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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: LIN 01 070 52709

Office: TEXAS SERVICE CENTER

Date: JUN 15 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: SELF-REPRESENTED

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 Director of the Nebraska Service Center denied the nonimmigrant visa petition. The director subsequently reopened the matter and issued a new decision denying the petition a second time. The matter is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a restaurant with 50 employees and an approximate gross annual income of \$1.7 million. It seeks to employ the beneficiary as a food service 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, the petitioner submits a brief.

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, the petitioner asserts that the Department of Labor ("DOL") has determined in its *Dictionary of Occupational Titles* ("DOT") that a food service manager position is a specialty occupation requiring at least a baccalaureate or higher degree. Finally, the petitioner asserts that the director relied upon an overly narrow reading of the training requirements for food service manager positions in the DOL's *Occupational Outlook Handbook* (*Handbook*) in arriving at the conclusion that the position in question does not qualify as a specialty occupation.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

- Coordinate and direct the activities of department heads and staff members to deliver quality food and customer service to the restaurant;
- Is responsible for proper purchasing, receiving, handling and delivery of all food, along with cost analysis, invoice verification and cost control.
- Coordinate preparation of financial statements and is responsible for the results.
- Responsible to hire and assign all personnel to specific job duties, create budgets, and to hold them accountable to these duties and to their budgets.
- Supervises [sic] and approves [sic] hourly employee schedules and ensures proper rotation of these shifts, along with verification that cost of labor is within budgeted constraints.
- Review the performance of staff members and department heads quarterly and make wage decisions based upon performance criteria.
- Plan, coordinate and execute all community events, festivals, and caterings.

- Verify all menus and pricing.
- Coordinate with vendors to provide the specified items for all offerings.
- Solves [sic] all customer and staff complaints and communicates [sic] methods to avoid mistake repetition.
- [E]stablish well defined employee performance standards and ensure constructive employee appraisals and evaluations[.]
- [E]valuate the success of marketing and sales programs with division management and recommend adjustments and changes to achieve desired results[.]
- [E]nsure expenditures stay within budget limitations.

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.

The proffered position is that of a food service manager. The DOL describes the work of a food service manager at pages 55-56 of the *Handbook* 2002-2003 edition, as follows:

The daily responsibilities of many food service managers can often be as complicated as some of the meals prepared by a fine chef. In addition to the traditional duties of selecting and pricing menu items, using food and other supplies efficiently, and achieving quality in food preparation and service, managers now are responsible for a growing number of administrative and human resource tasks. For example, managers must carefully find and evaluate new ways of recruiting employees in a tight job market. Once hired, managers must also find creative ways to retain experienced workers.

. . . .

On a daily basis, managers estimate food consumption, place orders with suppliers, and schedule the delivery of fresh food and beverages. They receive and check the content of deliveries, evaluating the quality of meats, poultry, fish, fruits, vegetables, and baked goods.

. . . .

The quality of food dishes and services in restaurants depends largely on a manger's ability to interview, hire, and when necessary, fire employees. . . . Once a new employee is hired, managers explain the establishment's policies and practices and oversee any necessary training. Managers also schedule the work hours of employees, making sure there are enough workers present to cover peak dining periods.

. . . .

Another fundamental responsibility of food service managers is supervising the kitchen and dining room. . . . They also investigate and resolve customers' complaints about food quality or service.

The duties of the position in question closely parallel those typically performed by food service managers as described above. A review of the *Handbook* at pages 55-57 finds no requirement of a baccalaureate or higher degree in a specific specialty for employment as a food service manager. The petitioner contends that the *Handbook* indicates that, while several avenues of entering the profession are available, 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 *Handbook* specifically notes:

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.

The petitioner asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the DOL'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 Department of Labor's *Occupational Outlook Handbook (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*.

On appeal, the petitioner submits copies of email correspondence between the beneficiary and [REDACTED] Manager, Occupational Outlook Studies, Office of Occupational Statistics and Employment Projections, Bureau of Labor Statistics. Mr. [REDACTED] states:

While a college degree is generally not a requirement for assistant manager positions, restaurant chains now usually hire college graduates for most general manager positions and higher level regional manager positions. A bachelor's degree in Hotel and Restaurant Management (or a similar title) is most preferred, but persons with bachelor's degrees of other subjects are commonly hired. A person without a college degree occasionally has an opportunity to advance to a general manager job with a restaurant chain, but they need an impressive background of experience as a restaurant general manager in an independent restaurant. . . .

