

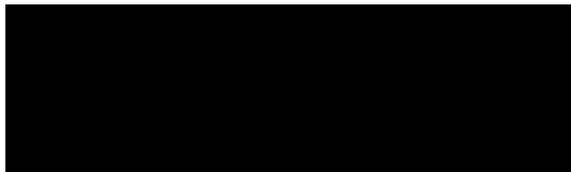
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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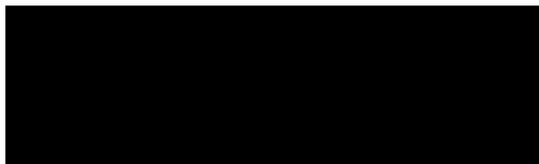
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Date: **MAY 02 2011** Office: CALIFORNIA SERVICE CENTER FILE: 

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:

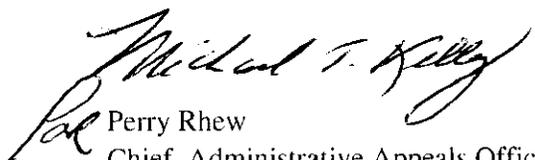


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 and hospitality services provider. It seeks to employ the beneficiary as a General Manager 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, concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

The primary issue that the AAO will consider is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In this matter, the petitioner seeks to employ the beneficiary as a General Manager. The initial letter from the petitioner submitted with the petition stated that the beneficiary would:

- Maximize rooms revenue and yield penetration through management of room inventories;
- Compile data, analyze trends, develop accurate forecasts, and communicate to departments to ensure appropriate staffing levels;
- Monitor staff hiring and staffing requirements;

- Oversee training of new employees;
- Hold weekly employee meetings;
- Interact with catering clients;
- Develop and conduct pre-shift line-up meetings
- Control and maintain inventory of catering supplies;
- Respond to complaints regarding catering service; and
- Plan, coordinate and supervise the activities of workers.

The petitioner also stated that it requires its hotel manager to have at least a bachelor's degree in hotel management or its equivalent.

Additionally, the petitioner submitted a credential evaluation finding that the beneficiary's foreign education is equivalent of a U.S. Master of Business Administration in Corporate Management degree.

On May 1, 2009, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation, including a more detailed job description and an organizational chart. The RFE also requested additional information regarding the petitioner's business.

In response to the RFE, the petitioner broke down the proffered duties as follows:

- Maximize rooms revenue and yield penetration (40% of the beneficiary's time);
- Compile data, analyze trends, and develop forecasts (15% of the time);
- Monitor staff hiring and staffing (10% of the time);
- Oversee training of all new employees (10% of the time);
- Holding weekly employee meetings and ensuring that health and safety codes are followed (5% of the time);
- Interact with catering clients (5% of the time);
- Develop and conduct pre-shift line-up meetings (5% of the time);
- Control and maintain inventory of all catering supplies (5% of the time); and
- Nonessential functions (5% of the time).

The petitioner also submitted a professional opinion letter from [REDACTED] at Seattle Pacific University. This letter argues that the proffered position is a specialty occupation because it would normally be filled by someone with at least a Bachelor's Degree or the equivalent in Hotel Management.

Additionally, the petitioner submitted an organizational chart, which indicates that the beneficiary would be supervised by an Executive Director and that he would be responsible for overseeing the Front Desk Manager, the Front Desk Agents, the Concierge and Bell Staff, and Security.

The director denied the petition, finding that the proffered position is not a specialty occupation.

On appeal, counsel checks “Box B” in Part 2 of the Form I-290B, which indicates that a brief and/or additional evidence will be submitted to the AAO within 30 days, however counsel has submitted neither. In the Form I-290B, counsel argues that the proffered position was erroneously classified as an Administrative Services Manager when the proffered position more closely resembles that of a Lodging Manager. Although the AAO agrees with counsel that the proffered position is closer to that of a Lodging Manager than an Administrative Services Manager, the petitioner has failed to establish that the proffered position is a specialty occupation.

To make its determination whether the employment qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor’s *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry’s professional association has made a degree in a specific specialty 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)).

To determine whether a particular job qualifies as a specialty occupation, USCIS 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. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See *generally Defensor v. Meissner*, 201 F. 3d 384. 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 AAO agrees with counsel that the proffered position appears to come under the *Handbook*’s (2010-11 online edition) section on lodging managers. The *Handbook* section on lodging managers describes the nature of this work as follows:

A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for both vacationing families and business travelers. *Lodging managers* make sure that these conveniences are provided, while also ensuring that the establishments are run efficiently and profitably. Most lodging managers work in traditional hotels and motels, but some work in other lodging establishments, such as recreational camps and RV parks, inns, boardinghouses, and youth hostels.

Lodging establishments can vary significantly in size and in the number of services they provide, which can range from supplying a simple in-room television and a continental breakfast to operating a casino and accommodating conventions. These factors affect the number and type of lodging managers employed at each property.

The one person who oversees all lodging operations at a property is usually called a *general manager*. At larger hotels with several departments and multiple layers of management, the general manager and multiple *assistant managers* coordinate the activities of separate departments. . . . In smaller limited-service hotels—mainly those without food and beverage service—one lodging manager may direct all the activities of the property.

Lodging managers have overall responsibility for the operation and profitability of the hotel. Depending on the hotel and the size of its staff, lodging managers may either perform or direct housekeeping, personnel, office administration, marketing and sales, purchasing, security, maintenance, oversight of recreation facilities, and other activities. They may hire and train staff, set schedules, and lend a hand when needed.

