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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

[Redacted]

File: LIN 01 175 52853 - Office: Texas Service Center

Date: **JUL 21 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]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
Robert P. Wiemann, Director
Administrative Appeals Office

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DISCUSSION: The nonimmigrant visa petition was denied by the Director, Texas Service Center, who affirmed her decision in a motion to reopen or reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an Oklahoma entity operating as a specialty restaurant with an unknown income and number of employees. The petitioner seeks to employ the beneficiary as a food production manager for a period of three years. The director determined that the petitioner failed to establish that the proffered position was a specialty occupation. A motion for reconsideration was filed. That motion was granted, but the director affirmed her original determination that the job was not a specialty occupation.

On appeal counsel asserts that the position of food production manager is a specialty occupation. Counsel further asserts that a previous determination by the Immigration and Naturalization Service, now the Bureau of Citizenship and Immigration Services (the Bureau), held that the offered position was a specialty occupation.

Section 214(i)(1) of the Immigration and Nationality 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.

The first issue to be considered is counsel's assertion that the offered position is an H-1B specialty occupation because the Bureau previously approved a prior H-1B petition involving the same beneficiary and job description. With regard to this assertion,

the Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. Prior decisions of the service center lack precedential authority over the AAO and the AAO is not bound to follow any decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp. 2d 800, 803 (E.D. La. 2000), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Counsel further asserts on appeal that the position of "food production manager" is a specialty occupation. The Bureau does not simply rely on a position's title 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.

The beneficiary's job responsibilities were detailed in the petitioner's I-129 as:

Coordinates activities of and directs training of chefs and cooks; plans and reviews menus, analyzes recipes, determines food, labor and overhead costs. Sets pricing. Establishes and enforces nutrition and sanitation standards.

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 qualify the offered position as a specialty occupation. The job responsibilities to be assigned to the beneficiary are similar to

the duties of a food service manager. In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at page 55, the Department Of Labor describes in part, the duties of a food service manager as follows:

One of the most important tasks of food service managers is selecting successful menu items. . . . Managers or executive chefs select menu items, taking into account the likely number of customers and the past popularity of dishes. Other issues taken into consideration when planning a menu include unserved food left over from prior meals that should not be wasted, the need for variety, and the seasonal availability of foods. Managers or executive chefs analyze the recipes of the dishes to determine food, labor, and overhead costs, and to assign prices to the various dishes. . . .

These job responsibilities closely resemble those listed by the petitioner on the I-129. In counsel's motion to reconsider, counsel asserts that the performance of the duties previously detailed necessarily require the beneficiary to have sufficient education "to teach and train others; the knowledge to understand the basic principles of nutritional science, hygiene and chemistry in the planning and preparation [of] menus; and the skills to determine food, labor and overhead costs." Counsel states that the training and teaching requirements of the proffered position require knowledge and abilities not available outside a "college environment." As noted in the *Handbook*, however, these duties are required of food service managers, along with a host of other management responsibilities not required of the beneficiary, such as recruitment and retention of employees. *Id* at 55.

The *Handbook* notes that a bachelor's degree in restaurant and food service management provides strong preparation for a career in this occupation. Candidates are recruited however, from two and four-year college hospitality management programs, as well as from technical institutes and other institutions offering programs leading to associate degrees or other formal certification. *Id* at 56 - 57. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area for the offered position. The petitioner does not make this assertion and offered no proof in this regard.

Third, the petitioner failed to present any evidence to establish that parallel positions among similar organizations in the industry commonly require a bachelor's degree.

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 those duties is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent. The duties associated with this position are performed by individuals in the industry from a variety of educational backgrounds. They range from those obtaining four-year university degrees to those obtaining two-year university degrees or certifications from technical institutes or other organizations.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is therefore concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

Beyond the decision of the director, the petitioner failed to submit any documentation or evidence establishing that the beneficiary's foreign degree was equivalent to a baccalaureate degree from an accredited U.S. university. The petitioner also failed to establish that the beneficiary's prior work experience was equivalent to a baccalaureate degree from an accredited U.S. university. The petitioner merely asserts in its I-129 Supplement H, that the beneficiary had 17 years of "experience in the restaurant business; including the supervision and training of chefs and cooks; selection of recipes and cost analysis." No submission was made detailing specifically what positions the beneficiary had previously held or the job responsibilities associated with those positions.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.