

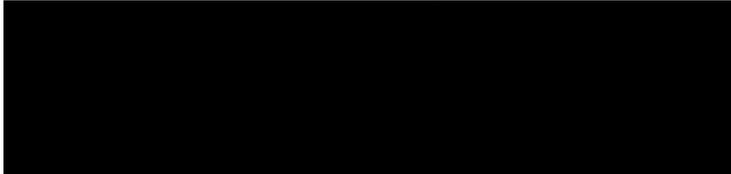
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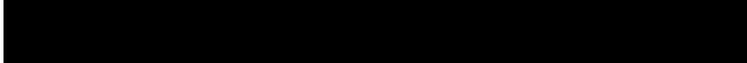


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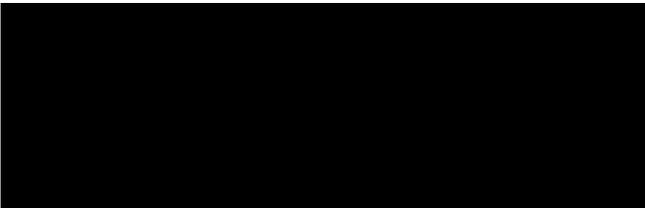


FILE: WAC 02 149 50361 Office: CALIFORNIA SERVICE CENTER Date: **JUN 09 2004**

IN RE: Petitioner: 
Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(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, Director
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 corporation engaged in the hotel and restaurant business. In order to employ the beneficiary as a hotel manager, the petitioner 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 on two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

On appeal, counsel states that the director's decision to deny the petition is based on material errors in law and fact, and that the evidence of record satisfied the requirements for approval of the petition.

In reaching its decision, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the materials submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the additional evidence submitted with the brief. As reflected in the body of the decision below, the AAO accepted and fully considered all the evidence that counsel submitted on appeal. Also, in contrast to the director, the AAO accorded no significance to the fact that there was a variance in the petitioner's statements about the number of its employees.

Upon consideration of the entire record, including all of the material submitted on appeal and at the earlier stages of the proceeding, the AAO has concluded that the denial of the petition was not erroneous. The evidence of record requires that the petition be denied on both of the grounds cited by the director. Accordingly, the appeal will be dismissed and the petition will be denied.

The first issue to be addressed is the failure of the evidence to establish a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

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.

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 evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This provision assigns specialty occupation status to those positions for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the positions’ duties.

The evidence presented about the specific duties of a proffered position is always a critical factor in Citizenship and Immigration Services (CIS) determinations on the specialty occupation issue.

In the letter of support that he filed with the Form I-129, the petitioner’s president described the petitioner as a full-service hotel with 86 guest rooms, 28 guest suites, and “a full[-]service restaurant, lobby, lounge, and gift shop.” This letter included this verbatim information about the proposed duties:

[The beneficiary’s] full time duties will include running the day-to-day operations of the hotel and coordinating all aspects of hotel operations, he will answer to the president [named]. He will organize and direct the work of other professional subordinates involved in providing food, beverages, accommodations, and other ancillary services for hotel guests, these duties will require approximately 50% of his time.

[The beneficiary] will also be responsible for personnel, accounting, office administration, purchasing, security and maintenance.

He will review and track guest billing, invoices, reservations, room assignments, and assist in the organization of special events, these duties will require approximately 25% of his time.

He will also train and direct front desk staff, insure that guests are treated courteously, and is authorized to adjust charges appearing on customer bills. He will also estimate staffing

requirements, plan work schedules, and review the hotel operations to maintain compliance with licensing, health and safety, and other statutory regulations.

[The beneficiary] will also confer with top level management to set guidelines, policies and regulations, such as setting room rates, allocating funds to departments, and approval of expenditures.

[The beneficiary] will also participate in the planning and generation of ideas aimed at increasing profits, controlling budgets. These duties will require the remaining 25% of [the beneficiary's] work time.

