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U.S. Department of Justice  
Immigration and Naturalization Service

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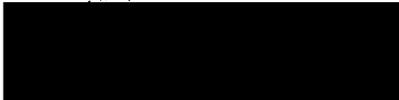


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Office: CALIFORNIA SERVICE CENTER

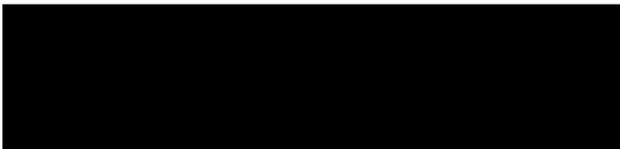
Date: 31 JAN 2002

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:



**PUBLIC COPY**

**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, Director  
Administrative Appeals Office

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

The petitioner is a residential care facility with 4 employees and a gross annual income of \$250,000. It seeks to employ the beneficiary as a food service manager for a period of two years. The director denied the petition finding that the petitioner had failed to establish that the position qualified as a specialty occupation.

On appeal, counsel submits a brief.

The regulation at 8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" 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.

Further, the regulation at 8 C.F.R. 214.2(h)(4)(iii)(A) that a petitioner could qualify the offered position as a specialty occupation if the petitioner could establish that:

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.

On appeal, counsel argues that the position is a specialty occupation because of the complexity of the proposed duties and

high level responsibility of the position. Counsel further argues that the director failed to carefully read and analyze the language of the Department of Labor's Occupational Outlook Handbook which indicates that employers prefer to hire individuals with a bachelor's degree. Counsel further argues that the position is a specialty occupation because of the uniqueness and complexity of the position. Counsel argues that the position involves elements of the occupations of nutritionist, budget analyst, and construction estimator.

Counsel's argument on appeal is not persuasive. Counsel has not submitted sufficient evidence establishing that the position is a specialty occupation. Counsel has not established that the position meets any of the four requirements enumerated above and, as a result, the director's decision will not be disturbed.

The petition is supported by a description of the duties of the position that indicates that the beneficiary will be responsible for examining food samples, food service records, and other data to determine sales appeal and cost of preparing and serving meals and beverages; estimating number of servings based on recipes and unit cost of preparation; converting recipes for use in quantity preparation; studying reservation lists and records; forecasting customer traffic and number of servings required; investigating complaints relative to faulty cooking or quality of ingredients; and planning of menus.

The Service does not agree with counsel's argument that the proffered position of food service manager normally requires a bachelor's degree. A review of the Department of Labor's Occupational Outlook Handbook, (Handbook), 2000-2001 edition, at pages 76-77 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a food service manager. While the Handbook indicates that a bachelor's degree in restaurant or food service management is a strong preparation for a career in this occupation, a bachelor's degree is not the minimum requirement for entry into the occupation. Depending on the nature of the employer, individuals are selected for food service manager positions after completion of both 2 and 4-year training programs. In addition, many food service manager positions are filled by promoting experienced food and beverage workers.

While counsel argues on appeal that the proffered position involves duties of other occupations such as a nutritionist, the record does not demonstrate that this position is anything more than that of a food service manager. It must be noted that many occupations in the work force contain elements of other occupations. However, the additional elements do not alter the basic nature of the occupation. As a result, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

In addition, the petitioner has not shown that it has required the services of individuals with baccalaureate or higher degrees in a specialized area in the past for this position. The record reflects that the restaurant was first opened in 1979. The record does not contain any evidence establishing that the prior food service managers of the restaurant had a bachelor's degree in a specialized area.

In addition, the record does not contain sufficient evidence establishing that firms of similar size and scope hire individuals with bachelor's degrees in a specialized area in parallel positions. The record is devoid of information relating to other companies involved in this industry.

Finally, the petitioner has not established that the duties of the proposed position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree. It has not been shown that the duties of this position are any more complex than those of other food service managers.

In view of the forgoing, it is concluded that the petitioner has not demonstrated that the proffered 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. Accordingly, the decision of the director will not be disturbed.

**ORDER:** The appeal is dismissed.