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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, DC 20536

File: SRC 01 091 53083 Office: TEXAS SERVICE CENTER

Date: JUN 25 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:

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, who certified her decision to the Administrative Appeals Office for review. The director's decision will be affirmed. The petition will be denied.

The petitioner is a Jupiter, Florida restaurant that seeks to temporarily employ the beneficiary as a food service manager for a period of three years. The director determined that the petitioner had not established that the proffered position was a specialty occupation. Counsel does not submit any additional evidence on notice of certification.

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 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.

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 issue in this proceeding is whether the petitioner has established that the proffered position is a specialty occupation. On April 24, 2001, the director requested evidence that the proffered position meets one of the above-noted regulatory criteria to qualify as a specialty occupation. The petitioner submitted a letter listing the proposed job duties, a list of several job openings in the hospitality field, information regarding universities offering degrees in hospitality management, and information about Jupiter, Florida.

On June 23, 2001 the director denied the petition. The director pointed out that the educational institutions noted offered various degrees, from two-year degrees to masters degrees, in the field of hotel and restaurant management, and also that the vacancy announcements illustrated employers' willingness to hire candidates with less than a baccalaureate degree. The director concluded that a baccalaureate or higher degree is not the minimum requirement for entry into the position of food service manager, nor is the degree requirement common to the industry. The director also found that the documentation submitted did not support a conclusion that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a bachelor's degree.

The petitioner submitted a motion to reopen and reconsider on August 2, 2001. The motion included a newspaper article which discussed employers' difficulty in hiring and keeping restaurant managers. The director subsequently affirmed her prior decision, noting that the article does not mention the level of education required to perform the job of restaurant manager.

A review of the entire record in this case does not support a finding that the proffered position qualifies as a specialty occupation. With respect to the criterion described in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position, the petitioner has failed to provide any documentation to this effect. The Department of Labor's *Occupational Outlook Handbook* (Handbook) 2002-2003 edition at pages 56-57 discusses the educational requirements of this position. The Handbook states that some food service managers obtain their positions through in-house promotion, others have two or four year degrees from college hospitality management programs, while still others are graduates with degrees in other fields who have demonstrated aptitude. Accordingly, the evidence does not support a finding that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

There is no documentation on record to support the criterion set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the degree requirement is common to the industry in parallel positions among similar organizations. The petitioner has failed to submit information regarding parallel positions in similar organizations. In fact, the record contains very little information about the petitioner's own restaurant, making an independent comparison unfeasible. Nor has the petitioner made the alternative showing that this particular position is so complex or unique that it can be performed only by an individual with a degree.

Turning to the criterion found at § 214.2(h)(4)(iii)(A)(3), that the employer normally requires a degree or its equivalent for the position, the petitioner submitted no documentation to this effect, as the business in question is newly opened, and no such documentation exists.

Finally, regarding 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) that the job duties of the food service manager 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, the record contains no evidence to support this criterion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 director's decision will be affirmed.

ORDER: The director's decision denying the petition is affirmed.