[REDACTED] as an authoritative source on the duties and educational requirements of a wide variety of occupations. To the extent that they are described in the above excerpt and elsewhere in the record, including counsel's expanded description in his letter of reply to RFE, the proposed duties comport with those of the lodging manager occupation as described in the [REDACTED] the version to which both the director and counsel refer.

Counsel does not dispute the applicability of the *Handbook's* information on lodging managers, but he interprets that information, erroneously, as indicating that lodging manager positions meet the specialty occupation threshold of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) by normally requiring at least a baccalaureate degree.

The AAO disagrees with counsel's interpretation. This excerpt from the 2002-2003 edition of the *Handbook's* section on the lodging managers occupational category clearly establishes that lodging managers' employers do not normally set a baccalaureate or higher degree, or the equivalent, in a specific specialty as minimum entry requirement:

Hotels increasingly emphasize specialized training. Postsecondary training in hotel or restaurant management is preferred for most hotel management positions, although a college liberal arts degree may be sufficient when coupled with related hotel experience. Internships or part-time or summer work are an asset to students seeking a career in hotel management. The experience gained and the contacts made with employers can greatly benefit students after graduation. Most bachelor's degree programs include work-study opportunities.

In the past, many managers were promoted from the ranks of front desk clerks, housekeepers, waiters, chefs, and hotel sales workers. Although some employees still advance to hotel management positions without education beyond high school, postsecondary education is preferred. Restaurant management training or experience also is a good background for entering hotel management, because the success of a hotel's food service and beverage operations often is important to the profitability of the entire establishment.

The *Handbook* only reports an employer preference for post-secondary training. Employer preferences do not equate to employer requirements. Furthermore, a preference for post-secondary training does not equate to a preference for a college degree or, for that matter, even college courses. As the *Handbook* notes, institutions

offering hotel or restaurant management courses include technical institutes and vocational and trade schools, as well as community, junior, and four-year colleges.

The record's copy of California Occupational Guide 114 (Hotel and Motel Managers) is additional evidence that hotel management positions do not normally require at least a bachelor's degree or the equivalent in a specific specialty. This document notes, in part, that most recent hires have a BA or an AA degree in hotel administration. Obviously, an AA, or associate of arts degree, is less than the educational level required for a specialty occupation.

As the evidence of record does not establish the proffered position as one for which the normal minimum entry requirement is a baccalaureate or higher 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 petitioner has not satisfied either of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong assigns specialty occupation status to positions for which there is a degree requirement which is common to the industry in positions which are both (1) parallel to the proffered position, and (2) located in organizations that are similar to the petitioner.

The director correctly found unpersuasive the one relevant document in the record, which is a job vacancy announcement for a hotel manager on a cruise ship. Even if this cruise ship position were deemed to be a position parallel to the proffered position and in an organization similar to the petitioner, one job vacancy announcement is inconsequential as far as establishing a particular educational requirement as an industry-wide hiring standard.

In determining whether there is such an industry-wide standard, factors often considered by CIS 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" [REDACTED]

As already discussed, the *Handbook* does not report that the proffered position requires a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of [REDACTED] this prong 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 about the proffered position and its requirements has not established that the proffered position is unique in comparison to hotel manager positions in general, nor has the petitioner shown that the position is more complex than hotel manager positions in general. As already discussed, these positions do not normally require a degree in a specific specialty.

Next, the petitioner has not satisfied 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 minimal evidence of record that is relevant to this provision – which counsel describes as “a copy of the degree submitted with an application for a similar position with the petitioner, and the degree of the person who performed the duties of the offered position previously” – is insufficient to demonstrate an established history of educational requirements for the proffered position.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In fact, the evidence of record does not establish that the duties are more specialized and complex than those that should be expected in the hotel management occupation in general, which the *Handbook* indicates does not normally require a degree in a specific specialty.

Because the proffered position does not meet any criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A), the AAO shall not disturb the director’s denial of the petition on the specialty occupation ground.

The director was also correct in his decision to deny the petition on the ground that the petitioner failed to establish that the beneficiary is qualified to serve in a specific specialty in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C).

