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U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 027 53223 Office: VERMONT SERVICE CENTER Date: **JAN 13 2006**

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, Director
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and dismissed a subsequent motion to reopen. 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 its 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 on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Immigration and Nationality Act (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.

The term “specialty occupation” is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which 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 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.

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 proposed position.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for evidence (RFE); (3) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; (5) the petitioner’s motion to reopen; (6) the director’s dismissal of the petitioner’s motion; and (7) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner’s October 17, 2003 letter of support stated that the duties of the proposed position would involve supervising and coordinating the activities of workers engaged in the taking, recording, and canceling of reservations in the front office. The beneficiary would also be required to develop and implement the general sales policy of the hotel and restaurant in coordination with the financial department, execute this sales policy, handle personnel management, and promote the business as it opens to new markets.

The director denied the petition, finding that the petitioner had satisfied none of the four criteria set forth at § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

Counsel submitted the Form I-290B on July 1, 2004. Although counsel submitted a letter with the Form I-290B, she also marked the box at section two of the Form I-290B to indicate that a brief and/or evidence would be sent within 30 days. The AAO never received this additional brief and/or evidence. As such, the AAO faxed a follow-up letter to counsel’s office on December 22, 2005, requesting that the brief and/or additional evidence be sent within five business days.

Counsel responded to the AAO’s facsimile on December 29, 2005 and indicated that she had not sent the brief and/or additional evidence within the 30-day period in 2004. Thus, the AAO deems the record complete and ready for adjudication.

In determining whether a proposed 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. The AAO routinely consults the Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The *Handbook* discusses the duties and educational qualifications of lodging managers. The *Handbook* offers the following information:

A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for both vacationing families and business travelers. While most lodging managers work in traditional hotels and motels, some work in other lodging establishments, such as camps, inns, boardinghouses, dude ranches, and recreational resorts. In full-service hotels, lodging managers help their guests have a pleasant stay by providing many of the comforts of home, including cable television, fitness equipment, and voice mail, as well as specialized services such as health spas. For business travelers,

lodging managers often schedule available meeting rooms and electronic equipment, including slide projectors and fax machines.

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, decor, 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. In order to fill entry-level service and clerical jobs in hotels, some managers attend career fairs.

The *Handbook* provides the following information regarding the educational background necessary for entry into the field:

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.

Thus, the *Handbook's* findings do not support counsel's contention that a bachelor's degree is required for entry into the field, as it reports that postsecondary training is "preferred" by many employers.

Employer preferences do not equate to employer requirements, and do not rise to the “normally required” standard imposed by the regulation. Such a preference for postsecondary “training” does not equate to a bachelor’s degree or university 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.

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. However, no evidence to satisfy this prong has been submitted.

The second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) requires the petitioner to prove that the duties of the proposed position are so complex or unique that only an individual with a degree can perform them. The nature of the duties of the proposed position as set forth in the petition does not support such a finding, as they are similar to the positions discussed in the *Handbook*, which do not require a degree. The record contains no documentation to support a finding that the proposed position is more complex or unique than hotel managers at other, similar organizations.

Therefore, the petitioner cannot establish that the proposed position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the proposed position qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a showing that the petitioner normally requires a degree or its equivalent for the proposed position. To determine a petitioner’s ability to meet this criterion, the AAO normally reviews the petitioner’s past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas.

The submitted evidence fails to establish the third criterion, as no evidence to support the assertion that the petitioner normally requires a degree or its equivalent has been presented. The petitioner has submitted a letter, in which it states the following:

I checked with Choice hotels and they require that all general managers of their upper brands such as Quality, and Clarion have a bachelor’s degree. They also require a minimum of 40 hours a year [of] attendance at their educational seminars for which you get a certificate. These are the requirements of their Franchior Choice Hotels, International, Inc. [sic].

Additionally, counsel states on appeal that “we specifically stated that Choice Hotels requires its franchisees to only hire holders of bachelor’s degrees[,] preferably in a related field.”

However, no supporting evidence has been supplied to verify these statements. Simply 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)). Nor can counsel’s unsupported statement that the petitioner requires a degree satisfy this criterion, as the unsupported assertions of counsel do not constitute evidence and will not satisfy the petitioner’s burden of proof. *Matter of Obaigbena*, 19 I&N

Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the petitioner's letter did not state that a degree in a specific course of study is required. The director highlighted this issue in her dismissal of the motion to reopen. On appeal, counsel concedes that a degree in a specific field is not required:

Further, although a degree in a specific field is not required, the beneficiary's degree is for hotel management – so the degree is completely correct. The examiner is incorrect in his reading of the law related to [the] H-1B. A degree in a specific field[,] while making the easier case, has never been a requirement for H-1B qualification. . . . The examiner seems to believe that only positions that state a requirement for a degree in a specific field are H-1B qualified.

However, as noted previously, 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 proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study.

Therefore, the proposed position does not qualify as a specialty occupation under the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires a demonstration that 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 of the proposed position 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. Again, there is no information in the record to support a finding that the proposed position is more complex or unique than similar positions in other, similar organizations. Therefore, the evidence does not establish that the proposed position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the position qualifies for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will 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.