Our material on Restaurant and Food Service Managers covers assistant manager positions and general manager positions, and independent restaurants as well as those operated by a chain. For that reason, we said that a college degree is preferred - even though a college degree is a virtual requirement for anyone who seeks to move into a general manager position with a restaurant chain. Most restaurant assistant managers are not viewed by restaurant chain management as candidates for advancement to general manager positions. But persons hired by chains as part of a

general manager training program almost always start as assistant managers - and a college degree is almost always a requirement for these management development positions.

Mr. [REDACTED] comments support the finding that a food service manager position does not qualify as a specialty occupation. Mr. [REDACTED] indicated that a bachelor's degree is a virtual requirement for management trainee and general manager positions in restaurant chains, but he did not indicate that such positions normally require a bachelor's degree in food service management or a related field. Indeed, he specifically stated that, although a bachelor's degree in hotel and restaurant management is most preferred for such positions, persons with bachelor's degrees in other subjects are commonly hired.

The petitioner further cites Mr. [REDACTED] as follows:

Our career materials are intended to provide information for persons choosing or changing careers and represent the best judgement of our team of economists. As we indicated in the introductory material to the Handbook (see <http://www.bls.gov/oco/oco2009.htm>), it is not intended for use in determining immigration matters and other legal and regulatory disputes [sic].

The Bureau does not, however, rely upon the *Handbook* in determining immigration matters. The Bureau uses the *Handbook* as a reliable source for information regarding the normal minimum educational requirements for entry into any given occupation. In making a determination as to whether a particular job qualifies as a specialty occupation, the Bureau considers all of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), including the normal minimum requirement for entry into the occupation, the petitioner's normal hiring practice, whether the degree requirement is an industry standard or alternately whether the particular position is so complex or unique that it can be performed only by an individual with a baccalaureate degree in a specific specialty, and whether the duties of the job are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The petitioner also submits a printout from the website of the Canadian version of the *Handbook*, <http://user.icx.net/~quinn/mresfoho.htm>, in support of the assertion that a food service manager position normally requires a minimum of a bachelor's degree in a specific specialty. However, this document indicates that the normal educational credential for employment as a food service manager in Canada is: "associate degree/bachelor's degree." Not only does this document not indicate a requirement of a baccalaureate degree in a specific specialty for food service manager jobs, it does not even indicate a bachelor's degree is required, since an associate degree is also acceptable for entry into this occupation.

It is noted that the petitioner has previously submitted a copy of the University of Houston's 1999-2000 undergraduate catalog showing the curriculum for the Bachelor of Science degree in Hotel and Restaurant Management. 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.

However, as previously stated, the DOL does not indicate in the *Handbook* that a baccalaureate degree in a specific specialty is normally the minimum requirement for entry into the occupation.

In attempt to demonstrate that the degree requirement is an industry standard, the petitioner submitted an Internet job advertisement for a food services operations manager position. Although this position requires a bachelor's degree in food management or foods and nutrition, the position cannot be considered parallel to the proffered position because the advertised position is a departmental manager job in a unified school district, rather than a managerial job in a restaurant chain. Thus, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

Additionally, the petitioner has not shown that it required a baccalaureate degree in a specific specialty 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.

With regard to the petitioner's objection to the initial denial of the petition based on a finding that the proffered position does not qualify as a specialty occupation when no correspondence had been issued requesting additional evidence in support of the petition, it is noted that the director subsequently reopened the matter, and provided the petitioner ample opportunity to submit additional evidence to show that the proffered position is a specialty occupation. In fact, the petitioner has now had two opportunities to submit such evidence, first in response to the director's request for evidence, and second on appeal to the director's decision denying the petition for a second time. Therefore, the petitioner was not prejudiced by the director's initial failure to request additional evidence regarding the position in question.

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.