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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: WAC 01 257 61157

Office: CALIFORNIA SERVICE CENTER

Date: NOV - 6 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 that 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 that 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 that 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 Director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Associate Commissioner for Examinations on appeal. The appeal shall be sustained. The petition will be approved.

The petitioner is a fine dining establishment that employs 200 individuals and has an undisclosed gross annual income. It seeks to employ the beneficiary as a front-of-house restaurant manager for a period of three years. The director denied the petition finding that the proffered position was not a specialty occupation.

On appeal, the petitioner submits a statement and additional evidence.

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 the classification of qualified nonimmigrant 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.

8 C.F.R. 214.2(h)(4)(ii) further 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.

On October 11, 2001, the director issued to the petitioner a notice of her intent to deny the petition. In the notice, the director informed the petitioner that its proffered position did not meet the definition of a specialty occupation. First, the director informed the petitioner that the Department of Labor's Occupational Outlook Handbook (Handbook) indicated that a bachelor's degree is not required for a restaurant manager

position. Second, although the petitioner had stated that the Department of Labor's Dictionary of Occupational Titles assigned the position an SVP rating of seven, the director concluded that this rating indicated that the position did not require a baccalaureate degree. Third, the director stated that even though the petitioner had mentioned that the beneficiary would supervise a professional staff of 75 individuals, the petitioner did not submit any evidence that the individuals occupied specialty occupations. Fourth and finally, the director informed the petitioner that managerial positions, in general, are not considered professional endeavors, and she cited Matter of Caron International, Inc., 19 I&N Dec. 791 (Comm. 1988). The director provided the petitioner 30 days to submit additional evidence or information in support of the petition.

In response, the petitioner submitted a detailed letter describing its operations and the proffered position. The petitioner stated that Spago Beverly Hills is the flagship of a group of fine dining restaurants. The petitioner further stated that it has been ranked fourth in the nation by *Gourmet* magazine, and is renowned for its level of service. According to the petitioner, "[the proffered position] . . . is one that has a much greater magnitude than one would normally anticipate, and continued growth and success of our brand is hinged upon it."

The petitioner then described in great detail the proffered position of front-of-house restaurant manager, which the petitioner claimed was more complex than a standard restaurant manager position.¹ The petitioner stated that the front-of-house manager was responsible for tasks such as (1) the design of a service training program for staff, (2) the implementation of standard operating procedures and safety regulations, (3) the control of the budget, (4) the coordination and supervision of staff, and (5) the functions of the private dining room. The petitioner further stated that it required an individual with a bachelor's degree in this position because "the type of training and supervision which must be administered by the front-of-house manager in order to produce and maintain the extraordinary level of service for which Spago Beverly Hills has become famous is also well beyond what is encountered in most restaurants."

The director denied the petition on March 21, 2002 for the reasons stated in the notice of her intent to deny the petition. The director noted that the petitioner hosted many prestigious events, but concluded that the duties to be performed by the beneficiary were within the scope of the duties of a restaurant manager as described in the Handbook.

On appeal, the petitioner reiterates many of the claims it made in

¹ The petitioner's nine-page description of the proffered position will not be repeated here.

its response to the director's notice. The petitioner also submits additional evidence.

The first item of evidence is a list of the petitioner's employees whom it claims have "attained degrees or higher and are in the position of management with direct reporting responsibilities with and to [the] H-1B candidate" The second item of evidence is a letter from Wolfgang Puck, the owner of Spago Beverly Hills, who explains the responsibilities of the proffered position and the beneficiary's credentials. The third and fourth items of evidence are letters from the Russian Tea Room and Aquavit, which are submitted to support the petitioner's claim that fine dining establishments normally recruit individuals with bachelor's degrees in the hospitality industry. The final items of evidence are documents relating to the beneficiary's qualifications.

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 are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

In both the notice of her intent to deny and the denial letter, the director noted that the Department of Labor's Handbook failed to indicate that a bachelor's degree in a specific specialty was a minimum requirement for entry into the position of a food service/restaurant manager. However, after comparing the job duties of the proffered position to the job duties of a food service manager as described in the Handbook, it is clear that the proffered position is more complex. Accordingly, the Department of Labor's assessment of the training required to perform the duties of a food service manager are not applicable in this particular case.

The director classified the position as a food service manager. In its Handbook, 2002-2003 edition, at page 55, the Department of

Labor states, in part, the following about this position:

[M]anagers now are responsible for a growing number of administrative and human resource tasks. For example, managers must carefully find and evaluate new ways of recruiting employees in a tight job market. Once hired, managers also must find creative ways to retain experienced workers. . . . On a daily basis, managers estimate food consumption, place orders with suppliers, and schedule the delivery of fresh food and beverages. They receive and check the content of deliveries, evaluating the quality of meats, poultry, fish, fruits, vegetables, and baked goods. To ensure good service, managers meet with sales representatives from restaurant suppliers to place orders replenishing stocks of tableware, linens, paper, cleaning supplies, cooking utensils, and furniture and fixtures. They also arrange for equipment maintenance and repairs, and coordinate a variety of services such as waste removal and pest control. . . .

The Department of Labor's description of a food service manager does not parallel the duties of the proffered position; none of the job duties listed above were included in the petitioner's description of the proffered position.

According to the petitioner, the beneficiary will design, develop and administer a four-week training program for its staff. This is a more complex responsibility than simply recruiting and retaining employees. Additionally, in its detailed description of the proffered position, the petitioner never stated that the beneficiary would be responsible for mundane duties such as ordering supplies, checking the contents of deliveries, or estimating food consumption.

The Service notes that the Handbook provides valuable information about a wide range of occupations in the nation's economy. However, the Handbook's information is limited; it does not include all occupations, and only "provides a general, composite description of jobs."² Thus, whether or not the Handbook states that a particular occupation normally requires a bachelor's degree in a specific specialty for entry into the position, it is also necessary to consider the nature of the petitioner's operations and the job duties of the proffered position when determining whether a job is a specialty occupation.

² The Department of Labor makes this statement in the Handbook's Acknowledgements page. The Department of Labor further states that the Handbook cannot be expected to reflect work situations in specific establishments or localities.

Here, the petitioner is a fine dining establishment that has earned national renown for its food and service. The petitioner has described a position that, although akin to a food service manager, is far more complex than the Department of Labor's description of such a position. Thus, the petitioner's requirement of a bachelor's degree in restaurant management for the proffered position is a reasonable requirement.³ Accordingly, the petitioner has satisfied the requirement in 8 C.F.R. 214.2(h)(4)(iii)(A)(2), and the director's objection to the approval of the petition has been overcome.

The record indicates that the beneficiary received a Certificat d'Aptitude au Professorat de l'Enseignement Technique from the Academy of Rennes, France in 1981. This Certificate has been equated to a Bachelor of Arts degree in restaurant management from an accredited institution of tertiary education in the United States. Therefore, the beneficiary is qualified to perform the duties of this specialty occupation.

As always, 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 sustained that burden.

ORDER: The appeal is sustained. The petition is approved.

³ It is noted that the Department of Labor stated that "[m]ost food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs." Thus, the petitioner's requirement of a bachelor's degree in restaurant management for a non-trainee position is not excessive.