

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



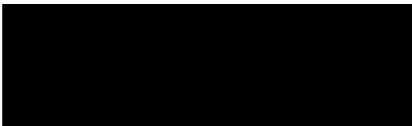
D2

FILE: LIN 04 266 51818 Office: NEBRASKA SERVICE CENTER Date: JUN 15 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

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 operator and seeks to employ the beneficiary as a hotel manager. It endeavors to classify her 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant 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.

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 are 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) the 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) the Form I-290B with 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 manager. Evidence of the beneficiary’s duties includes the Form I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would:

- Ensure the efficient and profitable operation of the hotel;
- Allocate funds, authorize expenditures, and assist in planning budgets;
- Establish standards for personnel administration and performance;
- Provide service to patrons;
- Establish room rates;
- Publicize the food service and type of patronage to be solicited;
- Respond to customer complaints and resolve problems;
- Interview, hire and evaluate personnel;
- Delegate authority and assign responsibility to department heads; and
- Plan dining room, bar and banquet operations.

The petitioner requires a minimum of a bachelor’s degree in business administration, economics or hotel management for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position. Factors often considered by CIS when determining this criterion include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)*, reports that the industry requires a degree; whether an industry 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 information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for lodging managers. The *Handbook* notes that hotels increasingly emphasize specialized training for lodging managers. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, but a college liberal arts degree may be sufficient when coupled with related hotel experience. In the past, many managers were promoted from the ranks of hotel staff. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. There are over 800 educational facilities that have programs leading to recognition in hotel or restaurant management. They include community colleges, junior colleges, universities, vocational and trade schools. Large motel and hotel chains offer better opportunities for advancement than small independently owned establishments and career advancement may be accelerated by completion of certification programs offered by various associations. The petitioner has, therefore, failed to establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the offered position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Educational qualification for the offered position exists from baccalaureate level liberal arts degrees, to education earned in junior colleges or vocational and trade schools.

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support thereof submits an opinion letter from [REDACTED] Associate Professor of Hotel [REDACTED] and eight job advertisements. [REDACTED] states that after reviewing an outline of the beneficiary's job duties, it is his opinion that the responsibilities associated with the position make a four-year degree, or its equivalent, in the area of hotel management or a related field a necessity. He further states that he believes that it is a general practice within the field of hotel management for a hotel with a gross annual income of approximately \$450,000 to hire a hotel manager with at least a bachelor's level or equivalent background. [REDACTED] does not, however, provide any basis for his opinion or belief as to industry educational requirements for the position, except for his education and experience. He does not provide or reference any labor market survey, trade publication or study, or any other source of authoritative information to support his opinion. Simply going on the 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 190 (Reg. Comm. 1972)). The AAO will afford Dr. Sturman's opinion little weight since he provides no basis for his opinion. CIS may, in its discretion, use as advisory opinion 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). [REDACTED] opinion does not establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations for the offered position.

The eight job advertisements submitted also fail to establish that a degree in a specific specialty is common to the industry for parallel positions in similar organizations. One advertisement for a hotel general manager states that a bachelor's degree from a four-year college or university, **or** one to two years related experience and training will qualify applicants for the position. The advertisement does not state that the college degree need be in any specific field of study. Further, one or two years of related experience is not equivalent to a baccalaureate level education. Four advertisements state that a four-year college degree or equivalent education/experience is required for the position. Again, the advertisements do not require the degree to be in any specific specialty. The remaining three advertisements state that a "bachelor's degree in Hotel/Restaurant Management or Business is a plus," but do not otherwise state that a degree in any specific discipline is required for the advertised positions. The petitioner has not established the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties described by the petitioner appear to be routine for hotel managers and regularly performed by individuals with a wide range of education and/or experience. Reference is again made to the opinion letter submitted [REDACTED] states that due to the diversity of the duties to be performed, a bachelor's degree in hotel management or a related field would be required for the position. He provides no basis for this statement except to state that it is his opinion. He does not explain why his opinion differs from other authoritative information, such as that contained in the *Handbook*, or explain what about the duties to be performed is different or more complex than the duties performed by other hotel managers in similar organizations. The duties of the position detailed by the petitioner are general hotel management duties that are routine in the industry. They are neither unique or so complex that they can only be performed by someone with a degree in a specific specialty. As noted in the *Handbook*, hotel management positions are regularly performed by individuals with less than a baccalaureate level education. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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