



U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 044 50182 Office: NEBRASKA SERVICE CENTER Date: MAR 28 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:

SELF-REPRESENTED

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, Director
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 general manager. 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 because the proffered position is not a specialty occupation. On appeal, the petitioner submits additional evidence.

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 (7) the Form I-290 and the petitioner's letter. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a general manager. Evidence of the beneficiary's duties includes: the Form I-129; the documents accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties as follows: supervise, coordinate, and direct activities of staff; interview, hire, and train staff; discuss management policy with staff to ensure their understanding of operating procedure and standards; maintain time cards; handle payroll, accounts payable, and deposits; discuss problems with customers; and solve problems. For the proposed position, the petitioner contends that a baccalaureate degree in business administration and one year of experience is required.

In denying the petition, the director stated that the proposed position parallels a food service manager, as that occupation is described in the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* reveals that a food service manager does not require a bachelor's degree in a specific specialty. As such, the director found that the petitioner failed to establish any of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the submitted letter from the petitioner states that the director quoted page 78 in the *Handbook*, which relates to information on property, real estate and community association managers. The petitioner states that its June 11, 2004 letter replying to the request for evidence and the *Dictionary of Occupational Titles* (DOT) convey that the proposed position requires a bachelor's degree. The petitioner submits an advertisement relating to a position that is similar to the proposed position.

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 *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)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The petitioner's reference to and assertions about the relevance of information from the *DOT* is not persuasive. Neither the *DOT's* specific vocational preparation (SVP) rating nor a job zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty as a minimum for entry into the occupation. An SVP rating and job zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

CIS routinely consults the *Handbook* about the duties and educational requirements of occupations. The AAO agrees with the director and the petitioner that the proposed position parallels the *Handbook's* depiction of a food services manager.¹ To establish that a position qualifies as a specialty occupation, the petitioner must do more than demonstrate that a baccalaureate degree is required for the proposed position. The petitioner must show that a baccalaureate degree in a specific academic field that is directly related to the proffered position is required for the position. Here, the *Handbook* relays that employers do not require food service managers to have a baccalaureate degree in a specific specialty. It states:

Experience in the food services industry, whether as a full-time waiter or waitress or as a part-time or seasonal counter attendant, is essential training for a food services manger. Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs which require internships and real-life experience to graduate. Some 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 experience, interest and aptitude. Many restaurant and food service manager positions—particularly self-service and fast-food—are filled by promoting experienced food and beverage preparation and service workers. Waiters, waitresses, chefs, and fast-food workers demonstrating potential for handling increased responsibility sometimes advance to assistant manager or management trainee jobs. Executive chefs need extensive experience working as chefs, and general managers need prior restaurant experience, usually as assistant managers.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. Almost 1,000 colleges and universities offer 4-year programs in restaurant and hospitality management or institutional food service management; a growing number of university programs offer graduate degrees in hospitality

¹ On appeal, the petitioner states that the director quoted page 78 in the *Handbook*, and that information on this page corresponds to information on property, real estate, and community association managers; and that it does not address managers in the food service industry. The AAO finds that the director's denial letter discussed information from the *Handbook* that specifically relates to managerial positions in the food service industry.

management or similar fields. 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. . . .

Based on the evidence in the record and the *Handbook's* information, the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

To satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that a degree requirement is common to the industry in parallel positions among organizations that are similar to the petitioner, the petitioner submits a job advertisement. The job advertisement does not state the requirement of a baccalaureate degree in a specific field; nor does it convey the same job duties as described by the petitioner for the proposed position. Thus, it is not persuasive in establishing this first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that the proposed position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty. As discussed earlier, the *Handbook* reveals that the proposed position resembles a food service manager, which is an occupation that does not require a baccalaureate degree in a specific specialty. Consequently, the petitioner fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires that the petitioner establish a past practice of normally requiring a degree or its equivalent for the position. The petitioner submitted no evidence to establish this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the *Handbook* discloses that the proposed position mirrors that of a food service manager, which is an occupation that does not require a baccalaureate degree in a specific specialty. As such, the petitioner fails to establish this last criterion.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition on this ground.

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.

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