



U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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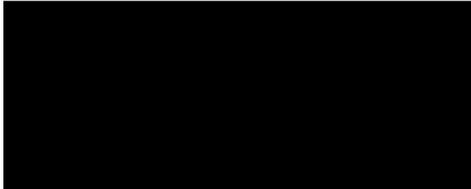
MAR - 8 2001

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)

IN BEHALF OF PETITIONER:



Identification data deleted to prevent clearly unwarranted invasion of personal privacy.

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary as an assistant restaurant hotel manager for a three-year period. The director determined the petitioner had not established that the offered position is a specialty occupation.

On appeal, counsel argues that the industry practice for Las Vegas casino resorts is to hire individuals in restaurant and food service manager positions who have a bachelor's degree or its equivalent. Counsel explains that the petitioner is a gourmet restaurant and a fine dining restaurant which requires skills that are unique and are associated with hospitality management programs. Counsel states that the director did not thoroughly review the evidence presented or review the detailed job duties. Counsel further states that in denying the petition, the director generalized the job duties.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have 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)(B), the petitioner shall submit the following with an H-1B petition involving a specialty occupation:

1. A certification from the Secretary of Labor that the petitioner has filed a labor condition application with the Secretary,
2. A statement that it will comply with the terms of the labor condition application for the duration of the alien's authorized period of stay, and
3. Evidence that the alien qualifies to perform services in the specialty occupation.

The petitioner has provided a certified labor condition application and a statement that it will comply with the terms of the labor condition application.

Pursuant to 8 C.F.R. 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the 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.

The record shows that the beneficiary completed a three and one-half year program earning a Diploma of Higher Hotel and Restaurant Studies at the Lausanne Hotel School in 1997 in Switzerland. An educational evaluation submitted by the petitioner indicates that he has earned the functional equivalent of a major in Hotel and Restaurant Administration for a Bachelor of Science degree awarded by regionally accredited colleges and universities in the United States.

The term "specialty occupation" is defined at 8 C.F.R. 214.2(h)(4)(ii) as:

an occupation which 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 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, 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.

The duties of the offered position are listed as:

The Assistant Manager of "Rotisserie" will oversee a staff of 27 chefs, 5 hostesses, 48 servers and 24 bussers and organize and schedule the restaurant's two employee shifts. The Assistant Manager will work under the direction of the Manager of "Al Dente" Restaurant and Paris Las Vegas' Director of Restaurants and Vice President of Food and Beverage Administration. The Assistant Manager will assist in the creation of the restaurant's lunch/dinner menu, wine and beverage lists, and daily and seasonal menu selections. The Assistant Manager will develop and implement promotional specials to maintain restaurant patronage and repeat service. The Assistant Manager will train staff and evaluate employees periodically to ensure that the restaurant remains in constant accordance with corporate hotel standards and that hotel patrons receive consistently knowledgeable, high quality service. The Assistant Manager will also assist revenue reports for the restaurant and for the Food and Beverage Department.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. In addition, the petitioner has not shown that similar firms require the services of such individuals in parallel positions.

Counsel asserts that the Department of Labor has determined that the offered position is a specialty occupation. However, a reference in the Department of Labor's (DOL) Dictionary of

Occupational Titles (DOT), Fourth Edition, 1977 is not enough to establish an occupation is within the professions or is a specialty occupation. The DOT is not designed as a definitive guide for adjudication of petitions for immigration benefits. The Department of Labor acknowledged this fact on page xiii of the DOT when it stated:

In using the Dictionary, one should note that the U.S. Employment Service has no responsibility for...setting jurisdictional matters in relation to different occupations.

The duties listed above are primarily those of a restaurant and food service manager. The DOL's Occupational Outlook Handbook, 2000-2001 edition, at pages 76-78 finds no baccalaureate degree requirement in a specialized area for employment as a restaurant and food service manager. While a bachelor's degree in restaurant and food service management provides a particularly strong preparation for a career in these positions, most of them are filled by promoting experienced food and beverage preparation and service workers. In view of the foregoing, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of regulations.

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.