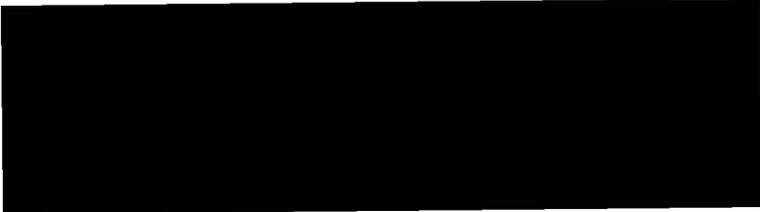


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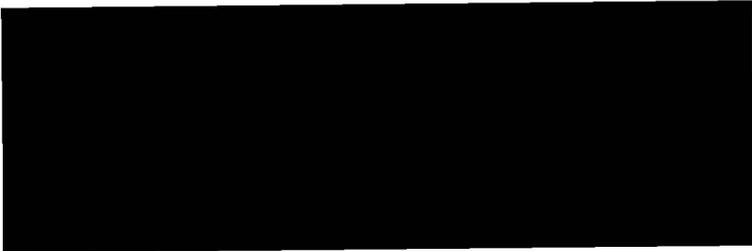
FILE: EAC 04 261 53314 Office: VERMONT SERVICE CENTER Date: **JUL 12 2006**

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.

*for Michael F. Kelly*  
Robert P. Wiemann, Chief  
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 an assistant room service 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. Counsel submits a timely appeal.

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) 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, the appeal brief, and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an assistant room service 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 the job description entitled "Room Service Manager," the beneficiary's duties are as follows: interview, hire, discipline, manage, and direct room service, mini bar and tea service staff of 15 employees; participate in and develop staff training programs and ensure that the staff is certified and retrained; ensure work schedules for all areas of room service, mini bar and tea service are prepared and meet labor standards and budgetary concerns such as hotel profitability and cost containment; order food and beverage supplies and maintain inventory for all shifts; work hands-on in taking orders, prep, set up, delivery and cleaning-up along with the service staff; assist in developing menus and promotions; interact with guests and obtain feedback from them through verbal, written, and guest satisfaction reports; evaluate guest information to determine the action to improve and maintain service; respond to guest problems and complaints to ensure satisfaction of guests' stay and accommodate special requests; meet with assistants and line staff to review daily activities, group business, and amenities regarding in-room dining; have operation knowledge regarding room service equipment and software; oversee bookings and service for all hospitality suites and group functions; ensure room service staff are aware of emergency and fire procedures; handle emergency situations; maintain an effective flow of communication from room service to all departments; create, revise, and maintain room service policies, procedures, and operating standards; supervise and train staff to ensure compliance with hotel policies and procedures by room service staff; handle reservations for tea service; review overtime, supply requisitions, and cashier procedures; maintain statistical data that covers forecasts, revenues, and average checks to predict future potentials and to assist with forecasting and budgeting; keep a positive attitude and recognize a successor; maintain a close relationship with sales, catering, and convention services departments; ensure the accurate execution of group contracts, menus, billing information, and special requests; ensure staff is aware of special handling, room capacities, menus, set up, etc.; prepare special reports and handle special projects and assignment as directed by the Food and Beverage Director; be familiar with local, federal, and state regulations. For the proposed position, the petitioner asserts that it requires at least a baccalaureate degree in hotel management and related experience which includes food and beverage experience and interpersonal and leadership skills.

The director denied the petition, finding that the offered position fails to qualify as a specialty occupation. The director found the facts in *Matter of Sun*, 12 I&N Dec. 535 (DD 1966), a case concerning a hotel manager position, different from those in the instant petition. According to the director, the hotel manager in *Matter of Sun* managed an entire hotel; the duties of the assistant room service manager, which is the position presented here, are more limited in nature and scope than a hotel manager of an entire hotel. The director found the information in the *Dictionary of Occupational Titles (DOT)* failed to establish the offered position as a specialty occupation.

On appeal, counsel states that the evidence submitted on appeal describes the beneficiary's coursework and how it corresponds to the proposed duties. Counsel submits a job posting to demonstrate that the petitioner's

degree requirement is common to the industry in parallel positions among similarly elite hotels. According to counsel, the spreadsheet submitted on appeal reflects that the petitioner normally requires a bachelor's degree for the proposed position. Counsel submits a field memorandum which discusses Specific Vocational Preparation (SVP) ratings.

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 2006-2007 edition of the Department of Labor's *Occupational Outlook Handbook* (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 *DOT* is not persuasive. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of 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 only the total number of years of vocational preparation required for a particular position. It does not describe 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 position would require. For this reason, the director did not err in discounting the *DOT* information.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the proposed duties are a combination of those of a food service manager and a food and beverage manager. The *Handbook* describes those occupations as follows:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining

experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of the restaurant, its equipment, and facilities. Managers generally are responsible for all of the administrative and human-resource functions of running the business, including recruiting new employees and monitoring employee performance and training.

*Food and beverage managers* oversee all food service operations maintained by the hotel. They coordinate menus with the Executive Chef for the hotel's restaurants, lounges, and room service operations. They supervise the ordering of food and supplies, direct service and maintenance contracts within the kitchens and dining areas, and manage food service budgets.

