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U.S. Citizenship
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Services

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MAY 04 2004

FILE: WAC 03 031 50610 Office: CALIFORNIA SERVICE CENTER Date:

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.

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 specialty Japanese restaurant that seeks to employ the beneficiary as its restaurant manager. The petitioner 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 the proffered position is not a specialty occupation. On appeal, counsel submits a 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.

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 director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) 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 October 28, 2002 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: determining overhead costs; selecting and pricing menu items; scheduling, ordering, and using food and other supplies efficiently; receiving and checking the content of deliveries; monitoring quality of food preparation and service; ensuring that health and fire codes, and liquor regulations are met; evaluating new ways to recruit and retain employees; scheduling work hours of employees; resolving customer complaints; and maintaining daily accounting records including payroll and purchases. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree related to hospitality management or an equivalent thereof.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into a restaurant and food manager position was not a baccalaureate degree or its equivalent in a specific specialty. 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).

On appeal, counsel states that the proffered position is a specialty occupation because the beneficiary would be supervising sushi chefs, professional employees who are members of a specialty occupation. Counsel submits expert opinions to support his assertion that a sushi chef position qualifies as a specialty occupation. Counsel further asserts that the requirement of a baccalaureate degree for positions similar to the proffered position is industry wide.

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 record contains, in part, as follows:

- A letter, dated April 13, 2002, from Marie Anchordoguy, Associate Professor, Chair, Japan Studies, Jackson School of International Studies, University of Washington, who states in part: "It is [my Japanese counterparts'] opinion and mine as well, that the [sushi chef] training received may be similar to that of a Bachelor of Culinary Arts from a United States University but with considerably more on-site training hours. . . .";
- An email, dated April 27, 2002, from Eric C. Rath, Assistant Professor, University of Kansas, who states, in part: "My studies in Japan and about Japan have definitely shown that there is a high level of non-formal education involved in being a sushi chef extending over a number of

years. In this training, there is often what we may call a [sic] apprentice system but what they call “minarai”. This is usually not available to the low level cooks, but arms them with knowledge of the food preparation and delivery area that may be mapped to a bachelor or higher study in food or culinary science in the US. . . .”; and

- An undated letter, from Takehiko Yasuda, President, Northern California Japanese Restaurants Association, who states, in part: “In my opinion as a Servsafe Authorized Instructor and the President of the Northern California Japanese Restaurants Association, the minimum educational requirement of a Sushi Restaurant Manager or Sushi Chef Manager for respectable restaurants such as Blowfish restaurant in the San Francisco Bay Area serving raw dishes such as sashimi and sushi, requires at least a bachelor’s degree in Hospitality Management, Culinary Arts, or equivalent job training. . . .”.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a restaurant and food service manager job. Furthermore, regarding counsel’s claim that sushi chefs are members of a specialty occupation because they require a minimum of a baccalaureate degree, neither Professor Anchordoguy nor Professor Rath states affirmatively that baccalaureate level training is required for sushi chefs; rather, they state that such training may be the equivalent of a baccalaureate degree. Mr. Yasuda’s opinion has also been reviewed. He, however, does not provide any evidence in support of his opinion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, a review of the website for the California Sushi Academy at www.sushi-academy.com finds that an intensive sushi chef course lasts 12 weeks.

Regarding parallel positions in the petitioner’s industry, the petitioner submitted letters from three Japanese restaurants. All of the writers assert that positions such as the proffered position require a baccalaureate degree in culinary art or an equivalent thereof. Again, the writers do not provide any evidence in support of their opinions. *See Matter of Treasure Craft of California, id.*

The petitioner also submitted Internet job postings for food industry positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. One of the advertisements is for a restaurant manager of the Campus Services Division of Brandeis University, with the requirement of a bachelor’s degree or a related degree with at least two years of management experience. It is noted, however, that an associate’s degree and two years of experience are not the equivalent of a bachelor’s degree, for CIS purposes. Another advertisement is for a food service manager, with the requirement of “16 years” of education. No specific field of study, however, is specified. As none of the advertisements are similar to the proffered position, they have little relevance.

The record also does not include any persuasive 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. As counsel does not address this issue on appeal, it will not be discussed further.

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 do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. 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 proffered position is a specialty occupation. 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.