



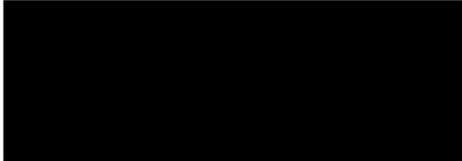
DA

U.S. Department of Justice

Immigration and Naturalization Service

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



File: EAC 01 007 51531

Office: Vermont Service Center

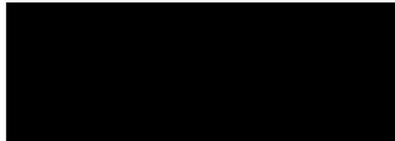
Date: MAY 01 2002

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

The petitioner provides catering and restaurant services. It seeks to employ the beneficiary as a banquet manager for a period of three years. The director determined the petitioner had not established that the offered position is a specialty occupation or that the beneficiary qualifies to perform services in a specialty occupation.

In response, counsel submits a brief.

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 does not hold a baccalaureate degree in any field of study. An educational evaluation submitted by the petitioner found the beneficiary's foreign education to be equivalent to the completion of three years of study in hospitality management and one year of business management at regionally accredited institutions of higher education in the United States. A second evaluation, which was based upon the beneficiary's educational level and work experience indicated that the beneficiary has attained the equivalent of a Bachelor of Arts degree in hotel and restaurant management from an accredited institution of higher education in the United States.

This Service uses an independent evaluation of a person's foreign credentials in as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See Matter of SEA, Inc., 19 I&N Dec. 817 (Comm. 1988).

The second evaluation finding that the beneficiary's educational and employment backgrounds are equivalent to a bachelor of arts degree in hotel and restaurant management carries no weight in this case because the record contains no evidence establishing that the evaluating official is qualified to make such a determination in this proceeding. Only an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience may make such a determination. 8 C.F.R. 214.2(h)(ii)(4)(D)(1). It is determined the beneficiary is not qualified to perform services in a specialty occupation based upon education and experience.

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 described as:

In charge of the banquet service function. Supervises banquet service personnel to assure guest satisfaction through proper food and beverage service and presentation. Maximizes the Company's profitability from the catering function. Develops detailed plans for each catered event. Holds pre-function meeting with servers to ensure smooth and efficient service. Assures proper inventory of all banquet service equipment and supplies to meet required needs. Hires, trains, and evaluates banquet staff. Performs other tasks as requested by the Food and Beverage Director.

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. The petitioner has nowhere indicated the number or percentage of food services managers who hold a baccalaureate degree in restaurant management or a closely related field.

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 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.

Counsel submits a model position description published by the National Restaurant Association indicating that the desired educational level for the position of banquet manager is a two year associate's degree or a bachelor's degree from a four year college. Additionally, counsel has provided a letter which states that the usual requirement for a banquet manager is a college degree in restaurant management, typically, a bachelor's. One letter is insufficient to establish an industry standard. In addition, the writer has not provided evidence in support of his assertions.

In these proceedings, the duties of the position are dispositive and not the job title. The offered job is best described as being a food service manager position. In its Occupational Outlook Handbook (Handbook), 2001-2002 edition, at pages 55-57, the Department of Labor (DOL) does not list a baccalaureate or higher degree in a specialized area as being required for employment as a food service manager. Most food service management companies and national or regional restaurant chains recruit management trainees from two and four-year college hospitality management programs. The Handbook indicates that food service and 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 interest and aptitude. Some restaurant and food service manager positions, particularly self-service and fast food, are filled by promoting experience 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. Although a bachelor's degree in restaurant and food service management provides a particularly strong preparation for a career in this occupation, a number of community and junior colleges, technical institutes and other institutions offer programs in these fields leading to an associate degree or other formal certification short of a bachelor's degree.

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.