

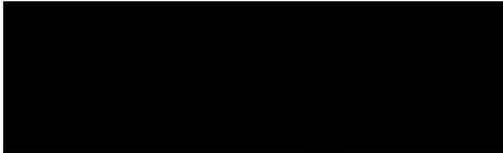
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U.S. Citizenship
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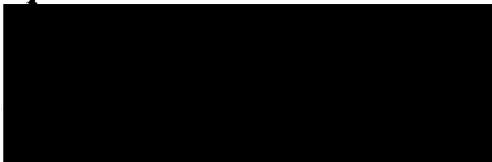
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FILE: EAC 04 179 50344 Office: VERMONT SERVICE CENTER Date: **APR 01 2005**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

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 restaurant as a maitre d'(manager). In order to so employ the beneficiary, the petitioner endeavors 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 two independent grounds, namely, that the petitioner had failed to establish that (1) the proffered position meets the definition of a specialty occupation set forth 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).

The AAO has determined that the director's decision was correct. The AAO based its decision upon its consideration of the entire record of proceeding before it, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the director's denial letter; and (3) the Form I-290B, counsel's brief on appeal, and the documents submitted in support of the brief.

The specialty occupation issue will be addressed first.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consonant with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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 which [2] 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. (Italics added.)

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) has consistently interpreted 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, CIS 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The addendum to part 5 of the Form I-129 provides the following non-technical description of the proffered position:

Coordinate food service activities of restaurant. Estimate food and beverage costs and requisitions. Purchase supplies. Confer with food preparation and other personnel to plan menus and related activities. Direct hiring and assignment of personnel. Investigate and resolve food quality and service complaints.

In his May 10, 2004 letter of support filed with the Form I-129, the petitioner's owner states that the restaurant needs to fill the proffered position with “a competent restaurant professional who is looking for a lifetime career in the restaurant business” and who “must possess an understanding of fine dining service...as well as speak fluent Spanish in order to carry on a role as a liaison to our very large Latino staff.”

In light of the evidence of record before her, the director was correct in deciding that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty occupation status to a

position 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 AAO recognizes the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of a wide variety of occupations. Accordingly, the AAO considered the information on restaurant management reported in the section of the 2004-2005 edition of the *Handbook* on the food service manager occupation. To the extent that they are described in the record, the duties of the proffered position substantially comport with this occupation as discussed in the *Handbook*. However, the *Handbook* indicates that this occupation does not normally require at least a baccalaureate degree, or the equivalent, in a specific specialty, and the evidence of record does not refute this information.

The petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that 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. Counsel provides no independent evidence that is relevant to this criterion.

The AAO also found that the evidence of record does not qualify the proffered position under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This section of the regulation provides an employer the opportunity to show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The evidence of record, which provides little information about the specific duties proposed for the beneficiary, fails to establish how the proffered position is unique from or so much more complex than the normal range of restaurant positions that do not require such a degree.

Next, the petitioner has not met the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) for a position for which the employer normally requires at least a baccalaureate degree or its equivalent in a specific specialty.

In light of the statutory and regulatory definitions of specialty occupation, this criterion has several evidentiary elements. First, the petitioner must demonstrate that it has an established history of hiring for the proffered position only persons with at least a bachelor's degree or equivalent. Second, this bachelor's degree or equivalent must be in a specific specialty that is characterized by a body of highly specialized knowledge. Third, the petitioner must also establish that both the nature and the level of highly specialized knowledge that the bachelor's degree or equivalent signifies are actually necessary for performance of the proffered position. Despite counsel's assertion, the fact that the petitioner's present maitre'd (manager) studied at Cornell University does not satisfy this criterion, and the record contains no other evidence that does.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) 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 limited evidence about the specific duties proposed for the beneficiary establish no more than that they would entail restaurant fine-dining food service management with a Spanish-speaking dimension. This does not establish the specialization and complexity required by 8 C.F.R. § 214.2(h)(iii)(A)(4). In fact, the record does not establish that the duties are

more specialized and complex than those that should be expected in restaurant management positions whose performance does not require a degree in a specific specialty.

In short, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO also finds that the director correctly determined that the petitioner had not established that the beneficiary was qualified to serve in a specialty occupation.

To establish the beneficiary's educational credentials, counsel relies upon the beneficiary's certification from the National Service Training Center, also known as SENA, of Columbia, South America. Counsel contends that, by submitting translations of this documentation and of the section of Columbia law on SENA's function, the petitioner has established that the beneficiary holds the equivalent of a U.S. bachelor's degree in a specific specialty. Counsel is mistaken, for, in accordance with the regulations at 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D), establishing U.S.-degree equivalency by documentation of a foreign degree requires an evaluation of the underlying coursework by a reliable credentials evaluation service that specializes in evaluating foreign educational credentials, and establishing the U.S.-degree equivalency by documentation of training requires an evaluation by an official at an accredited U.S. college or university who is authorized to grant-college level credit for training in the particular specialty in question.

As the director's decision is correct, it 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. Accordingly, the appeal will be dismissed.

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