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Washington, DC 20536



**U.S. Citizenship
and Immigration
Services**

[Redacted]

FILE: SRC 02 254 50295 Office: TEXAS SERVICE CENTER Date: **MAR 11 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:

[Redacted]

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.

[Signature]
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 corporation doing business as a restaurant specializing in authentic Indian cuisine. In order to employ the beneficiary as a management analyst, 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 had failed to establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

The AAO has determined that the director's decision to deny the petition was correct. The record lacks an evidentiary basis for classifying the proffered position as a specialty occupation in accordance with any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In reaching its decision on the appeal, the AAO considered the entire record of proceeding, which contains: (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, counsel's brief, and the documentary evidence submitted with the brief.

Section 214(i)(1) of the Immigration and Nationality Act (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.

The evidence of record fails to provide any meaningful information about the specific duties that the beneficiary would have to perform in the actual exercise of the proffered position. Consequently, there is insufficient evidence to establish that the petitioner is proffering a specialty occupation.

In his letter of support submitted with the Form I-129, the petitioner's president delineated the proposed duties as follows:

Analyze operating procedures to devise most efficient methods of accomplishing company goals. Plan and study work problems and procedures such as organizational change, communications, information flow, and integrated inventory control and cost analysis. Gather and organize information on problem or procedures including present operating procedures. Analyze gathered data and develop solutions or alternate methods of proceedings. Organize and document findings and prepare recommendations for implementation of new systems, procedures or organization changes. Confer with employees to assure smooth functioning of newly implemented systems and procedures.

The president asserted, "In order to perform the duties of this position, the incumbent must have a bachelor's degree, preferably in the hotel and restaurant management area."

The AAO noted that the president's description of duties is virtually a verbatim excerpt from the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)*. The important point in this regard is that the description communicates no details about the particular position in which these general duties are to apply. Furthermore, the remainder of the record provides very little information about the specific tasks that would engage the beneficiary in the performance of the position.

The letter of support also stated that the petitioner's restaurant serves "an upscale and diverse market," and the letter noted, "Being in a very competitive field, we are planning to introduce new ethnic, regional, and continental menus to service our customers." The letter also asserted that the petitioner's projected gross annual income was \$750,000, and it stated, "We have plans to expand our business in the next couple of years to other cities in Texas such as Dallas, Austin, and San Antonio."

The matters submitted by counsel in response to the RFE added no substantial information about what exactly the beneficiary would be doing under the general umbrella duties that the president had described for the position. In particular, the president's letter of response provides no particulars about the actual, practical matters that the beneficiary would have to handle in the performance of her specific job. Instead, it speaks in abstract terms about the "complex nature of duties that have to be performed by managerial personnel in our firms" and about the breadth of knowledge that these generalized duties require.

On appeal, counsel's brief concentrates on demonstrating that, as a general principle, a management analyst position is a specialty occupation. Neither the brief nor the documents submitted with it provide substantive information about the specific tasks that the beneficiary will actually perform in the practical exercise of the general duties described for the proffered position.

In the context of the record before the AAO, it is not possible to gauge how the petitioner's generalized description of duties actually relate to what the beneficiary would be doing on the job in either the short term or the three-year term which the petitioner seeks. Because the record does not illuminate the actual matters

upon which the beneficiary would be working, it is also not possible to determine if the beneficiary would have to apply the highly specialized type of knowledge that distinguishes a specialty occupation. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The AAO will not interfere with that burden by speculating, one way or the other, about the specific duties and associated knowledge requirements that may or may not be required in the job proposed for the beneficiary.

In analyzing the evidence, the AAO first applies the criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Because the actual matters that will engage the beneficiary have not been adequately depicted, there is an insufficient factual basis to determine the actual nature of the particular position. It follows that the educational requirements of the position cannot be determined. Therefore, the petitioner has not met this criterion.

Next, the AAO weighed the evidence to see if the proffered position qualifies as a specialty occupation by way of the first prong at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) - a bachelor's or higher degree requirement that is common in the proffered position's industry in positions that are parallel to the proffered one in organizations similar to the petitioner. The same evidentiary failing noted for section 1 operates here also. Because the evidence does not substantiate what work the beneficiary would be doing, it cannot establish the actual nature of the proposed position. Accordingly, the petitioner cannot link the proffered position with a specific type in the industry. So, the first prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2) is not satisfied.

The AAO notes, in passing, that the letters submitted from the two other restaurant firms have no persuasive value. The letters state only a preference, but not a requirement, for a degree in a specific specialty. Furthermore, the fact that each letter is practically a verbatim copy of the other is ample reason to question the deliberation that the authors applied. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Also, counsel's reference to the *DOT* information about the management analyst occupation would have had no persuasive effect, even if the record had established that the petitioner is proffering an authentic management analyst position. The *DOT* information does not specify that the management analyst positions require a bachelor's degree in any specific specialty.

Next, the petitioner has not satisfied the second prong of 8 C.F.R. § 214.2 (h)(4)(iii)(A)(2), either. That is, the evidence of record does not establish that this particular position is so complex or unique that it can be performed only by an individual with a baccalaureate or higher degree in a specific specialty. Given the lack of evidence about the specific, practical duties that the beneficiary would perform, the complexity or uniqueness of the position cannot be established.

The criterion at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(3) is not a factor: no evidence relevant to this criterion is presented or available, as this is the petitioner's first hiring action for the proffered position.

Finally, the AAO turned 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 them is usually associated with the attainment of a baccalaureate or higher degree. In light of the lack of evidence about the specific duties that would have to be

performed day-to-day, the record does not establish any measure of specialization or complexity. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the petitioner is proffering a specialty occupation. For this reason, 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.