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20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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MAY 31 2007

FILE: EAC 05 242 52450 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.

for Michael T. 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 owns and operates the hotel Courtyard by Marriott Boston/Revere in Massachusetts. It seeks to employ the beneficiary as an account supervisor. 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 based on his determination that the record failed to establish the proffered position as a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence; (3) counsel's response to the director's request; (4) the director's denial letter; and (5) Form I-290B, with counsel's brief. The AAO reviewed the record in its entirety before reaching its decision.

The issue before the AAO is whether the 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) consistently 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.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. 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 (5th Cir. 2000). The critical element is not the title of the position nor 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.

The petitioner seeks the beneficiary's services as an account supervisor. Evidence of the beneficiary's duties includes: the Form I-129; the petitioner's August 5, 2005 cover letter in support of the petition; and counsel's November 7, 2005 response to the director's request for evidence. As stated by the petitioner's director of human resources in her August 5, 2005 letter, the proposed duties are as follows:

As a sales manager, [the beneficiary] will be responsible for determining the demand for services offered by the Marriott Hotel and its competitors and identifying potential customers. She will also help develop strategies with the goal of maximizing Marriott's profits or share of the market while ensuring its customers are satisfied. . . . She will be expected to have knowledge of principles and methods for showing, promoting, and selling hospitality and hotel products and services. This includes marketing strategy and tactics, product demonstration, sales techniques, and sales control systems. *She will perform routine or moderately complex tasks that require limited exercise of judgment* and exhibit experience and familiarization with [the petitioner's] methods, practices and programs. [The beneficiary] may assist the staff in performing tasks requiring skills equivalent to a higher-level position and may perform higher-level work for training and development purposes. Her work will be closely monitored and reviewed for accuracy. (Emphasis added.)

In response to the director's request for additional evidence, the petitioner submitted a job description for the proffered position describing the proposed duties, in part, as follows:

1. Direct the management of the organization, or a department, subdivision, function, component, or organization as well as develop and manage a budget.
2. Establish the goals and policies of organization, component or function and not only proactively identifies, qualifies and solicits new business to achieve personal and hotel revenue goals but also closes the best opportunities for the hotel based on market conditions and hotel needs.
3. Give the direction to others for the day[-]to[-]day operations of the activity or function to assist General Manager and regional director of sales and marketing with office management and work flow in accordance with operations manager.

In her denial, the director found that the proposed duties related to lodging managers do not require a bachelor's degree. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the director totally ignored the petitioner's evidence submitted as proof that the proffered position is a specialty occupation. In support of the appeal, counsel submits copies of the petitioner's previously submitted documentation, including an expert opinion from a college professor.

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 turns first to 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 *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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2006-07 edition, indicates that a baccalaureate or higher degree in

a specific specialty, or its equivalent, is required for lodging manager jobs. Moreover, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally required for advertising, marketing, promotions, public relations, and sales managers jobs.

The record contains an academic opinion from a college professor who asserts that the proffered position requires a bachelor's degree in hospitality administration and marketing, or a related field. The opinion rendered by the professor is not probative. Despite his self-endorsement, neither the professor's letter, his resume, nor any other evidence of record substantiates that he is qualified as an expert on industry-wide recruiting and hiring practices regarding hotel account supervisors. Further, the professor does not provide any evidence in support of his assertion or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in hospitality administration and marketing, or a related field. The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO 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, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Regarding parallel positions in the petitioner's industry, the record contains a letter from the human resources generalist from another Marriott hotel who submits copies of the bachelor's degree and master's degree of one of its sales managers. For this employer to demonstrate that it normally requires at least a bachelor's degree for employment as a sales manager, however, it would need to document the credentials of all of its sales managers, not just one. 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)).

The record also does not include any evidence from individuals, firms, or professional associations regarding an industry standard. The record does not demonstrate that the proffered position is more complex than or unique from the range of lodging manager positions for which the *Handbook* indicates no requirement for at least a bachelor's degree in a specific specialty. The duties that comprise the proffered position are described in generalized terms, (such as "[d]irect[ing] the management of the organization, or a department, subdivision, function, component, or organization as well as develop and manage a budget"), that do not indicate the necessity for a body of highly specialized knowledge attained by at least a baccalaureate degree level of coursework in a specific specialty.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The record contains a letter from the petitioner's human resources director stating that three of its current sales managers hold bachelor's degrees. The record, however, contains no evidence of the educational backgrounds of the petitioner's sales managers. Again, simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). In this regard, the petitioner fails to establish that the proffered position entails the theoretical and practical application of a body of highly specialized knowledge attained by a bachelor's degree, or the equivalent, in a specific specialty.

Further, the AAO notes that, regardless of any degree requirement imposed by the petitioner, the evidence of record does not substantiate a need for at least a bachelor's degree in a specific specialty. CIS must examine the ultimate employment of the alien and determine whether the position qualifies as a specialty occupation, regardless of the petitioner's past hiring practices. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5th 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. 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.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

Counsel states, on appeal, that the director totally ignored the petitioner's evidence and supporting documentation. A review of the record in its entirety, however, finds that the proposed duties do not exceed in scope, specialization, or complexity those duties usually performed by lodging managers or by advertising, marketing, promotions, public relations, and sales managers, occupational categories for which the *Handbook* indicates no requirement for or usual association with a baccalaureate or higher degree in a specific specialty. It is further noted that the petitioner's director of human resources specifically states in her August 5, 2005 letter that the beneficiary "will perform routine or moderately complex tasks that require limited exercise of judgment and exhibit experience and familiarization with [the petitioner's] methods, practices and programs." As such, the petitioner has not demonstrated that the proposed duties elevate the complexity of the proffered position to require a bachelor's degree in a specific specialty. To the extent that they are depicted in the record, the duties 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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.

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.