science from the College of Hospitality, Retail, and Sport Management of the University of South Carolina, granted on May 12, 2001, as well as a previously earned master of business administration (M.B.A.) from The Ohio University, granted in August 1995.

In response to the RFE counsel indicated that the proffered position is actually that of a hotel manager, even though the petitioner calls it a front desk manager. Counsel submitted a list of individuals it claims are currently employed by the petitioner as general managers in various of its franchise hotels as evidence that the petitioner normally requires a bachelor's degree or its equivalent for the position.

The director determined that the proffered position was not a specialty occupation. Quoting an excerpt from the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* about the training and other qualifications of lodging managers, which indicated that a variety of educational backgrounds and work experience could lead to a hotel management position, the director found that a baccalaureate degree in a field related to the proffered position is not required to perform the duties of the job. Another DOL publication cited by the petitioner, the *Dictionary of Occupational Titles (DOT)*, was dismissed by the director as an unpersuasive source of information about the educational requirements of hotel managers or other occupations. The fact that CIS may have approved other petitions for hotel manager positions, the director continued, does not mean that every hotel manager position qualifies as a specialty occupation. The circumstances of each case must be scrutinized individually. In the instant petition, the director stated, the evidence of record did not demonstrate that the proffered position involved the theoretical and practical application of a body of highly specialized knowledge that required a baccalaureate or higher degree in a specific specialty. The petitioner did not demonstrate that a baccalaureate degree is a common industry requirement for hotel manager positions by other hotels and motels similar to the petitioner. The director concluded that the record failed to establish that the proffered position qualified as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the director erred in determining that the proffered position does not require a baccalaureate degree and therefore does not qualify as a specialty occupation. Counsel submits an evaluation of the proffered position by a university professor and refers to a previous ruling by a district director that a hotel manager position requires a bachelor's degree or its equivalent. Counsel refers to its previously submitted internet job postings for hotel manager positions that required baccalaureate degrees, and reiterates its contention that both the *Handbook* and the *DOT* support its claim that a hotel manager is a specialty occupation.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

Based on the duties of the proffered position described by the petitioner, the AAO determines that the position fits within the *Handbook's* occupational category of lodging managers and accords most closely with the subcategories of general manager and front office manager. The duties of the occupation and the pertinent subcategories are described in the *Handbook*, 2004-05 edition, at 53-54:

Lodging managers are responsible for keeping their establishments efficient and profitable. In a small establishment with a limited staff, the manager may oversee all aspects of operations. However, large hotels may employ hundreds of workers, and the general manager usually is aided by a number of assistant managers assigned to the various departments of the operation. In hotels of every size, managerial duties vary significantly by job title.

General managers, for example, have overall responsibility for the operation of the hotel. Within guidelines established by the owners of the hotel or executives of the hotel chain, the general manager sets room rates, allocates funds to departments, approves expenditures, and establishes expected standards for guest service, décor, housekeeping, food quality, and banquet operations. Managers who work for chains also may organize and staff a newly built hotel, refurbish an older hotel, or reorganize a hotel or motel that is not operating successfully

Front office managers coordinate reservations and room assignments, as well as train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. Front office managers may adjust charges posted on a customer's bill.

With respect to the educational requirements of the occupation, the *Handbook* states as follows:

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

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

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.

Id. at 54. Though the above quoted language does indicate that a degree in hotel management is increasingly favored by hotels looking for managers, it also affirms that a non-specific liberal arts degree may also suffice in many cases. Moreover, the *Handbook* also explains that post-secondary training in hotel management does not necessarily mean a four-year baccalaureate degree. Hotel management degrees are at many levels, including two-year associate, four-year baccalaureate, and graduate master's degrees. In addition, degrees or diplomas in hotel management may be earned from institutions outside the college and university framework. Finally, while it may be increasingly uncommon, it is still possible to advance to a hotel management position with a high school education and experience in the field.

