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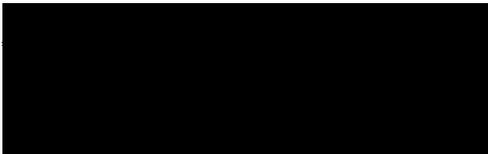


FILE: LIN 02 241 54356 Office: NEBRASKA SERVICE CENTER Date: JUL 19 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 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

Robert P. Wiemann, Director
Administrative Appeals Office

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 Japanese sushi restaurant that seeks to employ the beneficiary as a restaurant manager. The petitioner, therefore, endeavors to classify the beneficiary 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 he determined that the proffered position is not a specialty occupation and the beneficiary was not qualified to perform the duties of the position. On appeal, counsel asserts that the position is a specialty occupation and the beneficiary is qualified to perform the duties of the position. Counsel submits no further 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.

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 record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letters that describe the position and offer the position to the beneficiary; (3) the director's request for additional evidence, dated November 20, 2002; (4) the petitioner's letter that respond to the director's

request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a restaurant manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's letters contained in the original petition; the director's request for further evidence; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary's duties would involve making purchases of seafood, maintaining inventory control of supplies, training employees to work in a Japanese restaurant environment, hiring employees, and evaluating customer satisfaction. Finally, the petitioner stated that the beneficiary would be responsible for the day-to-day operations of the restaurant, ranging from accounting, finance, budgeting, scheduling, to advertising. In its response to the director's request for further evidence, the petitioner also indicated that the beneficiary would be training sushi chefs. The petitioner indicated the candidate for the position should have a college degree in restaurant or food management.

The director found that the proffered position was not a specialty occupation and referred to the classification of food services manager in the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*. The director cited excerpts from the *Handbook* that stated while food service and restaurant chains prefer to hire people with degrees in restaurant and institutional food service manager, they often hire graduates with degrees in other fields that had demonstrated interest and aptitude. Based on the *Handbook* information, the director determined that a baccalaureate degree in a specific specialty was not required for entry into the position. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director also determined that the documentation submitted to establish the beneficiary's qualifications for the position did not demonstrate that the beneficiary had the experience and training equivalent to a baccalaureate degree in the field of food service or management.

On appeal, the petitioner states that the proffered position is a specialty occupation as the petitioner's operations are not small, and the type of food and services provided by the petitioner are specialized. Counsel states that there is no such degree program called food service management, and that the more commonly known degrees are hotel management or management in commerce. Counsel states that the beneficiary has the latter degree from the Philippines. Counsel also states that the submission of the beneficiary's training certificates was not meant to substitute for the requisite baccalaureate degree. Counsel states that such material was submitted to Citizenship and Immigration Services (CIS) only to establish that the beneficiary possesses the requisite knowledge and skills needed to run a Japanese restaurant. .

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, both the petitioner and the director correctly identified it as a restaurant or food service manager. With regard to training for such a position, the 2004-2005 edition of the *Handbook* states the following: "Many experienced food and beverage preparation and service workers are promoted into managerial positions; however, applicants with a bachelor's or an associate degree in restaurant and institutional food service management should have the best job opportunities." This statement does not establish that employers require a baccalaureate degree in a specific specialty; it merely states which academic credentials would provide the best employment opportunities. Thus, the *Handbook* does not establish that the minimum requirement for the proffered position is a baccalaureate degree in a specific specialty.

With regard to parallel positions in similar restaurants, the petitioner submitted a letter from [REDACTED] the owner of House of Tokyo Japanese Restaurant in St. Charles, Illinois [REDACTED] stated that the training of sushi chefs and managers included knowledge of Japanese culture, just-in-time method of inventory control, and customer service. The writer then stated that it required its manager to possess a college degree in restaurant management or food service and also possess some experience in the food industry. [REDACTED] did not provide any evidentiary documentation to further substantiate his assertions with regard to his restaurant manager. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. Counsel submitted a letter from the petitioner that identified two employees who were former managers. According to the petitioner, both of these employees possessed a college degree. The petitioner also stated that toward the latter part of his business operations, he has only employed individuals with a college degree in restaurant management and food service. Nevertheless, the petitioner did not provide any evidentiary document to further establish his assertions. Therefore the petitioner has not met this criterion.

Finally, the AAO turns to 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 the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties of the position involve areas such as hiring employees, and maintaining inventory control over food supplies. All of these duties appear routine to the operation of any restaurant. While the job duties of a sushi or hibachi chef may have cultural significance and entail specific cooking skills, the management of such employees does not appear necessarily complex or specialized. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a restaurant manager of a Japanese restaurant. Without

more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

With regard to the director's comments on whether the beneficiary was qualified to perform the duties of the proffered position, pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The director found that the beneficiary was not qualified for the proffered position because the beneficiary's education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel states that the director erred in concluding that the beneficiary's school transcript was incomplete and that the degree obtained by the beneficiary was not relevant to the position being filled. Counsel also states that no degree program called food service management exists, and that the more commonly known degrees for the proffered position are hotel management and management in commerce. Counsel maintains that the beneficiary's degree studies offered courses that would prepare the student to become a restaurant manager. Counsel points out the courses listed in the transcript include advertising, salesmanship, business organization, retail merchandising, and accounting. Counsel also maintains that the letters of employment from previous employers and the training certificates submitted by the petitioner were submitted to show that the beneficiary did possess the requisite knowledge and skills beyond those provided by a college degree that are needed to run a Japanese restaurant.

Upon a review of the record, counsel's assertions are not persuasive. First, the course of studies that is most relevant for the proffered position, according to the *Handbook*, and according to the statement made by Mr. Kim, the owner of another Japanese restaurant, is food services or restaurant management. Second, the assertion of counsel with regard to the non-existence of such degrees in the Philippines is given no weight in this proceeding. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The petitioner did not submit any educational evaluation document with regard to the equivalency of the beneficiary's coursework in the Philippines to a U.S. baccalaureate in food service or restaurant management. It should be noted that the university course transcript from ██████████ University that the petitioner submitted contained two copies of the same page that outlined coursework for the school years 1984 to 1986. The record is devoid of any university coursework taken by the beneficiary in restaurant or food service management.

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). In attempting to equate the remaining documentation as work experience or specialized training in the field of restaurant or food services management, none of this documentation is considered relevant to the present proceedings. First, the letters from former employers primarily document the beneficiary's employment for nine years as a waiter both in the Philippines and in the [REDACTED]. There is no evidence in the record as to the beneficiary's management experience in the food service or restaurant management field while employed as a waiter. In addition, the record is devoid of any training that the beneficiary may have received in Japanese culture and sushi and hibachi cooking. The training certificates submitted by the petitioner document the beneficiary's participation in courses in bartending, computer and cocktail training. Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position.

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the position. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).