



U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: SRC 03 021 51345 Office: TEXAS SERVICE CENTER Date: **OCT 22 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.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 restaurant that seeks to employ the beneficiary as a general 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 and other 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 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 general manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's 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: planning, directing, coordinating, and managing restaurant operations; supervising staff; ordering produce; monitoring safety and security procedures and measures; handling marketing and human resources; and building sales and controlling costs. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in restaurant management.

The director found that the proffered position was not a specialty occupation, because 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 a bachelor's degree is a normal minimum entry requirement for a general manager. Counsel also asserts that the proffered position is very complex, and that the knowledge necessary to perform the duties is associated with obtaining a bachelor's degree in restaurant management. As counsel addresses the first and fourth criteria described above, the AAO will analyze the evidence in light of these two provisions.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors often considered by CIS when determining these criteria 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 AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. A review of the job duties and responsibilities listed in the record reveals that they are substantially similar to those described in the *Handbook's* section on restaurant and food service managers. According to the *Handbook*, there are several routes to entering into this field, and in general, a bachelor's degree in a specific specialty is not a prerequisite to securing employment as a restaurant manager.

On appeal, counsel submitted several letters in support of the petitioner's contention that a bachelor's degree in restaurant management is normally required for the proffered position. Dr. [REDACTED] of Oklahoma State University wrote that the coursework that the beneficiary undertook in order to obtain his degree in hotel and restaurant administration amply prepared him to carry out the duties of the proffered position. The AAO does not doubt Dr. [REDACTED] assessment of the value of the beneficiary's education; however, Dr. [REDACTED] did not assert that such a degree is a minimum prerequisite to entry into the general manager position. Professor [REDACTED] of the Rochester Institute of Technology wrote that, in his opinion, companies hiring restaurant managers consider a bachelor's degree in restaurant management or a related field to be a necessary prerequisite. The AAO notes that Professor [REDACTED] cannot be considered a recognized authority for the purposes of providing an expert opinion, because no resume or other evidence of his qualifications as an expert was attached to the opinion letter. Also, there is no evidence that Professor [REDACTED] wrote on behalf of any professional association.

Also included were letters from a food and beverage service manager at a Thai restaurant and the owner of another Japanese restaurant. The food and beverage service manager noted that the minimum requirement for "this job position" is a bachelor's degree in hotel and restaurant management or business administration and related work experience. It is not clear whether the writer was referring to the proffered position or to the writer's position. The restaurant owner wrote, "we prefer to hire a candidate with a bachelor's degree in Hotel and Restaurant management or have [sic] a substantial knowledge and experience in the Japanese food." This statement does not indicate that a bachelor's degree in the specific specialty is a normal minimum entry requirement; it indicates that while there is a preference for degreed individuals, other qualifications may suffice. The petitioner has, thus, not established the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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 more specialized and complex than duties normally ascribed to the position of restaurant manager. The record contains no evidence that the duties require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in restaurant management. 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).

The record does not include documentation that would establish either of the remaining two criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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.