Within guidelines established by the owners of the hotel or executives of the hotel chain, lodging managers set room rates, allocate funds to departments, approve expenditures, and ensure that standards for guest service, decor, housekeeping, food quality, and banquet operations are met. Increasingly, lodging managers also are responsible for ensuring that the information technology common in today's hotels is operational. Some lodging managers, often called *revenue managers*, work in financial management, monitoring room sales and reservations, overseeing accounting and cash-flow matters at the hotel, projecting occupancy levels, and deciding which rooms to discount and when to offer rate specials.

Front office managers, a category of lodging manager, coordinate reservations and room assignments and train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. At some hotels, they may greet the guests personally and provide them individual attention to see their needs are met. Any adjustments to bills often are referred to front office managers for resolution.

Convention services managers coordinate the activities of various departments to accommodate meetings, conventions, and special events. They meet with representatives of groups or organizations to plan the number of conference rooms to reserve, the configuration of the meeting space, and determine what other services the group will need, such as catering or banquets and audio, visual, or other electronic requirements. During the meeting or event, they

resolve unexpected problems and monitor activities to ensure that hotel operations conform to the group's expectations.

Lodging managers may work with hotel sales and marketing directors and public relations directors to manage and coordinate the advertising and promotion of the hotel. They help develop lodging and dining specials and coordinate special events, such as holiday or seasonal specials. They may direct their staff to purchase advertising and to market their property to organizations or groups seeking a venue for conferences, conventions, business meetings, trade shows, and special events.

Lodging managers who oversee the personnel functions of a hotel or serve as human resource directors ensure that all accounting, payroll, and employee relations matters are handled in compliance with hotel policy and applicable laws. They also oversee hiring practices and standards and ensure that training and promotion programs reflect appropriate employee development guidelines.

Computers are used extensively by lodging managers and their assistants to keep track of guests' bills, reservations, room assignments, meetings, and special events. In addition, computers are used to order food, beverages, and supplies, as well as to prepare reports for hotel owners and top-level managers. Many hotels also provide extensive information technology services for their guests. Managers work with computer specialists and other information technology specialists to ensure that the hotel's computer systems, Internet, and communications networks function properly.

Under the section on Training, Other Qualifications, and Advancement, the *Handbook* states that:

[m]ost large, full-service hotel chains usually hire people who have a bachelor's degree in business, hotel, or hospitality management for management trainee positions; however, a liberal arts degree coupled with experience in the hospitality field may be sufficient. At other hotels, especially those with fewer services, employers look for applicants with an associate degree or certificate in hotel, restaurant, or hospitality management along with experience.

[Emphasis added.]

The AAO notes that although the petitioner's hotel has 50 employees and a restaurant, it does not appear to be part of a large full-service hotel chain. However, even if the petitioner is part of a large full-service hotel chain, a bachelor's degree in a wide variety of fields, including business, hospitality management, or even a liberal arts degree, may be sufficient. Because the *Handbook* indicates that working as a lodging manager at a hotel does not normally require at least a bachelor's degree in a *specific specialty*, the *Handbook* does not support the proffered position as being a specialty occupation.

Because the evidence in the record of proceeding does not substantiate that the proffered position is one for which there is normally a minimum requirement for a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

In response to the RFE, the petitioner submitted copies of advertisements for hotel general managers. However, these advertisements either require a bachelor's degree generally (without specifying a field in a specific specialty) or less than a bachelor's degree. Therefore, these advertisements do not refute the statement in the *Handbook* that a wide variety of degrees and fields is acceptable for general manager positions. The petitioner has not provided any documentation evidencing a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner.

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

As will now be discussed, upon careful review of the letter from [REDACTED] - which opines on the educational requirements for the proffered position - the AAO concludes that the letter has no probative value with regard to establishing the proffered position as a specialty occupation. At the outset, the AAO finds that neither [REDACTED] evaluation document nor any other evidence in the record of proceeding establishes that [REDACTED] is an authority in the area in which he pronounces his opinion, namely, the hiring requirements for lodging management positions.

Next, [REDACTED] does not cite studies, surveys, any empirical evidence, or any reference materials in support of his opinion about the educational requirements for the proffered position, other than stating that the duties of the proffered position are consistent with those that fall within

Job Zone 4 of the *O*Net On-line* Summary Report (*O*Net On-line*). On April 13, 2011, the AAO accessed the pertinent section of the *O*Net Online* Internet site, which addresses Lodging Managers under the Department of Labor's Standard Occupational Classification code of 11-9081.00. That site is <http://www.onetonline.org/link/summary/11-9081.00>. Contrary to Professor Knight's assertion, *O*NET Online* assigns a Job Zone of Three, not Four, to Lodging Managers. However, even if Professor Knight were correct that the proffered duties are encompassed within a Job Zone Four rating, this would group it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the *O*Net Online* does not state or otherwise indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O*Net Online* information is not probative of the proffered position being a specialty occupation.

Further, [REDACTED] focuses on generic and generalized duty descriptions provided by the petitioner, which, the AAO finds, do not distinguish the proffered position from those positions in the hotel manager occupation that do not require at least a bachelor's degree in any specific specialty, and that do not require the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The very fact that [REDACTED] (and the petitioner) attributes a degree requirement that is different than the degree that the beneficiary actually holds undermines the credibility of his opinion. Further, [REDACTED] does not address the authoritative information in the *Handbook* about the educational credentials of hotel managers.

For the reasons discussed above, the AAO finds that [REDACTED] evaluation has no significant evidentiary weight, and that it is not probative evidence on the specialty occupation issue. 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).

Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for lodging manager positions. Moreover, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than lodging manager positions that can be performed by persons without a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner.

Next, as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their

performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties do not indicate that they are more specialized and complex than those of lodging manager positions that are not usually associated with a degree in a specific specialty.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petition will be denied and the appeal dismissed. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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