



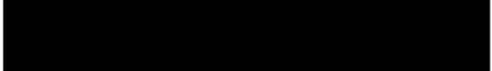
U.S. Citizenship
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Date: **JUN 08 2012** Office: VERMONT SERVICE CENTER 

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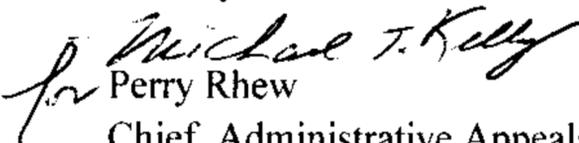
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a hotel with 24 employees and a gross annual income of \$3 million. It seeks to employ the beneficiary as a hotel manager and 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification 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 (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration 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 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 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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] 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 [(2)] 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, a proposed 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 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) (hereinafter *Defensor*). 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), 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.

The petitioner states that it is seeking the beneficiary's services as a hotel manager. The petitioner states the following regarding duties of the position:

In this position her duties will be to manage the hotel to ensure an efficient and profitable operation, establish standards for personnel administration and performance, service patrons, room rates, advertising, publicity, credit, food selection and service; to plan dining room, bar and banquet operations; to allocate

funds, authorize expenditures, and assist in planning budgets for departments; to interview, hire and evaluate personnel; to delegate authority and assign responsibility to department heads; to inspect guests' rooms, public access areas and outside grounds for cleanliness and appearance; to process reservations and adjust guest's complaints.

Counsel submitted copies of the beneficiary's foreign degree and an academic evaluation indicating that the beneficiary possesses the equivalent of a U.S. Master of Arts in Economics and Master of Business Administration. Counsel also submitted a copy of the petitioner's 2009 tax return, hotel information from the petitioner's website, and the beneficiary's resume.

On July 1, 2010, the director issued an RFE requesting the petitioner to submit documentation highlighting the nature, scope, and activity of the petitioner's business enterprise which may include (1) a detailed description of the proffered position, including approximate percentage of time spent for each duty the beneficiary will perform; (2) list of current and past employees in a similar position and their qualification supported by documentary evidence; (3) job descriptions for the majority of positions including job titles, duties and education requirement; and (4) evidence that a bachelor's degree in a specific specialty is the minimum requirement for the proffered position.

In response to the director's RFE, counsel stated that the petitioner is a large hotel which has been in business since March 2002 and is a member of the Best Western International hotel chain which is the world's largest brand of hotels with more than 4,000 hotels in 80 countries. Counsel also cited *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966) to state that hotel managers are members of the professions and cited two more unpublished decisions. However, counsel did not specify how the facts of the instant petition are analogous to the cited cases. Counsel also did not include copies of the cases. In addition, counsel submitted an organization chart and a detailed job description for hotel managers at Best Western hotels, which is as follows:

Job description

A hotel manager is responsible for the day-to-day management of a hotel and its staff and has commercial accountability for planning, organizing and directing all hotel services, including front-of-house (reception, concierge, and reservations), food and beverage operations and housekeeping. In large hotels, managers often have a specific remit (guest services, accounting, and marketing) and make up a general management team.

While taking a strategic overview and planning ahead to maximize profits, the manager must also pay attention to the details, setting the example for staff to deliver a standard of service and presentation that meets guests' needs and expectations. Business and people management are equally important elements.

Typical Work Activities

- Planning and organization accommodation, catering and other hotel services;

- Promoting and marketing the business;
- Managing budgets and financial plans and controlling expenditure;
- Maintaining statistical and financial records;
- Setting and achieving sales and profit targets;
- Recruiting, training and monitoring staff;
- Planning work schedules for individuals and teams;
- Meeting and greeting customers;
- Dealing with customer complaints and comments
- Addressing problems and troubleshooting;
- Ensuring events and conferences run smoothly;
- Supervising maintenance, supplies, renovations and furnishings;
- Dealing with contractors and suppliers;
- Ensuring security is effective;
- Carrying out inspections of property and services;
- Ensuring compliance with licensing laws, health and safety and other statutory regulations.

At the outset, the AAO finds that, as reflected in the above excerpt from the petitioner's letter of support and response to the RFE, the petitioner describes the duties of the proffered position in terms of generalized functions that appear generic to the hotel manager occupation in general. As such, the AAO finds that they do not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than hotel manager positions which may share those same generalized functions and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The director denied the petition on July 26, 2010. The director found that the evidence of the record does not establish that the job offered qualifies as a specialty occupation. The director cited from the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2010-2011 edition, to state that the *Handbook* does not indicate that all hotel manager positions require individuals with a bachelor's degree or higher. Further, it was noted that the petitioner failed to submit evidence to demonstrate that the degree requirement is common to the industry. In addition, the director noted that the petitioner submitted an organization chart, but failed to submit supporting documentation to show that the petitioner historically required a baccalaureate degree in a specific field of study for the position.

On appeal, counsel states that the director based his denial on erroneous citation to the *Handbook* and claims that the *Handbook* supports the approval of the petition. Counsel submitted a copy of the chapter on "Lodging Manages" from the *Handbook*, 2010-2011 edition. Counsel also cited the *Matter of Sun* and the same previously-cited unpublished decisions to state that hotel management positions have long been recognized by the Service to be professional occupation.

