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

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ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

File: EAC 02 082 54696

Office: VERMONT SERVICE CENTER

Date:

MAY - 8 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:

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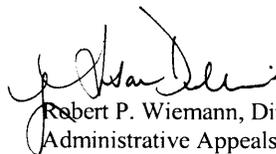
INSTRUCTIONS:

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
Administrative Appeals Office

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, the [REDACTED] wishes to employ the beneficiary as a school 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 brief 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 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 noted that the petitioner had used two different titles for the proffered position, "school food service manager" and "associate school food service manager." The director also observed that the record includes an advertisement for the position of school food service manager, placed by the Office of School Food and Nutrition Services, Board of Education of the City of New York, in which the starting salary is listed as \$31,519, as opposed to the \$29,514 offered for the position in question. Although the petitioner states that the correct title of the position is "school food service manager," the labor condition application (Form ETA 9035) contained in the record identifies the position as "associate school food service manager." The director, therefore, denied the petition based on a conclusion that the labor condition application contained in the record did not pertain to the proffered position of school food service manager.

The critical issue to be determined is whether the position as described in the I-129 petition corresponds to the job details provided in the LCA. In this case, there does appear to be a correspondence between the I-129 petition and the LCA. The petitioner identifies the position in the I-129 petition as "school food service manager" and lists the non-technical description of the position as "associate food service manager." The position is identified in the LCA as "associate school food service manager." The offered salary of \$29,141 corresponds to the salary specified in the LCA. In addition, the job duties listed in the petition correspond to the duties of the "school food service manager" position in the job advertisement referenced above. The salary discrepancy and slight variation in job titles noted by the director are not significant enough to warrant a finding that the LCA does not correspond to the I-129 petition. The director's decision will be withdrawn as it relates to the LCA and the job advertisement.

The director also determined the petitioner had not shown that the duties of the proffered position are sufficiently specialized and complex to require a baccalaureate degree in a specific specialty.

On appeal, counsel asserts that the petitioner requires a baccalaureate degree or its equivalent for the position in question.

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 offered the following description of the duties of the offered position:

Oversee the breakfast, lunch, and after-school food snack programs for students in New York City.

In response to a request for additional evidence, the petitioner provided the following, expanded listing of the job's duties:

1. Manage the day to day activities of the food programs of two (2) New York City public schools, including kitchen staff and administrative work.
2. Suggest, plan and revise menus according to market trends and nutritional value for the breakfast, lunch, and afterschool food programs;
3. Organize, plan, supervise and coordinate the daily meals of both New York City public schools for approximately 1600 students;
4. Estimate food and beverage costs and how much food and drink to be purchased based on daily needs and individual portions using specialized computer and accounting programs;
5. Research and negotiate contracts with foodstuff and beverage providers; purchase and inspect foodstuffs and beverages based on pricing, quality, portion control, ingredients, dietary restrictions, and special food orders;
6. Maintain inventory of foodstuffs, beverages, and other items such as paper goods to ensure smooth operations of the school cafeterias;
7. Schedule, supervise, and coordinate staff preparing food and service, including the Associate Food Service Manager, School Lunch Aides, School Lunch Helpers, Senior School Lunch Aides, and Senior School Lunch Helpers, totaling seventeen (17) in number.
8. Monitor budget and cut unnecessary costs to ensure maximum use of tax dollars for the approximately 1600 students served in the two (2) New York City schools where alien works.

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 DOL describes the duties of food service managers at pages 54-55 of the *Handbook* as follows:

One of the most important tasks of food service managers is selecting successful menu items. Managers. . . select menu items, taking into account the likely number of customers and the past popularity of dishes. Other issues taken into consideration when planning a menu include unserved food left over from prior meals that should not be wasted, the need for variety, and the seasonal availability of foods. . . . Menus must be developed far enough in advance that supplies can be ordered and received in time.

. . . .

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.

. . . .

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.

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. 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 food service 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.

In an attempt to demonstrate that the proffered position requires at least a bachelor's degree in a specific specialty, counsel submitted an expert opinion evaluation prepared by [REDACTED] Associate Professor of Hotel and Hotel Management at Rochester Institute of Technology, Rochester, New York. Professor Sackler stated:

[The] position of School Food Service Manager requires that the candidate have at least a Bachelor's Degree with concentrated experience in Restaurant Management, or a related field from an accredited institution of higher education in the United States. This degree can either come through academics alone or from a combination of academics and work experience if the academics alone doesn't [sic] equate to a bachelors degree. If work experience is required, for example if the candidate only has an associate's degree, the candidate must have a minimum of six years of work experience with two of those years being in a managerial position.

Professor [REDACTED] statement supports the finding that the proffered position does not qualify as a specialty occupation. According to the job advertisement for the school food service manager position, the Board of Education of the City of New York will accept individuals with an *associate's degree and two years of supervisory food service management experience* for the position of school food service manager. Professor [REDACTED] states that an individual with an associate's degree must have *at least six years of work experience* in order to show equivalency to a bachelor's degree. If Professor Sackler's standard is applied to the position in question, it clearly does not qualify as a specialty occupation since an associate's degree and two years of related work experience are acceptable for employment in the proffered position of school food service manager.

Furthermore, while Professor ██████████ states that the position of school food service manager requires a bachelor's degree plus related work experience, he does not specify that a baccalaureate degree *in a specific specialty* is normally the minimum requirement for entry into the occupation.

Finally, although Professor ██████████ may be qualified to evaluate foreign educational credentials, the record does not contain any evidence to show that he possesses the ability to give expert testimony regarding the question of whether the proffered position qualifies as a specialty occupation. That determination is the province of the Bureau as set forth within The Act.

The petitioner did not submit any evidence to establish that other school systems of similar size require the services of individuals with baccalaureate degrees in a specific specialty or the equivalent in parallel positions.

Counsel states that the petitioner requires a baccalaureate degree in a specific specialty or its equivalent for the proffered position. In support of this statement, counsel submits a position description and a job advertisement for food service manager positions offered by the Office of School Food and Nutritional Services, Board of Education of the City of New York. According to these documents, the petitioner requires a baccalaureate degree with a major in a food-related area or an associate's degree in a food-related area and two years of full-time related work experience for the proffered position.

For purposes of determining equivalency to a baccalaureate degree, three years of specialized training and/or work experience must be demonstrated for each year of college-level training an alien lacks. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). According to this formula, an individual with a two-year associates degree must have six years of related work experience to show equivalency to a baccalaureate degree in a specific specialty. In this case, since the petitioner accepts individuals with an associates degree and two years of related work experience, it cannot be concluded that the petitioner requires a baccalaureate degree or its equivalent for the proffered position.

Finally, the petitioner has not shown that the duties of the proffered 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. The duties of the position in question do not appear to be any more

specialized or complex than those normally required of food service managers, including selecting menu items, estimating food and beverage costs, ordering supplies, and scheduling and supervising the work of the kitchen staff. 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.

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.