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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street, N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, DC 20536



File: EAC-02-055-53761 Office: VERMONT SERVICE CENTER Date: AUG 22 2003

IN RE: Petitioner: [Redacted]
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)

ON 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 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, Vermont Service Center, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner owns and operates eleven [REDACTED] restaurants in Virginia. It claims 250 employees and a gross annual income of \$14 million. It seeks to temporarily employ the beneficiary as an assistant restaurant manager for a period of three years. The director denied the petition after determining that the petitioner had not established that the proffered position was a specialty occupation.

On appeal, counsel reasserts the petitioner's claim that the proffered position of assistant restaurant manager should be considered a specialty occupation.

Section 214(i)(1) of the Immigration and Naturalization Act (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.

The term "specialty occupation" is further 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 field 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.

At issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. In support of the original petition, the petitioner provided the following description of the proffered position:

- Schedules, trains, and supervise[s] hourly employees in all areas of restaurant operations including food preparation, sanitation, appearance, customer service, and building or equipment care and maintenance;
- Develops and maintains good customer relations to ensure customer satisfaction and build restaurant sales and profitability;
- Displays a positive attitude, representing the company well in the presence of customers and other employees;
- Maintains and keeps all store and company information in a professional, yet confidential manner;
- Communicates information to the General Manager pertaining to various opportunities or problems that need to be addressed within the restaurant unit;
- Performs various management level duties, including maintaining the security of the restaurant cash procedures;
- Trains crew members and other supervisors to uphold both NVG, BKG and local health department standards and policies, and assists in conducting performance evaluations for the restaurant staff.

On January 17, 2002, the director asked for further information with regard to whether the proffered position was a specialty occupation. In response, counsel submitted a letter from the petitioner's company president, [REDACTED] Mr. [REDACTED] stated: "In years past our company required that all assistant managers and above possess college degrees. . . . Unfortunately, . . . we have found it necessary to modify this educational requirement. We currently have assistant managers who may not possess a college degree, but do possess appropriate background, training, or work experience to handle the specialized skills of restaurant management."

On May 1, 2002, the director denied the petition. On appeal, counsel asserts that the proffered position requires a bachelor's degree "to allow such individual to perform the more complex and unique tasks required by overseeing diverse restaurant operations."

Upon review of the record, the petitioner has not presented a persuasive claim for classifying the proffered position as a specialty occupation. In evaluating whether the proffered position is a specialty occupation, each of the four criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A) will be considered separately below.

I. A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position - 8 C.F.R. § 214.2 (h) (4) (iii) (A) (1)

The Bureau often looks to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* when determining whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position.

The basic entry requirements of a Restaurant Manager as outlined in the 2002-2003 edition of the *Handbook* on pages 56 and 57 are as follows:

Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. 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. . . .

For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in these fields leading to an associate degree or other formal certification.

The petitioner provided a letter from [REDACTED] Director of Credential Evaluations, dated April 11, 2002. Mr. [REDACTED] stated that the "position of an Assistant Manager should be filled by a person with a bachelors degree in any related field as a minimum requirement for the job offer that qualifies him for the specialty occupation."

While the author of this letter may be qualified to make a determination as to whether the beneficiary qualifies to perform services in the proffered position based on his educational credentials, the author has not provided any credentials setting forth his ability to give expert testimony regarding the question of whether the proffered position of assistant restaurant manager qualifies as a specialty occupation. That determination is the province of the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (Bureau), as set forth within the Immigration and Nationality Act (The Act). See section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Bureau may, in its discretion, accept letters and advisory

opinion statements as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Bureau is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Since the opinion of Mr. Putta is not consistent with the standards outlined in the Handbook, his opinion can be given little weight.

While a baccalaureate degree in restaurant and food service management may be desirable for employment in the field, other types of training such as that received at community colleges and technical institutes, as well as degrees in unrelated fields and subjects, are also acceptable for entry into the field of food service management. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

II. 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 - 8 C.F.R. § 214.1(h) (4) (iii) (A) (2)

A. Degree Requirement is Common to the Industry

The petitioner submitted no documentation that any professional restaurant management association has made a bachelor's degree a requirement for entry into the field, nor has it submitted letters or affidavits from firms or individuals in the industry which attest that such firms "routinely employ and recruit only degreed individuals." Accordingly, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

B. Complexity and Uniqueness of the Proffered Position

In the alternative, the petitioner may show that the proffered position is so complex or unique that it can be performed only by an individual with a degree. In the instant petition, the petitioner has submitted no documentation that the position of an assistant restaurant manager would involve duties seen as either unique or complex that only an individual with a degree in a specific specialty could perform them.

III. The employer normally requires a degree or its equivalent for the position - 8 C.F.R. § 214.2(h) (4) (iii) (A) (3)

The petitioning company president, [REDACTED] stated on appeal that, in the past, the petitioner had "required that all assistant managers possess college degrees" but conceded that the company had "found it necessary to modify this educational requirement" and that it would now hire assistant managers "who may not possess a college degree, but do possess appropriate background, training, or work experience to handle the

specialized skills of restaurant management. Their work experience and training is in fact the equivalent of a bachelor's degree."

However, the petitioner did not submit any evidence to corroborate his assertion. The petitioner has not provided any evidence documenting the employment histories or educational backgrounds of the company's other assistant managers. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

IV. 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 - 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

To date the petitioner has provided no evidence documenting the alleged specialized and complex nature of the proffered position. The job description in the original petition lists duties that are similar to those of any assistant restaurant manager position. Although counsel describes the proffered position as "complex and unique" the president of the petitioning company did not detail any complexities which would differentiate this position from any other assistant manager position. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Without more persuasive evidence as to the specialized or complex nature of the position, the petitioner has not met the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has failed to establish that any of the four criteria 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.