The AAO finds that the director's determination that the petitioner did not establish the proffered position as a specialty occupation was correct. To make its determination whether the proffered

position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

First, the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The AAO finds that the duties described by the petitioner reflect the duties of a lodging manager. The “Lodging Managers” chapter at the 2012-2013 edition of the *Handbook* describes the associated duties, in part, as follows:

- Inspect guest rooms, public areas, and grounds for cleanliness and appearance
- Greet and register guests
- Ensure that standards for guest service, décor, housekeeping, and food quality are met
- Answer questions from guests about hotel policies and services
- Keep track of how much money the hotel or lodging facility is making
- Interview, hire, train, and sometimes fire staff members
- Monitor staff performance to ensure that guests are happy and the hotel is well run
- Coordinate front-office activities of hotels or motels and resolve problems
- Set room rates and budgets, approve expenditures, and allocate funds to various departments

See *Bureau of Labor Statistics, U.S. Dept. of Labor, Occupational Outlook Handbook, 2012-13 Ed.*, at <http://www.bls.gov/ooh/Management/Lodging-managers.htm> (accessed May 22, 2012).

Under the section on “How to Become a Lodging Manager,” the *Handbook* states that:

Most large, full-service hotels require applicants to have a bachelor’s degree. Smaller hotels generally seek applicants who have an associate’s degree or certificate in hotel management or operations. Some applicants may qualify with long-term experience working at a hotel.

Specifically under the section on “Education,” the *Handbook* states the following:

Most full-service hotel chains hire people with a bachelor’s degree in hospitality or hotel management. Hotel management programs typically include instruction in hotel administration, accounting, economics, marketing, housekeeping, food service management and catering, and hotel maintenance and engineering.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/home.htm>. The AAO’s references to the *Handbook* are to the 2012 – 2013 edition available online.

Computer training is also an integral part of many degree programs, because hotels use hospitality-specific software in reservations, billing, and housekeeping management.

While the *Handbook* states that most full-service hotel chains hire people with a bachelor's degree, "most" is not indicative that a particular position within the wide spectrum of hotel managers normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular hotel manager position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).²

Because the *Handbook* indicates that working as a hotel manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation.

Counsel claims that the director based his denial on erroneous citation to the *Handbook*. The director states that for the occupation of "Hotel Manager," the 2010-2011 edition of the *Handbook* states the following under "Training, Other Qualifications, and Advancement":

Most large hotel properties employ persons in occupations that require a wide range of skills and experience. Most entry-level jobs require little or no previous training; basic tasks usually can be learned in a short time.

Management, business, and financial operations occupations. Many hotels fill first-level manager positions by promoting staff from within-particularly those with good communications skills, a solid educational background, tact, loyalty, and a capacity to endure hard work and long hours. People with these qualities still advance to manager jobs, but, more recently, lodging chains have primarily been hiring persons with 4-year college degrees in the liberal arts or other fields and starting them in assistant manager or management positions.

The director stated that based on the information above, USCIS cannot conclude that all hotel manager positions are so complex as to require an individual who possess a baccalaureate degree or higher.

Counsel correctly noted that the director cited a wrong version of the *Handbook*. However, the correct version also does not support the conclusion that a baccalaureate degree is required for the position of a hotel manager.

The section "Training, Other Qualifications, and Advancement" of 2010-2011 edition of the *Handbook* states the following:

² For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree."

Most 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.

The correct version of the 2010-2011 edition of the *Handbook* reflects the content in the 2012-2013 edition that "most" large, full-service hotel chains usually hire people who have a bachelor's degree. However, as previously noted, "most" means "greatest in number, quantity, size, or degree." It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

Counsel refers *Matter of Sun*, 12 I&N Dec 535 (D.D. 1966) to state that hotel management positions have long been recognized by the Service to be professional occupations. However, *Sun* did not find that all hotel managers are members of the professions but rather that some hotel managers, under certain circumstances, qualify for professional status. In addition, that decision dealt with membership in the professions, not membership in a specialty occupation. While the terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act. That statutory language effectively supersedes *Sun*, which, by the way, predates the statutory and regulatory provisions that created the H-1B specialty occupation program. Therefore, counsel's reliance on the case is misplaced.

Counsel also referred to two unpublished decision. If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

In the instant case, the petitioner failed to submit copies of the unpublished decision. Moreover, counsel did not specify how the facts of these cases corroborate his claims in support of the instant petition. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, 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.

As stated earlier, 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Accordingly, the petitioner has not satisfied the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2)

Next, the AAO finds that the petitioner also failed to satisfy 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."

As reflected in this decision's earlier comments regarding the generalized and generic nature of the petitioner's descriptions of the proffered position and its duties, the AAO finds that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the hotel manager duties described constitute a position that requires the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform it. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the particular position. While one or two courses in hospitality or hotel management may be beneficial in performing certain duties of a hotel manager position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in hotel management, is required to perform the duties of the particular position here proffered.

In the instant matter, the petitioner provided an organization chart. The chart reflects that the petitioner already has three other managers on the property - general manager, accounting manager, and front office manager. The petitioner did not provide the duties of existing managers, but based on their job titles, it appears that their duties may overlap with duties listed for the proffered position. Therefore, the petitioner failed to distinguish the proffered position as

unique from or more complex than other manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The record of proceeding lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than hotel manager or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Thus, the petitioner also failed to satisfy 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."

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. The organization chart provided by the petitioner asserts that the General Manager has a Bachelor of Arts in Business Administration, the Accounting Manager has a Master's degree in Business Administration, and the Front Office Manager/Group Sales has a Bachelor of Science in Multimedia. However, the petitioner did not provide documentary evidence to support these assertions. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Further, the asserted array of acceptable degrees reflected in the organizational chart is not indicative of a requirement for a degree in a specific specialty.

In addition, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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 or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex

than hotel manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

As the evidence in the record of proceeding does not satisfy any criterion at 8 C.F.R. §214.2.(h)(4)(iii)(A), the AAO cannot find that the petitioner has established the proffered position as a specialty occupation.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed, and the petition will be denied.

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