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

(Handwritten initials)

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

[Redacted]

DEC 08 2003

File: EAC-02-190-53186 Office: VERMONT SERVICE CENTER Date:

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]

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 Citizenship and Immigration Services (CIS) 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.

(Handwritten signature)
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 is a casino with 13,500 employees and a gross annual income of \$424.9 million. It seeks to employ the beneficiary as an assistant shift manager for its Golden Dragon restaurant 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 normally requires a baccalaureate degree in hotel and restaurant management or a related field for its assistant restaurant shift manager positions. Counsel also states that the Department of Labor (DOL) in the most recent edition of its *Occupational Outlook Handbook (Handbook)* finds that a baccalaureate degree is required for a restaurant manager position. Counsel further states that the record contains expert opinions and job advertisements to demonstrate that this degree requirement is industry wide.

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

In this position, he will coordinate and implement all established procedures for the restaurant and participate as a panel member on MPGE's Board of Reviews. He will assist in supervising, training and evaluating restaurant personnel, enforce food and beverage policies and procedures and ensure sanitation compliance throughout the restaurant. He will also ensure that all set-up duties are completed on time and assist in estimating food and beverage costs and requisitions and reviewing financial transactions. Finally, he will promote positive customer relations and investigate and resolve customer complaints and be responsible for the restaurant's compliance with all regulatory requirements within area of responsibility.

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 AAO does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree or higher in business administration, hospitality management, or a related field. The proffered position is that of an assistant restaurant shift manager/food service manager. A review of the DOL's *Handbook*, 2002-2003 edition, at pages 56-57, finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a food service manager. Most food service management companies and national or regional restaurant chains recruit management trainees from 2 and 4-year college hospitality management programs. In addition, some restaurant and food service manager positions, particularly self-service and fast food, are filled by promoting experienced food and beverage preparation and service workers. 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, although the petitioner's food and beverage vice president states that the petitioner requires all of its assistant restaurant shift managers to hold a baccalaureate degree in restaurant management, hospitality management, or an equivalent thereof, the record contains no evidence in support of this claim. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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. The job advertisements submitted by counsel are noted. None of the advertisements, however, are for an assistant restaurant manager position. Rather, the advertisements are for positions such as director of dining services, general manager, and area manager. The petitioner has not demonstrated that the proposed duties of the proffered position are as complex as those in the advertised positions. For example, the duties of the advertised area manager position include directing the operation and maintenance of more than 11 restaurants. Furthermore, some of the advertisements do not specify a baccalaureate degree in a specific specialty.

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 opinion letters from Professor Patt Manheim, Ph.D. of Johnson and Wales University and Paul J. McVety, Associate Dean, College of Culinary Arts, Johnson and Wales University, are noted. Both writers maintain that a baccalaureate or higher degree in hotel and restaurant management or an equivalent is required for positions such as the proffered position. Instead of relying on the opinions of personnel from the beneficiary's alma mater, however, the petitioner should have presented information regarding whether any of the industry's professional associations have made a degree a minimum entry requirement. Neither counsel nor the petitioner presents evidence that any hospitality association has made a baccalaureate or higher degree a minimum entry requirement for positions such as the proffered position. For this reason, the opinion letters are accorded little weight.

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.