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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

[Redacted]

File: WAC-01-061-52598

Office: California Service Center

Date: **SEP 30 2002**

IN RE: Petitioner:
Beneficiary:

[Redacted]

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:

[Redacted]

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
Robert P. Wiemann, 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 operates two wine stores and has 2 employees and a stated gross annual income of \$160,000. It seeks to employ the beneficiary as a supervisor of food and liquor 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, counsel submits a brief and additional documentation.

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.

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.

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.

The director denied the petition because the duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree in a specific field of study. The director further determined the petitioner had not established that the beneficiary's education and work experience are equivalent to a bachelor's degree in a specific field of study.

On appeal, counsel asserts that the offered position is a specialty occupation. Counsel further asserts that the petitioner has submitted sufficient evidence to show that the beneficiary's education and work experience are equivalent to a bachelor's degree in operations management.

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

Coordinates through subordinates, purchasing, sales, inventory control, display, tabulating of receipts and warehousing of beverages in stores according to public demand and established policy of control authority. Visits stores to inspect facilities and procedures and evaluate condition of stock. Authorizes transfer of beverages among stores to maintain fresh balanced stock. Recommends expansion, remodeling or relocation of stores according to accepted merchandising principles and policy of the authority. Reviews sales and inventory reports to develop more efficient procedures to supply data on beverage consumption to legislative officials or other interested parties. May plan window displays or other merchandising techniques to stimulate sales.

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.

The Service does not agree with counsel's argument that the proffered position would normally require a bachelor's degree in operations management or a related field. The petitioner's General Manager, Ken Hamidi, stated in a letter dated May 10, 2001, that the petitioner operates a liquor store and a wine store in high-end neighborhoods in the Sacramento Valley. Mr. Hamidi further stated that the company's five-year plan includes the opening of two additional stores and the launching of an e-commerce website. Mr. Hamidi stated that his company also intends to enter the import-export wine trade with India as the targeted market. The petitioner wishes to employ the beneficiary as its food/liquor supervisor to "handle our present growth and help us in our future prospects."

The position appears to be that of an operations manager. According to the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 edition, at page 87, *general and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. The duties include formulating policies, managing daily operations, and planning the use of materials and human resources that are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services.

A review of the Handbook at page 87 finds no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or operations manager. Many general managers or operations managers have a bachelor's or higher degree in business administration or liberal arts. In some industries it is possible for individuals without a college degree to work their way up within the company and become managers. Thus, the petitioner has not shown that a bachelor's degree in business administration or a related field is required for the position being offered to the beneficiary.

In an attempt to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted four internet job advertisements for positions as sales manager, sales associate, and marketing manager in liquor stores or liquor distributorships. None of these job ads specifies that a bachelor's degree in a specific field of study is required. Indeed, only one of the ads states that a college degree is required. The other jobs require experience in wine sales and knowledge of domestic and imported wines.

On appeal, counsel asserts that the proffered position most closely resembles that of an operations logistics analyst or an operations manager. Counsel asserts that such jobs require a bachelor's degree with a specialization in operations management or logistics and submits three internet job advertisements in support of his assertion. However, none of the advertised jobs can be considered to be parallel jobs in similar organizations, since none of the prospective employers are in the food and beverage retail industry. Furthermore, seven job advertisements do not demonstrate an industry standard.

While counsel asserts that the petitioner requires a bachelor's degree with a specialization in operations management or logistics for the offered position, the petitioner has not provided any evidence to show that it requires a bachelor's degree in a specific field of study as part of the hiring process, such as copies of previous job announcements.

Counsel asserts on appeal that the duties of the proffered position are so specialized and complex that the knowledge required to perform these job duties is usually associated with the attainment of a bachelor's degree in a specific field of study. However, neither counsel nor the petitioner has not submitted any independent evidence to corroborate this statement. It was held in Matter of Obaigbena, 19 I. & N. Dec. 533, 534 (BIA 1988) and Matter of Ramirez-Sanchez, 17 I. & N. Dec. (BIA 1980) that the assertions of counsel do not constitute evidence.

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.

With respect to counsel's objection to denial of this petition in view of the approval of similar petitions in the past, the Service is not required to approve petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the previously approved petitions and their supporting documentation. It is, therefore, not possible to determine definitively whether they were approved in error or

whether the facts and conditions have changed since those approvals.

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 was awarded a bachelor of arts diploma by the University of Delhi in India in 1991. A credentials evaluator found this diploma equivalent to three years of university-level credit from an accredited college or university in the United States.

The beneficiary subsequently received a certificate from the National Institute of Fashion Technology in India upon completion of a one-year course in production technology. The credentials evaluator found this certificate equivalent to completion of a one-year technical course offered by a private organization in the United States.

The record further shows that the beneficiary worked for Euro Intex, a manufacturer and exporter of shirts and jackets in India, from June of 1991 to August of 1993. The petitioner has submitted an employment letter, signature illegible, from an individual identified as "Partner" in that firm. The letter merely provides the dates of employment and the beneficiary's job title. No information is provided regarding the duties performed by the beneficiary during his employment for that company.

The beneficiary worked for Bartholomew's from May of 1994 to December of 1994. The record contains an employment letter signed by Rajesh Bedi providing the dates of the beneficiary's employment and his salary. However, no information was provided regarding the beneficiary's job title or his responsibilities during his employment for that company.

From October 1995 to the date of filing of the petition, the beneficiary worked as general manager, marketing, for Sophistica Industries Pvt., Ltd. The record contains an employment letter signed by the Managing Director, signature illegible, of that company. This letter merely provides the beneficiary's job title and salary. No information was provided regarding the beneficiary's duties during his employment for that company.

The credentials evaluator found the beneficiary's foreign education and work experience equivalent to a bachelor's degree in operations management from an accredited college or university in the United States.

This Service uses an independent evaluation of a person's foreign credentials in terms of education in the United States 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., I.D. 3089 (Comm. 1988).

In this case, the evaluator appears to have relied solely on the beneficiary's resume and the employment letters contained in the record to reach her conclusion. However, as stated above, these employment letters do not provide any information as to the duties performed by the beneficiary during his employment for those companies. Without this information, the record lacks sufficient information to make a determination as to whether the beneficiary's foreign education and work experience are equivalent to a bachelor's degree in a specific field of study. In view of the foregoing, the evaluation is accorded little weight.

The record does not contain an evaluation from 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. The beneficiary is not a member of any organizations whose usual prerequisite for entry is a baccalaureate degree in a specialized area. The record contains no evidence that the beneficiary holds a state license, registration, or certification which authorizes him to practice a specialty occupation. 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 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.