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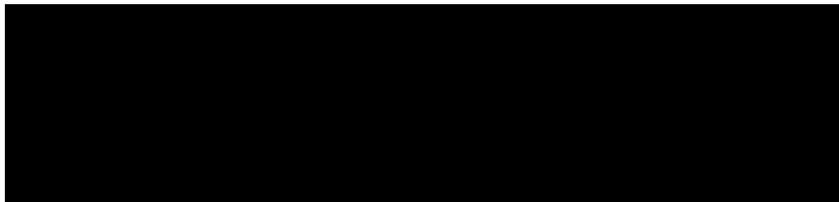


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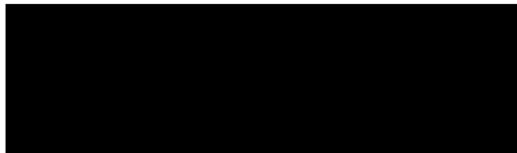
FILE: LIN 04 240 50934 Office: NEBRASKA SERVICE CENTER Date:

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*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** On August 25, 2004, the petitioner filed Form I-129, Petition for a Nonimmigrant Worker (Form I-129), seeking to employ the beneficiary as a hotel management analyst 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, Nebraska Service Center, denied the nonimmigrant visa petition and the petitioner appealed that decision to the Administrative Appeals Office (AAO). The AAO dismissed the appeal on September 7, 2006. Subsequently, JPRA Corporation, formerly Quest Inn & Mart filed a complaint for declaratory judgment in the U.S. District Court for the Western District of Washington. *JPRA Corporation, formerly Quest Inn & Mart, a Washington Corporation; Dorothy Tan, et al. v. Alberto R. Gonzales, et al.*, C06-1781 RSL (December 20, 2006). Upon review, the AAO, on its own motion, reopened the proceeding to reconsider its previous decision pursuant to 8 C.F.R. § 103.5(a)(5)(ii). The AAO issued a notice and request for evidence and counsel for the petitioner submitted a response, received June 19, 2007. The appeal will be sustained. The petition will be approved.

The petitioner owns a hotel and seeks to employ the beneficiary as a hotel management analyst. Accordingly the petitioner endeavors to classify the beneficiary as a nonimmigrant 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).

On April 27, 2005, the director denied the petition determining that the petitioner had not established that the proffered position is a specialty occupation. Upon review of the record, the AAO found that the petitioner had described the duties of a lodging manager and a marketing manager and that neither occupation required a bachelor's degree in a specific discipline. The AAO acknowledged the petitioner's statements regarding its intended expansion but found that the record did not contain sufficient documentation substantiating the petitioner's claim.

Upon reopening the matter, the AAO reiterated that the information that had been provided regarding the proffered position did not establish the proffered position as a specialty occupation. The AAO sought an explanation of how the duties of the proffered position incorporated the duties of a management or marketing analyst and a description of tasks and projects the beneficiary would perform in carrying out duties in the daily operation of the petitioner's hotel. The AAO also noted the insufficient data submitted regarding the petitioner's expansion plans and requested the specific duties the beneficiary would perform in relation to the petitioner's property development, management of its hotel(s), and marketing of the hotel(s). The AAO requested an explanation of how the duties of the proffered position extended beyond the routine tasks of a lodging or marketing manager.

The issue in this matter is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

In response to the AAO's March 28, 2007 RFE, the petitioner submits among other things: its business plan prepared by the beneficiary; a market analysis report prepared by the beneficiary; and a revised description of the hotel management analyst's job duties. The petitioner explains that the proffered position is more than that of a lodging manager overseeing the daily operations of the hotel; but rather is a position that evaluates statistics and past results to plan for the future. The petitioner provides an example of the beneficiary's analysis and recommendations directly affecting the petitioner's property development and expansion plans. The petitioner also provides an example of the beneficiary's analysis of theories of management techniques and recommendation and implementation of the theories to streamline the organization's operations. The petitioner also references the beneficiary's market research on Chinese tourism. It is the examples of specific tasks and projects demonstrating the duties of the proffered position and relating those duties to the

petitioner's specific business as well as the explanations and descriptions that are specific to the petitioner's business that enables CIS to make an informed decision regarding the nature of a proffered position. The information the petitioner provides in response to the AAO's RFE demonstrates that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The record reflects that the beneficiary will be performing the duties of a specialty occupation and has obtained a bachelor's degree from Washington State University in the specific discipline of hotel and restaurant management. The AAO finds in this matter that the beneficiary's degree, although unnecessary for a strictly hotel managerial position, is directly related to the petitioner's requirements for an individual with specialized training in a management field. Thus, the AAO finds in this matter that the beneficiary is qualified to perform the services of the specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

**ORDER:** The appeal is sustained. The director's April 27, 2005 decision and the AAO's September 7, 2006 decision are withdrawn and the petition is approved.