

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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: EAC-02-114-53120

Office: VERMONT SERVICE CENTER

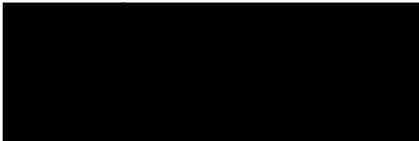
Date: JUN 25 2003

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 and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a subsidiary of RiRa Holdings, is responsible for the overall operation and management of five restaurants and pubs located in Charlotte and Raleigh, NC; Burlington, VT; Providence, RI; and Portland, ME. It has 41 employees and a gross annual income of \$2 million. It seeks to employ the beneficiary as a food manager for three to five of its restaurants 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 record contains opinions from industry experts to support her assertion that the proffered position is a specialty occupation. Counsel further states that the proposed duties, which include overseeing the petitioner's Carvery and Buffet Program, are sufficiently complex as to require the attainment of a bachelor's degree.

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

RiRa recently introduced, in three of its five restaurants, an Irish Carvery and Buffet Program. The program seeks to recreate a traditional Irish carvery buffet here in the U.S. This is a new venture for RiRa and it is intended to further expand the authentic Irish food, special event and entertainment offerings of the restaurants. As with any new venture, it has required extensive planning and implementation. RiRa would like to expand this program to its remaining two restaurants, however, before doing so the success of the program must be analyzed to determine what revisions are needed. In order to maintain the consistency of the program throughout the RiRa restaurants, the program now requires constant revision so it can continue to offer variety while maintaining its authenticity.

In order to achieve the above and to expand its program, RiRa is seeking to hire a Food Service Manager to examine, maintain and expand the program's profitability and to ensure its continued effective concept execution. The manager will examine food service reports including number of customers, the amount of provisions used, the amount of waste generated, usage of leftovers and other data to determine sales appeal and cost of preparing and serving the carvery and buffet. They [sic] will confer with food preparation and other personnel to plan menus and related activities. They [sic] will investigate and resolve food quality and service complaints. They will review financial transactions and monitor budget to ensure efficient operation and to ensure expenditures stay within budget limitations. In addition, they [sic] will assist in estimating the number of servings obtainable from standard and original recipes and unit cost of preparation. They [sic] will convert recipes for use in quantity preparation. They [sic] will study the reservation lists and sales receipts from each of the three restaurants to forecast customer traffic and

number of servings required for a specified period of time. This will be done in order to fine-tune the existing programs and with an eye towards expanding and implementing the program at the petitioner's remaining two restaurants and those that will be opened in the not so distant future.

In addition, the candidate will assist in the planning of additional menus and the formulation of recipes and menus based on traditional Irish fare.

The record contains the following:

- Undated opinion from [REDACTED] PhD, Dean of Students and Faculty of the New England Culinary Institute, who states, in part, as follows:

While in certain instances, food service managers may not require the knowledge that is obtained with a degree in culinary arts, this is almost never the case when the position involves overseeing more than one establishment or running [a] very large-scale operation. The RiRa position is both of these. Restaurants seeking this type of management level employee generally always require the services of someone with a Bachelor's degree. . . .

- Undated opinion from Linda L. Hoops, Director of Academic Relations of the Hospitality Business Alliance, who states, in part, as follows:

I also have working partnerships with industry management recruiters for small and big industries who value a bachelor's degree as a must for anyone pursuing a management position. Although these companies have their own unique training and development programs, they prefer to hire graduates because of their ability to think on their feet, to make decisions, technology savvy and their capacity to be quick learners because of their exposure to academic and industry related activities.

. . . .

The Council on Hotel, Restaurant and Institutional Education [,] an internationally recognized leader in hospitality and tourism education[,], are [sic]

composed of educators and industry training & development organizations with Federations in Canada and Europe and Chapters in Asia and Australia[, and] has long advocated a bachelor's degree as a minimum requirement to succeed in today's hospitality business. Through collaboration and partnership it is helping broker 2-year and 4-year degree programs across the world in hopes of helping the hospitality and tourism industry.

- Opinion dated April 22, 2002, from [REDACTED] Ph.D., Assistant Professor in the School of Hotel Administration at Cornell University, who states, in part as follows:

Typically a leadership position such as Food Service Manager is a specialty occupation. This is particularly the case when such a position spans 5 establishments such as the position discussed above
. . . .

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 Bureau does not agree with counsel's assertion that the proffered position would normally require a bachelor's degree

in culinary arts or a related field. A review of the Department of Labor's *Occupational Outlook 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, the petitioner has not demonstrated that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty such as culinary arts, for the offered position. 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. 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 opinions of Dr. [REDACTED], Dr. [REDACTED] and Ms. [REDACTED] are noted. Although Ms. [REDACTED] asserts in her opinion that the Council on Hotel, Restaurant and Institutional Education advocates a bachelor's degree as a minimum requirement in the hospitality business, she points out that the same organization is helping broker 2-year and 4-year degree programs across the world in hopes of helping the hospitality industry. As such, it appears that 2-year degree programs are acceptable within the hospitality industry. While the hospitality industry may prefer that its food service managers hold a baccalaureate degree, the information provided by Ms. [REDACTED] does not establish that a baccalaureate degree in a specific specialty is an industry requirement.

Both Dr. [REDACTED] and Dr. [REDACTED] agree that a food service manager overseeing more than one establishment or running a very large-scale operation would require a bachelor's degree in culinary arts. The petitioner has not, however, persuasively established why its carvery and lunch buffet program requires a separate food service manager. Many restaurants offer such an option in addition to its regular menu without hiring a separate food service manager to oversee it. The petitioner has not persuasively demonstrated that its carvery and lunch buffet program is so unique and special

that a separate food service manager is required to oversee the program in three of its five restaurants. The record contains no evidence that other restaurants that offer a buffet option require a separate food service manager. Furthermore, although the petitioner's director of operations states in a letter dated February 14, 2002, that its carvery and lunch buffet currently is offered at three of its five restaurants, a review of its website at <http://www.rira.com> finds that only one of its restaurants (Raleigh, NC) offers such a buffet. As such, the record does not persuasively establish that the beneficiary would be overseeing more than one establishment or running a very large-scale operation, as described by Drs. Fisher and Susskind in their opinions. It is noted that the record contains no explanation for this discrepancy.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice. *Matter of Ho*, 19 I&N Dec. 582. (Comm. 1988). In view of the foregoing, the three opinions 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.