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U.S. Citizenship
and Immigration
Services

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AUG 23 2007

FILE: EAC 06 002 51692 Office: VERMONT 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, 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 manager. It endeavors to classify him 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 asserting 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:

- Prepare the time schedule for all employees;
- Allocate duties to maids for laundry;
- Order breakfast for guests;
- Take care of maintenance problems;
- Order hotel supplies;
- Prepare and answer correspondence;
- Evaluate central reservations and allocate rooms;
- Review and check the night audit report;
- Match the safe drops for all shifts;
- Make bank deposits;
- Settle credit cards;
- Address customer complaints;
- Check inventory of supplies;

- Prepare and mail checks to suppliers;
- Reconcile travel agents accounts;
- Check rooms for quality assurance;
- Conduct public relations with Choice Int. for improving occupancy;
- Look for customer relations management; and
- Attend to marketing.

The petitioner requires a minimum of a bachelor's degree in business administration for entry into the proffered position.

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 (General Manager). 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 copies of four job advertisements and two opinion letters. Four job advertisements are insufficient in scope to establish an industry educational standard for the proffered position. Further, one of advertisements states that the minimum educational requirement for the position is a high school diploma. The remaining three advertisements require a college degree, but do not indicate that the degree need be in any specific educational discipline. The opinion letters are from a hotel owner [REDACTED] and an officer [REDACTED] of a hotel corporation. [REDACTED] states that he is a Days Inn franchise owner and that the individuals he has previously hired for motel manager positions held bachelor's degrees in accounting, marketing, commerce, finance or hotel management. [REDACTED] also states that he has routinely hired hotel managers in the past with a bachelor's degree. Neither opinion writer, however, provided documentation establishing that they have, in fact, employed such degreed individuals in the past. 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 evidence of record does not establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a degree requirement is common to the industry in parallel positions among similar organizations.

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

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 and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Nothing in the record establishes that the duties to be performed by the beneficiary are any more unique, or specialized and complex, than the duties referred to in the *Handbook* that are routinely performed by lodging managers who do not possess a baccalaureate level education. As such, 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.