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the

specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

To qualify the beneficiary, the evidence must demonstrate that he meets the criterion at either section 2 or 4. (In this particular proceeding there is no evidence relevant to sections 1 or 3.)

A positive determination under Section 2 must be premised on a determination from a credible foreign-degree evaluation service that the beneficiary holds a foreign degree that is equivalent to a United States baccalaureate or higher degree. Also, the foreign U.S.-equivalent degree must be in a specific specialty that is required for whatever is the pertinent specialty occupation.

Under section 2, the AAO accepted only part of the first evaluation report by [REDACTED] (GEG), dated March 11 2002, namely, the determination that GEG based upon the beneficiary's foreign degree. Under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), GEG's evaluation of work experience is beyond the scope of section 2. Accordingly, this GEG report establishes that the beneficiary holds the equivalent of a U.S. baccalaureate in nutrition. This finding is inconsequential, because the record does not establish that performance of the proffered position requires a degree in nutrition.

This leads to section 4. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination [REDACTED]
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

As there is no evidence of record regarding sections 2 and 4, only sections 1, 3, and 5 will be addressed.

The first GEG evaluation does not qualify for consideration under Section 1, because it is not presented by a person with the authority to grant college-level credit for training and/or experience in a relevant specialty. The second GEG evaluation [REDACTED] also does not qualify for consideration under section 1. This is because the evidence of record also does not establish that this second evaluator had authority to grant college-level credit either. First, the second evaluation letter only claims that the evaluator "has advisory authority" to grant college-level credit, and this amounts to authority only to advise on, not to actually grant, college-level credit. Second, CIS will not accept a faculty member's opinion as to the college-credit equivalent of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university - such as a letter from the appropriate dean or provost - establishes that the official is authorized to grant academic credit for that institution on the basis of training or work experience.

It should also be noted that the second evaluation would not qualify the beneficiary for service in a specialty occupation even if the evaluation were given full credit under section 1. This is because the evaluator determined that the beneficiary has attained the equivalent of a U.S. bachelor's degree in business administration, which is not a degree in a specific specialty. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. [REDACTED]

Section 3 of 8 C.F.R. § 214.2(h)(4)(iii)(D) allows for qualification of a beneficiary by evaluation of his or her foreign education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. As noted earlier, the AAO accepted that part of the first GEG evaluation that opined that the beneficiary holds the equivalent of a U.S. baccalaureate in nutrition. However, this fact is insignificant, because the record does not establish that a degree in nutrition is necessary to perform the proposed duties.

This leaves only section 5, which provides for beneficiary qualification if CIS determines (1) that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty, and (2) that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In accordance with [REDACTED] the record must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. CIS counts only those periods for which the record has clearly demonstrated (1) that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty

occupation; and (2) that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

The evidence of record that details the beneficiary's work experience does not demonstrate that it included the theoretical and practical application of the highly specialized knowledge required by any specialty occupation. Rather, the evidence indicates that the beneficiary worked in hotel management positions, which, as discussed earlier in this decision, are not specialty occupation jobs and do not require the highly specialized knowledge that characterizes a specialty occupation.

Furthermore, the record indicates that the credentials of the peers, supervisors, and subordinates with whom the beneficiary worked were a constellation of degrees - such as English literature, business administration, education psychology, hotel management, and nutrition - that is too diverse and unspecialized to characterize a specialty occupation.

Even if a combination of the beneficiary's education, specialized training, and/or work experience had established that he had the equivalent of a specific specialty degree required by a pertinent specialty occupation, the petition would have to be denied. This is because the provisions of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) also require the petitioner to clearly demonstrate that the alien has achieved recognition of expertise in the specialty, by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record lacks such documentation. In this regard, it is noted that, despite his assertion that he is a recognized authority, the second GEG evaluator did not provide the information, outlined in the footnote,

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. [REDACTED]

required for consideration as a recognized authority. Accordingly, the AAO did not accept him as a recognized authority.

In summary, the director was correct in denying the petition because both (1) the proffered position does not meet the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A), and (2) the beneficiary is not qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C). Therefore, the director's decision shall not be disturbed.

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.