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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: SRC-02-077-52313 Office: TEXAS SERVICE CENTER

Date: **AUG 19 2003**

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner operates wine and gourmet stores. It has 187 employees and an undisclosed gross annual income. It seeks to employ the beneficiary as a food and beverage service manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, 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.

The director denied the petition because the petitioner had not demonstrated that a baccalaureate degree is required for the proffered position. On appeal, counsel states, in part, that the petitioner currently employs and has employed professionals with baccalaureate degrees for positions similar to the proffered position. Counsel further states that the proposed duties are so complex that a baccalaureate degree is required. Counsel submits opinions from Julia Truitt Poynter, Ph.D., MBA, Division of Business and Economics, Transylvania University, and from William Hebrank, Adjunct Professor, Florida International University, in support of her claim.

Counsel's statement on appeal is not persuasive. The Bureau 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 Bureau considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The beneficiary] will be responsible for organizing wine tasting parties for clients, serving as a host and assisting clients['] needs in terms of wine type, age, flavor, etc. She will also be entrusted with experimenting with new gourmet dishes and will evaluate the response of the customers to new settings and menus. In addition, [the beneficiary] will handle our buffets, banquets, special food programs and promotions, assuring not only the quality of the food, but that its preparation and presentation are consistent with the reputation of our store.

In response to the director's request for additional evidence, the petitioner's wine director submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as a food and beverage service manager. He states, in part, as follows:

By no means her job will be that of a wine steward, who merely select[s] and makes recommendation[s] to patrons, replenish [sic] stock and maintains wine inventory; to the contrary, she will not only be eventually training and supervision [sic] these personnel, but will be our **wine consultant, responsible for wine tasting and buying, which represents the core of our business and reputation worldwide.**

The additional, more complex duty of "wine consultant" is noted. This duty, however, did not appear in the description of duties that was provided when the petition was initially filed. As such, it appears that this additional duty was added solely to make the petition approvable. In any event, for the purposes of this proceeding, the proposed duties are those that were described when the petition was initially filed.

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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree in hospitality management or a related field. The proffered position is similar to that of a promotion manager. A review of the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, at page 28, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a promotion manager. Most employers prefer a wide-range of educational backgrounds or promote individuals from within companies. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as hospitality management, for the offered position. A review of the petitioner's personnel roster finds that its employees hold baccalaureate degrees in a variety of educational fields, such as journalism, arts and science & anthropology, administrative engineering, and psychology. Third, the petitioner did not present any documentary evidence that a baccalaureate degree in a specific specialty or its equivalent is common to the industry in parallel positions among organizations similar to the petitioner. 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 opinions from Julia Truitt Poynter, Ph.D., MBA, Division of Business and Economics, Transylvania University, and from William Hebrank, Adjunct Professor, Florida International University, are noted. Dr. Poynter concludes that positions such as the proffered position require a bachelor's degree or its equivalent. It is noted that Dr. Poynter's opinion is for the position of a "purchasing specialist/buyer or merchandise manager." The duties discussed in her opinion, however, are not the duties that were described when the petition was initially filed. Because of these inconsistencies, her opinion is accorded little weight. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

It is noted that in the second opinion, Professor Hebrank, who is the beneficiary's former professor, states, in part, that the beneficiary will be an asset to the petitioner. In view of the foregoing, neither writer of the opinions provides any persuasive evidence that a baccalaureate degree in a specific specialty is required for the proffered opinion.

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.