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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529

U.S. Citizenship  
and Immigration  
Services

[Redacted]

FILE: EAC 03 059 55154 Office: VERMONT SERVICE CENTER Date: SEP 09 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.

*[Handwritten 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 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 submitted a Form I-290B on March 5, 2003 and requested forty five days in which to provide a brief. As of this date, however, the AAO has not received a brief or other evidence; thus, the record is complete.

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; (5) Form I-290B. 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 December 9, 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: developing appropriate food and décor themes; working with the owner to plan and carry out new projects and establish quality standards and training programs; establishing employee benefit programs; conducting performance review; and hiring and discharging restaurant managers. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in business administration or restaurant management.

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 the position of restaurant or food service manager was not a baccalaureate degree or its equivalent in a specific specialty. The director concluded that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On the Form I-290B, counsel asserts that the director made several errors in his decision. Counsel states that the director erred in comparing the instant position to that of a food service manager, since the offered position is that of general manager. Counsel also maintains that the decision of the Board of Alien Labor Certification Appeals (BALCA) submitted in response to the director's request for evidence is relevant, contrary to the director's finding, and supports the petitioner's need for the beneficiary's services. Counsel further contends that the director mistakenly speculated about the basis for an opinion provided in the credentials evaluation supplied. It appears that counsel contends, on appeal, that the evidence establishes the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2), that 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. The AAO will address these issues below.

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. 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. The AAO concurs with the director's finding that, 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.

Counsel's insistence that the position is actually that of a general manager is noted; however, even if considered as a general manager, the position will not be categorized as a specialty occupation. Ultimately, the duties and not the job title determine whether the position is classed as a specialty occupation. The AAO notes that many of the duties of a general manager, as that position is described in the *Handbook*, overlap or are similar to those of a restaurant manager. The *Handbook* states that the educational and training requirements to become a general manager vary greatly and include college degrees in business or liberal arts, or even working one's way up through the ranks without a college degree. It is apparent that, whatever the job title applied to the instant position, the job duties do not indicate that a bachelor's degree in a specific specialty is a minimum requirement.

Regarding parallel positions in the petitioner's industry, the petitioner submitted an opinion letter from [REDACTED] Ph.D., who wrote that, "A review of advertisements in national newspapers and in Internet job postings in the field clearly shows that a bachelor's degree in Hotel Management or, as a minimum, a bachelor's degree in Business with experience in Hotel Management is the normal entry level requirement for this and for similar positions." The record, however, does not contain any such advertisements to substantiate this 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).

[REDACTED] also stated that a review of the duties and responsibilities described in the record revealed that the proffered position required an individual with expertise in the field of hotel and restaurant management. While the AAO has no reason to question [REDACTED] credentials as a consultant in higher education, there is no evidence that [REDACTED] has any expertise in the restaurant management industry or represents any related professional association. [REDACTED] opinion, thus, carries little weight in this determination. Finally, the record contains no documentation to support the complexity or uniqueness of the proffered position. The petitioner has, therefore, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

No evidence in the record establishes either of the remaining two criteria described at 8 C.F.R. § 214.2(h)(4)(iii)(A). The BALCA opinion counsel highlights on appeal is of little relevance; it did not deal with the application of pertinent H-1B regulatory criteria, nor can its facts be analogized with sufficient specificity to those found in this record of proceeding to be of any guidance in this decision.

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.