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U.S. Citizenship
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FILE: LIN 04 260 53167 Office: NEBRASKA SERVICE CENTER Date: **APR 25 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 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 hotel accounts manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 and additional evidence including “supplementary” letters from similar businesses.

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 hotel accounts manager. Evidence of the beneficiary’s duties includes: the I-129 petition; the petitioner’s September 20, 2004 letter in support of the petition; and the petitioner’s response to the director’s request for evidence. According to this evidence, the beneficiary would

perform duties that entail: developing annual sales plans; identifying critical marketing issues and assisting in the development of plans to adjust to changing market trends and conditions; helping with the structure of hotel programs including the catering of banquets and business meetings; collaborating with the sales director in fostering partnerships with advertising agencies and outside suppliers; ensuring that advertising campaigns are well targeted and well executed; developing new business; and performing revenue, customer relations, and operations management. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hotel or hospitality management, economics, marketing, or a closely related field.

The director found that the proffered position, which is similar to a lodging manager, was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the proffered position combines the duties of a market research analyst with advertising, sales, and promotions managers, and is not a lodging manager position. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 8, which according to counsel, requires a degree to enter into the position. Counsel cites to *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966), to state that a hotel manager position qualifies as a member of the professions. Counsel also states that the record contains letters from similar organizations and a professional position evaluation as supporting documentation.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. A review of the Market and Survey Researchers category in the 2006-07 *Handbook* does not indicate that a bachelor's degree in a specialty is required for a market research analyst position.¹ As the market research analyst does not require a degree in a specialty, the position does not satisfy the regulatory requirement for eligibility as a specialty occupation under the first criterion. Moreover, no evidence in the

¹ A review of the website of Marketing Research Association (MRA) at <http://www.mra-net.org/edevents/cguide2.cfm#3> finds that a wide variety of degrees is acceptable for entry into the industry including liberal arts, social science, and communications.

Handbook indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally required for advertising, marketing, promotions, public relations, and sales managers jobs.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate 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 is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe 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 petitioner's citation to the *Matter of Sun* is also noted. This 1966 decision, however, dealt with membership in the professions, not membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act, 8 U.S.C. § 1184(i). That statutory language effectively supersedes *Matter of Sun*.

The record also contains industry standard letters from similar businesses, whose writers assert, in part, that the proffered position requires a bachelor's degree in hotel or hospitality management, or a related field. The writers, however, do not provide sufficient evidence in support of their assertions or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in a specific specialty. One of the writers provides copies of the diplomas for three of its employees, reflecting two Bachelor of Arts degrees and one Bachelor of Science degree. This information is not convincing evidence that the position of a hotel accounts manager is a specialty occupation in this case because there is no evidence of the specific specialties of these degrees. Another writer provides a copy of the resume of its sales associate, indicating that this employee holds a bachelor's degree in hotel/restaurant management. To demonstrate that it normally requires a degree in hotel/restaurant management for employment in the proffered position, the writer would need to document the credentials of more than one employee. Going on record without supporting documentary evidence is not 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 *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The opinion rendered by the professor is not probative. First, the evidence of record does not establish that the professor is an expert in the area in which he is opining. Despite his self-endorsement, neither the professor's letter, his resume, nor any other evidence of record substantiates that he is qualified as an expert on industry-wide recruiting and hiring practices regarding hotel accounts managers. Second, the opinion is based upon insufficient information about the particular position proposed here. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for accounts managers. None of the advertisements, however, stipulates a bachelor's degree in a specific specialty, thereby confirming the position of the DOL in its *Handbook*, namely that a wide range of educational backgrounds is suitable for entry into market and survey researcher, and advertising, marketing, promotions, public relations, and sales managers jobs. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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.