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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC-01-122-53173 Office: Vermont Service Center

Date: MAR 18 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)

PUBLIC COPY

ON BEHALF OF PETITIONER:



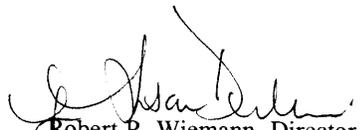
INSTRUCTIONS:

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 is an Indian restaurant with an undeclared number of employees and a stated gross income in excess of \$2 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 established that the proffered position is a specialty occupation.

On appeal, counsel submits a statement, a letter from the petitioner's corporate controller, and additional documentation.

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 term "specialty occupation" is 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 denied the petition because the petitioner did not establish that a baccalaureate degree is a minimum requirement for employment in the proffered position. On appeal, the petitioner's corporate controller asserts that the nature of the duties of the offered job 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 statements put forth on appeal are 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 a letter that accompanied the initial I-129 petition, the petitioner's corporate controller offered the following description of the duties of the offered position:

The duties are to coordinate all of our food service activities. The manager will estimate food and beverage costs and order supplies. He will plan menus, using knowledge of food and labor costs to price the menu. He will monitor the budget to ensure efficient operation and to make sure expenditures stay within budget limitations. Finally, he will also direct the hiring of personnel.

In response to a subsequent Service (now the Bureau) request for additional evidence to support the petition, the petitioner submitted a detailed description of the duties of the offered job. The description includes an hourly breakdown of the position's activities on a day by day basis for the week.

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 duties of the offered job are those of a food service manager as described in the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*), 2002-2003 edition, at pages 55-57. The *Handbook* does not list any requirement of a baccalaureate degree in a specific specialty for employment as a food service manager. Some food service managers are promoted from the ranks of restaurant workers. Others hold baccalaureate and associate (two-year) degrees in restaurant and hotel management, institutional food service management, and other fields of study.

Counsel contends that the *Handbook* supports the argument that the proffered position is a specialty occupation by indicating that, while several avenues of entering the profession are available, a bachelor's degree in restaurant or food service management 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. Food service and restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude....

For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in these fields leading to an associate degree or other formal certification.

Clearly, while 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, as well as degrees in unrelated fields and subjects, are also acceptable for entry into the field of restaurant management. Thus, the petitioner has not shown that a bachelor's degree in a specific specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner did not submit any evidence to establish that businesses similar to it in their type of operations, number of employees, and amount of gross annual income, require the services

of individuals with baccalaureate degrees in a specific specialty or its equivalent in parallel positions.

The petitioner submits a copy of the curriculum for its eighty-two week in-house "Management Training Program." However, the petitioner has failed to submit any documents listing the educational qualifications required of individuals seeking entry into this program. The fact that the petitioner has not provided evidence of a degree requirement for entry into its own training program only serves to reinforce the finding in the *Handbook* that a wide variety of education backgrounds are acceptable for employment in food service manager positions. Although the petitioner claims that it currently employs other food service managers who hold bachelor's degrees in restaurant and food service management or its equivalent, the record does not contain any documents such as copies of degrees, diplomas, or transcripts to corroborate this claim. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in this proceeding. *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm. 1972). As such, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specific specialty or its equivalent for the offered position.

The assertion by the petitioner's corporate controller that the proffered position is a specialty occupation because its duties are so specialized and complex cannot be accepted. The duties of the offered job are the relatively simple duties of a food service manager position as listed in the *Handbook*, including such mundane tasks as ordering supplies, checking the contents of deliveries, reviewing inventories of food and beverages, and the preparation of staff schedules. As noted above, the *Handbook* does not provide any indication that a baccalaureate degree in a specific specialty is required to be employed as food service manager. Therefore, it has not been persuasively established that the duties of the proffered position are so 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.

With respect to the counsel's objection to denial of this petition in view of the previous approval of petitions filed by the petitioner for similar positions, this Bureau is not required to approve applications or petitions where eligibility has not been demonstrated. The record of proceeding, as presently constituted, does not contain a copy of the approved visa petition and its supporting documents. It is, therefore, not possible to determine definitively whether it was approved in error or whether the facts and conditions have changed since its approval. Determinations of eligibility are based on the totality of evidence available to this Bureau at this time. The Administrative Appeals Office is not bound to follow the contradictory 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 (U.S. 2001).

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.