The beneficiary's duties are encompassed within those of a food service manager and a food and beverage manager. The beneficiary, for example, will manage and direct room service, mini bar and tea service staff of 15 employees; order food and beverage supplies and maintain inventory; assist in developing menus and promotions; interact with guests and obtain feedback from them; and maintain statistical data that covers forecasts, revenues, and average checks for forecasting and budgeting purposes.

The *Handbook* indicates that employers do not require a baccalaureate degree in hotel management for a managerial position in the hotel industry. The *Handbook* states:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel, restaurant, or hospitality management is preferred for most hotel management positions; however, a college liberal arts degree may be sufficient when coupled with related hotel experience or business education. Internships or part-time or summer work experience in a hotel 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 degree programs include work-study opportunities.

Community colleges, junior colleges, and many universities offer certificate or degree programs in hotel, restaurant, or hospitality management leading to an associate, bachelor, or graduate degree. Technical institutes, vocational and trade schools, and other academic institutions also offer courses leading to formal recognition in hospitality management. In total, more than 800 educational facilities provide academic training for would-be lodging managers. 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.

According to the *Handbook*, employers do not require a baccalaureate degree in hotel management for a food services manager position. It states:

Experience in the food services industry, whether as a full-time waiter or waitress or as a part-time or seasonal counter attendant, is essential training for a food services manager. Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs which require internships and real-life experience to graduate. Some restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated experience, interest and aptitude. Many restaurant and food service manager positions—particularly self-service and fast-food—are filled by promoting experienced food and beverage preparation and service workers. Waiters, waitresses, chefs, and fast-food workers demonstrating potential for handling increased responsibility sometimes advance to assistant manager or management trainee jobs. Executive chefs need extensive experience working as chefs, and general managers need prior restaurant experience, usually as assistant managers.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. Almost 1,000 colleges and universities offer 4-year programs in restaurant and hospitality management or institutional food service management; a growing number of university programs offer graduate degrees in hospitality management or similar fields. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification. Both 2- and 4-year programs provide instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science. Some programs combine classroom and laboratory study with internships providing on-the-job experience. In addition, many educational institutions offer culinary programs in food preparation. Such training can lead to a career as a cook or chef and provide a foundation for advancement to an executive chef position. Many larger food service operations will provide, or offer to pay for, technical training, such as computer or business courses, so that employees can acquire the business skills necessary to read a spreadsheet or understand the concepts and practices of running a business. Generally, this requires a long-term commitment on the employee's part to both the employer and to the profession.

The AAO agrees with the director's conclusion that *Matter of Sun* fails to establish the offered position as a specialty occupation. The director correctly distinguished the facts and context of the position in *Matter of Sun* from the position that is presented here. In *Matter of Sun* the hotel manager was responsible for managing the operations of a large hotel; here, the beneficiary's management of operations is limited to room service, the mini bar, and tea service. Consequently, the beneficiary's responsibilities differ in scope and complexity from those of a hotel manager who is responsible for the entire operations of a large hotel. Further, because *Matter of Sun* was decided in 1966 it did not involve the application of the specialty occupation criteria, as this was legislated 20 years later.

The AAO's conclusion, from the evidence to which it has referred above, 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 job posting that seeks a room service manager for the [REDACTED]. This evidence is not persuasive in demonstrating the petitioner's requirement of a bachelor's degree in hotel management as the job posting does not state that such a degree is required for the position. Moreover, the [REDACTED] has 1,427 guest rooms; thus, it is far larger than the petitioner, which has 263 guest rooms. Thus, the job posting fails to demonstrate that a specific degree requirement is common to the industry in parallel positions among similar organizations.

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, the *Handbook* reveals that a baccalaureate degree in a specific specialty such as hotel and restaurant management is not normally required for a managerial position in the hotel industry or for a food service manager, and the record fails to establish how the proffered duties as there listed are more complex than or unique from the range of duties usually performed by persons in similar positions who do not have at least a baccalaureate or the equivalent in a job-related specialty. 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 the petitioner's spreadsheet. The spreadsheet reflects that 12 of the petitioner's former and current employees held a bachelor's degree in a field relating to the proposed position. This evidence is not persuasive, however. The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000). The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act.<sup>1</sup> To interpret the regulations any other way would lead to absurd results: if CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388. As discussed earlier in this decision, the *Handbook* shows that the proposed duties are encompassed within those of a food

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<sup>1</sup> The court in *Defensor v. Meissner* observed that the four criteria at 8 C.F.R. 214.2(h)(4)(iii)(A) present certain ambiguities when compared to the statutory definition, and "might also be read as merely an additional requirement that a position must meet, in addition to the statutory and regulatory definition." *See id.* at 387.

service manager and a food and beverage manager, which are occupations that do not require in a bachelor's degree in a specific field or narrow range of disciplines. Thus, the evidence in the record fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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. No evidence in the record demonstrates that the nature of this particular proposed position is so specialized and complex as to require a baccalaureate degree in hotel management. On the face of the duties as described in this record, it is not apparent that they are so specialized or complex that their performance requires the application of highly specialized knowledge that is usually associated with at least a bachelor's degree in a specific specialty. Further, to the extent described in the record, the duties of the particular position proffered here do not appear more complex and specialized than those that the *Handbook* ascribes to food service managers and food and beverage service managers, and the *Handbook* does not indicate that such positions normally require or are usually associated with at least a baccalaureate degree in a specific specialty; the record contains no evidence that documents the proffered position as so complex and specialized as to require the knowledge usually associated with at least a bachelor's degree in a specific specialty. For this reason, the petitioner fails to establish the 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.

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.