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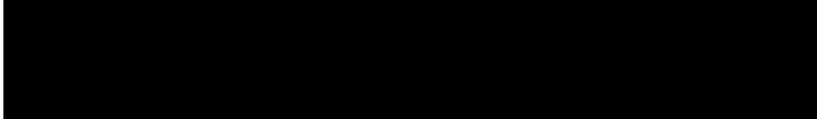
U.S. Citizenship  
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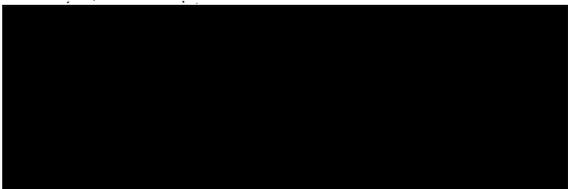


FILE: EAC 04 251 53841 Office: VERMONT SERVICE CENTER Date: **JUL 18 2006**

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 is a restaurant that seeks to employ the beneficiary as a management analyst. 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 on the ground that the proffered position is not a specialty occupation. Counsel submitted a timely appeal.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management analyst. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to the petitioner's July 21, 2004 letter, the beneficiary would perform duties that entail evaluating and analyzing organizational requirements and goals in relation to the development of an offshore client recruitment capability and developing locally based programs of cooperative initiatives with other businesses in relation to that same self-generated client stream; designing and implementing operating systems for account administration policies in the context of a rapidly growing and diversifying user base; developing a system that enhances quality standards and allows for input from the target market; planning and implementing initiatives that attract, retain, and empower foreign-based client sources in the context of the New York City local tourist market; designing and implementing a system of information dissemination which will be predicted upon an analysis of how successful efforts are in promoting and cementing a system of international recruitment for new and established foreign-generated clients; ensuring the actions of organizational staff enhance initiative activities and ensure that the focus of the initiatives are in keeping with what the traditional client base is likely to acquire; establishing a responsive and flexible approach to program design, establishing guidelines, and implementing procedures to ensure guidelines are followed; monitoring staff activity and acting in a hortatory and educational capacity; and keeping the managing board informed about initiatives. The petitioner's December 7, 2004 letter stated that the proposed position entails analyzing business and operating procedures in order to devise the most efficient methods of accomplishing the entire staff's duties; planning a study of work problems and procedures such as organizational change, communications, information flow, integrated production methods, inventory control, or cost analysis; analyzing gathered data, developing information, and determining solutions or alternate methods of proceeding; organizing and documenting findings of studies and preparing recommendations for implementation of new systems, procedures, or organizational changes and conferring with staff to assure smooth functioning of newly implemented systems and procedures. For the proposed position, the petitioner seeks to hire the beneficiary who, according to Global Educational Group, Inc., holds the educational equivalent of a bachelor's degree in business administration.

In denying the proposed position, the director stated that the petitioner failed to submit evidence establishing that the person who previously held the offered position possessed a bachelor's degree. The director stated that he is not required to approve the petition based on the assertion that the beneficiary has prior H-1B approval for a similar position in Florida. According to the director, the proposed duties in relation to the petitioning entity's nature and scope are not of H-1B caliber. The director found that experience alone would enable a person to perform the described management analyst duties. The director concluded that the petitioner, a restaurant, is not of the size or in the type of industry where a management analyst is typically hired. Most of the proposed duties, the director stated, relate to marketing and thereby differ from the *Handbook's* definition of a management analyst. The director found the job postings unpersuasive in establishing that the offered position requires a bachelor's degree in a specific specialty.

On appeal, counsel states that the director incorrectly concluded that the petitioner is not in the type of industry that typically hires H-1B caliber professionals. Counsel submits documentary evidence to establish that the employment of a management analyst with a bachelor's degree in business administration/management is common to the petitioner's industry. Counsel asserts that the Department of Labor's *Online Wage Library*, *Occupational Information Network (O\*Net)*, and *Dictionary of Occupational Titles (DOT)* reflect that a management analyst requires a bachelor's degree. Counsel asserts that the beneficiary's "duties are of a specialized and professional nature, requiring a minimum of a bachelor's degree in [b]usiness [a]dministration."

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 first considers 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 2006-2007 edition of 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)).

To qualify as a specialty occupation, the Act states that the offered position must require a baccalaureate or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation. Furthermore, *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), indicates that a baccalaureate degree in a generalized discipline such as business administration, without further specification, does not establish "a close corollary between the required specialized studies and the position"; the decision states:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that the position requires a precise and specific course of study which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility.

For the position offered here, the petitioner asserts a requirement for a bachelor's degree in business administration; however, the petitioner does not indicate that the position requires a specific discipline within the business administration field. Consequently, the petitioner does not require a baccalaureate degree in a

specific discipline or narrow range of disciplines that are directly and closely related to the offered position. Further, the petitioner has limited its description of the proffered position and the duties comprising it to abstract and generalized statements that do not establish specific tasks that the beneficiary would perform, or substantive knowledge that the beneficiary's work would practically and theoretically apply in actual performance of the job. It is for these reasons that the petitioner establishes none of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, that the position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty; the petitioner normally requires a degree or its equivalent in a specific specialty for the proffered position; or the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO notes that the evidence submitted on appeal is not persuasive in establishing the offered position as a specialty occupation. The letter from the New York State Restaurant Association states:

[T]he position of [m]anagement [a]nalyst is frequently necessary in New York City restaurants, particularly when they operate a very large restaurant or have multiple units. A bachelor's degree, particularly one in [b]usiness [a]dministration/[m]anagement, is usually required for this position.

This letter does not establish that the offered position qualifies as a specialty occupation as the petitioner is not a "very large restaurant" and does not have "multiple units." Furthermore, the petitioner here has not stated a requirement for a baccalaureate degree in business administration/management, and the record does not convey information about the performance of the proffered position that would substantiate that job performance requires a degree in a specific specialty.

The e-mail message from Mr. [REDACTED] of the National Restaurant Association quotes the *Handbook's* passage that states that:

Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. Restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. A number of colleges and universities offer 4-year programs in restaurant and hotel management or institutional food service management. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification. Both 2- and 4-year programs provide

instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science. Some programs combine classroom and laboratory study with internships providing on-the-job experience. In addition, many educational institutions offer culinary programs in food preparation.

The *Handbook's* excerpt explains that a bachelor's degree in a specific specialty is not required for a career in food service management. Thus, it fails to demonstrate that the position that is offered here qualifies as a specialty occupation.

As related in the discussion above, the petitioner has failed to establish the proposed position as 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.