



DA

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: LIN-99-142-54116

Office: Nebraska Service Center

Date: MAY 21 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)

Public Copy

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:

SELF-REPRESENTED

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 and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a hotel business with 88 employees and a gross annual income of \$3.2 million. It seeks to employ the beneficiary as a food and beverage manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, the petitioner's general manager argues that the proffered position is a specialty occupation and the beneficiary is qualified to perform the duties of a specialty occupation.

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), provides in part for nonimmigrant classification to qualified 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 a "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and 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 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)(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 beneficiary holds a baccalaureate degree in business administration conferred by an institution in the Philippines. The record also indicates that the beneficiary possesses over 23 years of practical experience in the food and beverage industry. The record, however, does not contain an evaluation of the beneficiary's credentials and/or work experience from a service which specializes in evaluating foreign educational credentials as required by 8 C.F.R. 214.2(h)(2)(iii)(D)(3). In view of the foregoing, it is concluded that the petitioner has not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

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.

The director denied the petition because the numerous job advertisements for various jobs within the hotel industry indicated that the educational requirements for such positions varied greatly from several years of experience in the field, to a high school education, an associate's degree, or a baccalaureate degree. The director found that the petitioner had not established that it normally requires a baccalaureate degree for the offered position or that the degree requirement is common to the industry. On appeal, the petitioner's general manager states in part that he and the food and beverage manager from the petitioner's other hotel property have been performing the duties of the offered position for the past several years. He further states in part that:

I have worked in the position of Food and Beverage Manager/Director for 20 years of my 27-year career in the hospitality industry. I graduated from Oklahoma State University with a Bachelor of Sciences degree in Hotel and Restaurant Administration. In addition, I received additional education in this field including an intensive six-week emersion program administered by Holiday Inns and other propriety training with the Hilton and Sheraton hotel companies. I can honestly say that I could not have succeeded in my jobs at this position without the education I received at the college level. The classes and curriculum covered in the four years at Oklahoma State prepared me for the challenges and training requirements that were presented during my career. The current Food and Beverage Manager at the Holiday Inn has a B.A. degree in Business Administration with a minor in Dietary Management. In addition, she possesses over 12 years actual experience in management with in the food and beverage industry.

The petitioner's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. Schedule all employees within the restaurant, lounge, kitchen and banquets to maintain the desired labor cost percentages against the anticipated sales volumes for the individual departments. Maintain a daily labor cost figure by calculating employee time cards frequently. Analyze labor expenditures and make schedule adjustments as needed to bring the department expenses in line.
2. Purchase all foodstuffs, liquor and other supplies for the individual departments. Maintain accurate records of all purchases. All purchases with exception of food and beverage costs of sales items must be processed on a Purchase Order form and be approved by the General Manager. Validate pricing of all items with the price sheets or bid sheets provided by the purveyors. Accurately track all food and beverage purchases to maintain a daily food cost and pour cost percentage based on static inventory levels and current revenue figures.
3. Supervise employees in the restaurant, kitchen, banquet and lounge departments to insure their maximum productivity and effectiveness. Monitor the quality of food and beverages being prepared in the respective

areas. Maintain a high standard of sanitation within the departments to insure the health and safety of the hotel's guests and employees are not compromised. Closely watch the quality of service that is being delivered to our guests. Provide feedback and developmental tools to foster the employees' continuous improvement and growth. Ensure that all personnel in the departments comply with company, local, state and federal governmental policies, rules and laws.

4. Develop and implement training programs in all departments to improve efficiency, increase guest satisfaction and generally refine the operations of the individual departments. Employee training within the departments should be a continuous process.

5. Audit and monitor the computerized point of sale system for accuracy and effectiveness of established controls that have previously been placed in effect. Coordinate with the Hotel Management System Analyst and improvements and changes that should be made to the POS system.

6. Perform monthly physical inventories of all cost of goods sold items within the food department and lounge. These inventories are to be extended and totaled within three days following the end of the month. Quarterly inventories should be completed for all expendable assets for the hotel.

7. Work closely with the Sales and Catering Department to insure that the successful execution of all banquet and meeting functions. Review all functions sheets to validate that all necessary information is contained for each event.

8. Continually analyze all menus in the restaurant and the banquet areas. Maintain an accurate, computerized sales index of all menus to determine the effectiveness of the individual items they contain. Audit the computerized point of sale system to insure that all guest checks are being posted correctly. Restructure and redesign all menus at least semi-annually. Constantly monitor the industry and trade publications to be aware of any new trends or population preferences that may affect the marketplace.

9. Maintain a computerized account of the banquet gratuities and service charges for the accounts payable/employee account. Balance these account ledgers with the biweekly payroll figures.

10. At least twice a year, solicit formal bid from food purveyors to become the primary vendor for the hotel. Pursue any possibility to lower the food cost percentage, increase the variety, delivery options available and improve the quality of the products that we are delivering to our guests. Analyze and evaluate the bids from the participating vendors and pass your recommendations to the General Manager for review.

11. Develop a detailed operational budget for the individual food and beverage departments. This business plan is extremely critical to the operations as it is used as a basis for the performance of the departments in the coming year. All budgets and business plans must follow approved accounting procedures as coordinated with the financial officers of the company.

12. Design and implement special promotions and events in the departments that will increase revenues and profitability of the operation. Develop holiday and traditional events that will stimulate additional revenues. Coordinate with the Sales and Catering office any campaigns and marketing efforts.

13. Coordinate booking, scheduling and benefits for entertainment in the lounge and for special occasions. Maintain an acceptable budget for this expense within the beverage department. Develop an entertainment calendar to coordinate with the promotional schedule. Market the entertainment options in conjunction with the Sales and Catering office.

14. Maintain awareness of industry developments and practice continuous learning.

15. Other duties as assigned.

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 petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the offered position appears to be that of a food and beverage manager. In its Occupational Outlook Handbook, 2000-2001 edition, at page 20, the Department of Labor (DOL) describes the job of a food and beverage manager as follows:

Food and beverage managers direct the food service operations of hotels. They oversee the hotels' restaurants, cocktail lounges, and banquet facilities. These managers also supervise food and beverage preparation and service workers, plan menus, set schedules, estimate costs, and deal with food suppliers.

A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 55-57 finds no requirement of a baccalaureate degree in a specialized area for employment as a food and beverage manager. Community and junior colleges, and some universities offer associate, bachelor's, and graduate degree programs in hotel and restaurant management. In addition, technical schools, vocational and trade schools, and other academic institutions offer programs leading to formal recognition in hotel or restaurant management. Although postsecondary education is preferred, some hotel employees still advance to hotel management positions without education beyond high school.

Second, 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. The record indicates that the position has never been filled. It is also noted that the petitioner's claim that it currently has one food and beverage manager in another property with a baccalaureate degree does not sufficiently establish that such degree is a usual requirement. Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the 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.