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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-01-213-56006 Office: Vermont Service Center

Date: MAR 24 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)

IN BEHALF OF PETITIONER:



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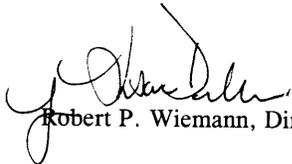
INSTRUCTIONS:

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

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a casino/resort with 8,500 employees and an unspecified gross annual income. It seeks to employ the beneficiary as a restaurant 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 brief, along with additional documentation.

Section 214(i)(1) of 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 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 had not shown that the proffered position required a baccalaureate degree in a specific specialty.

On appeal, counsel argues that the actual position offered to the beneficiary is that of "restaurant shift supervisor," and that the petitioner has always required at least a bachelor's degree in hospitality management or a related field for such position. Counsel further argues that a baccalaureate degree is necessary in this position due to the substantial authority and autonomy

provided to the petitioner's professional staff in performing its duties.

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 the initial I-129 petition, the petitioner described the duties of the offered position as follows:

[The food and beverage manager] coordinates the food services of the restaurant. He must review financial transactions and monitor budget; estimate food and beverage costs and purchase requisitions and supplies; confer with food preparation staff to plan menus for the restaurant; direct hiring and assignment of personnel; ensure compliance with sanitation requirements; promote positive customer relations and handle customer complaints; comply with all regulatory requirements; and maintain a clean, safe, hazard-free work environment.

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.

Counsel, on appeal, asserts that the Department of Labor (DOL) has determined in its *Dictionary of Occupational Titles (DOT)* that the position of restaurant manager requires a bachelor's degree in a specific specialty. However, the DOT is not considered 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 Service 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*.

The proffered position appears to be that of a food service manager. A review of the Department of Labor's *Occupational Outlook Handbook, (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. 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. While a bachelor's degree in restaurant and food service management provides a particularly strong preparation for a career in this occupation, there is no indication in the *Handbook* that this degree is the normal minimum requirement for entry into the occupation.

In attempting to establish that a baccalaureate degree in a specific specialty is the normal minimum requirement for entry into this occupation, counsel submits photocopied articles from *The American Almanac of Jobs & Salaries* and *The Encyclopedia of Careers & Vocational Guidance*. According to the *American Almanac*, in the year 2000, "about 375,000 people are employed as restaurant managers, many of whom now have college degrees in restaurant and food services management." The *Encyclopedia* indicates that, "in the 1990s, more than 160 colleges and universities offered four-year programs leading to bachelor's degrees in restaurant and hotel management or institutional food service management."

Neither article that counsel submits on appeal supports his assertion that a baccalaureate degree in restaurant and food services management is the normal minimum requirement for entry

into the occupation. The *American Almanac* article states that many individuals who are employed as restaurant managers have college degrees in restaurant and food service management. The author of the article does not articulate the exact number of restaurant managers, out of the reported 375,000 restaurant managers, who actually hold a baccalaureate degree in specific specialty. The term "many" is too ambiguous for one to conclude that the occupation of restaurant manager has an industry wide degree requirement. (Emphasis added.)

Similarly, the author's submission of an article from the *Encyclopedia* is misleading. A closer review of the article reveals the following statements about restaurant managers:

Educational requirements for restaurant and food service managers vary greatly. In many cases, no specific requirements exist and managerial positions are filled by promoting experienced food and beverage preparation and service workers. However, as more colleges offer programs in restaurant and institutional food service management -- programs that combine academic work with on-the-job experience -- more restaurant and food service chains are seeking individuals with this training.

Information in this article confirms that there is no normal minimum requirement of a baccalaureate degree in a specific specialty, or its equivalent, for entry into the position of restaurant manager. Although many employers prefer to hire individuals with education or training equivalent to a baccalaureate degree, at the present time, the industry does not make such credentials a minimum requirement for employment.

Nor has the petitioner submitted documentation demonstrating that the degree requirement is common to the industry in parallel positions among organizations similar in nature to that of the petitioner.

Although the petitioner's food and beverage administrator states in a letter submitted on appeal that the casino has a policy to hire only managers with a bachelor's degree in hospitality management, the record does not contain any evidence to corroborate this statement. 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). Moreover, the petitioner has submitted a list of its food and beverage managers, along with their educational attainments. An examination of the petitioner's list reveals that, out of 15 food and beverage managers included on their list, only five hold degrees in business administration or food service management. This does not support a finding that the petitioner normally requires a degree or its equivalent in a

specific specialty for the position offered to the beneficiary. The petitioner will accept a degree in business administration, which is not similar to a degree in hospitality management or restaurant and food service management.

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 in a specific specialty. The duties of this position, including such support tasks as ordering food and supplies, estimating food and beverage costs, and conferring with the staff to plan menus do not appear to be any more specialized or complex than those normally performed by food service managers at hotel restaurants. Moreover, as previously noted in this decision, the DOL -- an authoritative source for educational requirements for certain occupations -- does not indicate in its *Handbook* that a bachelor's degree in a specific specialty is the minimum requirement for employment as a restaurant or food service manager.

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.