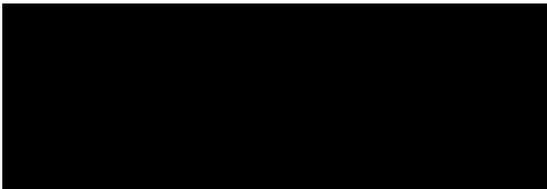




U.S. Citizenship  
and Immigration  
Services

*[Handwritten scribble]*



FILE: WAC 02 170 53772 Office: CALIFORNIA SERVICE CENTER Date: JUL 1 2004

IN RE: Petitioner:   
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(H)(i)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Mari Johnson*

*fo* Robert P. Wiemann, Director  
Administrative Appeals Office

Identifying and preventing clearly unwarranted invasion of personal privacy

STAMP

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a winery. In order to employ the beneficiary as a hospitality manager, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to 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).

The director denied the petition because the petitioner failed to establish that the proffered position is a specialty occupation and because the petitioner failed to submit requested evidence. On appeal, the petitioner submits an "appeal letter" dated September 25, 2003 and the following documents: a copy of the beneficiary's college diploma, an unofficial copy of the beneficiary's college transcript, and a copy of an undated letter which accompanied the diploma and the transcript when the service center returned them to the petitioner.

The AAO has determined that the director's decision to deny the petition was correct, because the petitioner has not established that the proffered position is a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching this decision, the AAO considered the entire record of proceeding, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, the petitioner's letter on appeal, and the documentary evidence accompanying the letter.

The first issue to be addressed is whether the proffered hospitality manager position qualifies as a specialty occupation.

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.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii), states that a specialty occupation means an occupation which [1] 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 [2] 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.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The evidence of record about the proposed duties is a decisive factor in any CIS decision on whether a position qualifies as a specialty occupation. At the time the director deliberated on the petition, the information about the proposed duties was limited to general statements that did not illuminate any need for the type of highly specialized knowledge that is the hallmark of a specialty occupation. The information presented on appeal has not remedied this deficiency.

The Form I-129 described the proposed duties in these abstract terms: “tasting, events coordinator, sales & marketing, [and] administrative assistance with international suppliers.” The hand-printed “Summary of the Oral Agreement for Employment” between the beneficiary and the petitioner also conveys no requirement for the type of highly specialized knowledge that characterizes a specialty occupation. This document only provides a very generalized description of the duties:

- Full-time = 40 Hrs/week
- Providing of hospitality towards customers
- Running the retailroom with [sic] dealing with suppliers
- Providing administrative assistance for owner and general manager
- Providing assistance with international suppliers

At the time of the director’s decision the record also included this general declaration by the beneficiary of reasons why the “proposed employment is a specialty occupation”:

- \* Foreign language required (French Preferred)
- \* Bachelor’s Degree required (Business background preferred)
- \* Wine knowledge required

- such as basics for winemaking
- wine sale in domestic and international markets

Like the documents that preceded it, the information provided by the letter on appeal does not address any specific tasks that would engage the petitioner. The letter only indicates that the position would involve such general activities as: employing multi-language fluency; enhancing the petitioner's customer and supplier relations; opening new markets; using "direct-sales and communication techniques to represent [the petitioner's] in France and other European countries," and applying "skills in marketing and wine economy."

The criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) is satisfied where the evidence establishes that the proffered position is one for which the normal minimum requirement for entry is a baccalaureate or higher degree, or the equivalent, in a specific specialty is the normal minimum requirement for entry. The petitioner's generalized and abstract information about the proffered position does not meet this threshold.

Next, the petitioner has not presented evidence that would qualify the proffered position under either alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner has not satisfied the first alternative prong, because there is no evidence that a degree requirement is common to the industry in parallel positions among similar organizations.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999) (quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The evidence of record is insufficient to identify the proffered position with any occupation for which the *Handbook* indicates a requirement for a degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The petitioner has not met the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), which provides that "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." The limited evidence in the record demonstrates no such complexity or uniqueness.

Next, 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position – is not a factor in this proceeding, as the petitioner did not present any evidence relevant to this criterion.

Finally, the evidence does not satisfy the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. To the limited extent that they are presented in the record, the duties do not appear so specialized or complex. As there is no information about the specific tasks that these generally described duties would entail, it is impossible to ascertain the level of knowledge with which they would be associated.

Because the petitioner has failed to establish that the proffered position is a specialty occupation within the meaning of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the AAO shall not disturb this portion of the director's denial of the petition.

The other issue to be addressed is the director's finding that the petitioner failed to submit a copy of the beneficiary's school transcripts. On March 14, 2003, the service center issued an RFE requesting the beneficiary's transcripts. The copy was to include all coursework and was to be signed by a school official. Instead, the petitioner submitted a July 6, 2002 letter from Sonoma State University congratulating the beneficiary on her bachelor's degree in Business Administration and advising her that official transcripts should be obtained through the Office of Admissions and Records. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. 8 C.F.R. § 103.2(b)(14). The director properly found that the petitioner had failed to submit requested evidence. On appeal, the petitioner submits an unsigned photocopy of the transcript from Sonoma State University. This unofficial, unsigned transcript does not include information on the beneficiary's two years of undergraduate coursework at Santa Rosa Junior College. The petitioner claims to have previously submitted this information in response to the RFE; however, even if this had been received, the unsigned, incomplete copy of the beneficiary's transcript does not respond to the director's request. Accordingly the AAO affirms this portion of the director's decision.

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. The petition is denied.