

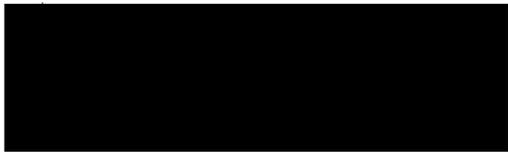
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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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



JUL 02 2006

File: SRC 01 267 51951 Office: TEXAS SERVICE CENTER Date:

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:

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

The petitioner owns and operates a travel plaza that is divided into the following departments: retail automotive fuel sales, an automotive service center, a convenience store, a full service restaurant, and a 48 room franchised facility serving interstate travelers and locals. The petitioner currently has 27 employees and estimated annual sales of \$3.6 million. The petitioner wishes to employ the beneficiary as a restaurant manager for a period of three years. The director determined the petitioner had not shown that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), 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 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 determined the petitioner had not shown that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

On appeal, counsel asserts that the degree requirement is an industry standard. Counsel further asserts that positions within the hospitality industry are in a state of transition and that a bachelor's degree is increasingly being recognized as a minimum requirement for employment as a restaurant manager. Finally, counsel asserts that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate degree in a specific specialty.

In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the position as follows:

As part of his responsibilities, the [b]eneficiary will manage restaurant and hotel operations, ensuring customer satisfaction, efficient service and a clean atmosphere. He will select and price menu items and use supplies efficiently to achieve quality food preparation and services. On a daily basis, the [b]eneficiary will estimate food consumption, place orders with suppliers and schedule deliveries. He will evaluate the quality of the deliveries and arrange for equipment maintenance and repairs. [The beneficiary] will meet with and provide consulting services to restaurant clients and suppliers.

He will supervise food preparation and cleaning to maintain company and government sanitation standards. [The beneficiary] will monitor the actions of employees and patrons on a continual basis to ensure that health and safety standards are obeyed.

[The beneficiary] will utilize his educational background and knowledge of the field in hotel and restaurant management to optimize services and provide satisfaction to patrons. [The beneficiary] will oversee employee hours and schedules and provide training for new employees.

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 Bureau does not agree with counsel's assertion that a baccalaureate degree in a specific specialty is normally the minimum requirement for employment as a restaurant manager. A review of the Department of Labor's ("DOL") *Occupational Outlook Handbook*, (*Handbook*) 2002-2003 edition, at pages 55-57 finds no requirement of a baccalaureate or higher degree in a specific specialty or its equivalent for employment as a restaurant manager. Counsel contends that the *Handbook* indicates that a bachelor's degree in hotel and restaurant or hospitality management, food service management or culinary arts provides a particularly strong preparation for a career in the field. However, the DOL specifically notes at page 57 of the *Handbook*:

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

For those not interested in pursuing a 4-year degree, more than 800 community and junior colleges, technical institutes, and other institutions offer programs in

these fields leading to an associate degree or other formal certification.

Clearly, although a baccalaureate degree in restaurant and food service management is desirable for employment in the field, other types of training such as that received at community colleges and technical institutes are also acceptable for entry into the field of restaurant management.

Counsel further asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered to be a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*. Thus, the petitioner has not shown that a baccalaureate degree in food services management or a related field is normally the minimum requirement for entry into the occupation.

In an attempt to demonstrate that the degree requirement is an industry standard, counsel submits two job advertisements for restaurant manager positions. One of the advertised jobs requires a bachelor's degree or two years of customer service or management experience. The other advertisements merely state, "recent college graduates are encouraged to apply." Neither of these advertisements indicates a requirement of a bachelor's degree in food service management, restaurant management, or a related field.

Counsel also submits a list of colleges and universities that have four-year programs leading to a bachelor's degree in hospitality. The DOL specifically notes at page 57 of the *Handbook*:

A number of colleges and universities offer 4-year programs in restaurant and hotel management or institutional food service management.

As previously stated, however, there is no indication in the *Handbook* that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

Finally, counsel submits an article entitled "Degrees Equal Dollars" from <http://www.restaurant.org>, the website of the National Restaurant Association. According to this article, restaurant managers with college degrees usually earn more than those who have less education. This article does not, however, state that the degree requirement is an industry standard. In view of the foregoing, it is concluded the petitioner has not submitted sufficient evidence to show that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not provided any evidence to show that it required a baccalaureate degree in a specific specialty or its equivalent as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty or its equivalent. The duties of the position do not appear to be any more specialized or complex than those normally performed by restaurant managers. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty or its equivalent is the normal minimum requirement for employment as a restaurant manager.

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.