Based on the foregoing information it is clear that a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into a hotel management position. Therefore, the proffered position does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

With regard to the *DOT*, *supra* – another DOL resource about occupations – counsel asserts that other occupations with an SVP (“specific vocational preparation”) of 7.0 – identical to that of hotel managers – have been determined by CIS to be specialty occupations. The *DOT* (and its SVP ratings for individual occupations) is not a persuasive source of information about whether a particular job requires a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate the total number of years of vocational preparation required for a particular occupation. It does not specify how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a particular position would require. Accordingly, the *DOT* does not establish that a baccalaureate or higher degree in a specific specialty is required for entry into a hotel manager position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes four internet job announcements by hotels seeking to fill general manager positions. Only two of the announcements specify that applicants must have a baccalaureate degree in hotel management or a related specialty. Another states that “[a] degree in hotel-motel management, business or related field or equal experience is preferred.” That language does not state that a specialty degree (or equivalent experience) is required by the employer. Further, a general degree in business administration is not a

degree in a specific specialty for the purposes of establishing a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988). The last job announcement does not identify any particular educational requirements. Furthermore, only one of the announcements provides information about the size of the hotel. The petitioner does not indicate the size of the hotel that the beneficiary would be managing. Even if it were comparable to the advertised hotel, one comparable organization does not establish an industry standard. Thus, the four job announcements do not establish that a baccalaureate degree in a specific specialty is a common requirement for general manager positions among similar organizations in the hotel industry, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel refers to the “expert opinion evaluation” submitted on appeal by an assistant professor of business administration who states that “[c]ompanies seeking to employ a General Manager require prospective candidates to possess at least a bachelor’s degree in Hotel Management, Business Administration, or a related field.” The professor does not cite any references such as government surveys, industry publications, or other evidence for the basis of his opinion, which does not accord with the information in the DOL *Handbook*. The *Handbook*’s information is based on a compilation of interviews with individuals employed in the occupation and by institutions that grant degrees, certifications, or licenses in the field, from published training materials, and from websites. *See Handbook, id.*, at 19. CIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. When an opinion is not accord with other information or is in any way questionable, however, CIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International, Inc.*, 19 I&N Dec. 791, 795 (Comm. 1988). The AAO determines that the expert opinion evaluation does not establish that a baccalaureate degree in a specific specialty is a common requirement for general manager positions in the hotel industry, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the hotel manager position is so complex or unique that it can only be performed by an individual with a specialty degree. Accordingly, the proffered position does qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel cites a 1966 decision by a district director in the legacy Immigration and Naturalization Service (INS), *Matter of Sun*, 12 I&N Dec. 535 (DD. 1966), as evidence that a hotel manager position has already been found to require a baccalaureate degree or its equivalent and is therefore a specialty occupation. That decision provides little information about the employer or the duties of the position. As such, the duties of the hotel manager position in that case cannot be viewed as automatically comparable to those involved in the instant petition. Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). Moreover, the issue in *Matter of Sun* was whether a hotel manager position qualified as a profession under section 101(a)(32) of the Act, not whether it qualified as a specialty occupation under section 214(i)(1) of the Act, a provision that did not yet exist in 1966. Therefore, the decision in *Matter of Sun* does not establish that the proffered position at issue in this petition qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

Counsel asserts that the position meets the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), because the petitioner has previously required its managerial employees to have college degrees or equivalent work experience. Counsel refers to a previously submitted list of thirteen

current and prior general managers hired by the petitioner to work at their various hotels. Seven of the thirteen did not complete a baccalaureate degree in any field. Though counsel asserts that each of those seven individuals had a combination of academic credits and experience in the hotel industry qualifying him or her for a general manager position, the petitioner has not provided any evidence of educational equivalency to indicate that the seven individuals had the equivalent of a baccalaureate degree in a specialty. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)). Accordingly, the record does not establish that the petitioner normally requires a specialty degree or its equivalent for the position of hotel manager, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the record does not establish that the proffered position meets the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), because the petitioner has not demonstrated that the duties of the hotel manager position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree in a specific specialty. Thus, the proffered position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons discussed above, the hotel manager position does not meet any of the criteria in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The petitioner has not established that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.