



U.S. Citizenship
and Immigration
Services

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FILE: SRC 03 063 52335 Office: TEXAS 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:



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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 Thai restaurant that seeks to employ the beneficiary as a culinary operations 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. On appeal, counsel states that the petitioner established two of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits 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 letter of support; (3) the director's denial letter; (4) the director's request for further evidence, dated June 12, 2003; (5) the petitioner's response to the director's request; 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 culinary operations manager. Evidence of the beneficiary's duties includes: the I-129 petition, the petitioner's letter of support, 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 managing and coordinating the food service activities of a Thai restaurant. This primary duty includes estimating food and beverage costs; ordering supplies; conferring with cooks regarding food preparation needs; supervising culinary workers; designing menus; hiring and training new employees on topics of nutrition, food decoration, and Thai style food; investigating food service complaints, conducting surveys with customers and potential customers, and overseeing the overall cleanliness of the restaurant with regard to local health department standards. The petitioner stated that a candidate for the position would have to possess a bachelor's degree or its equivalent.

The director found that the proffered position was not a specialty occupation and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of chef or food service manager. The director determined that this classification did not require a baccalaureate degree 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). The director also determined that the petitioner had not submitted sufficient documentation to substantiate the beneficiary's work experience, and requested further documentation of the beneficiary's work experience.

On appeal, counsel states that the petitioner established the second and the third criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submits six job vacancy announcements for restaurant manager or chef positions to address the second criterion. With regard to the uniqueness of the proffered position, counsel describes in greater detail the financial, payroll and budgeting responsibilities of the position. Counsel submits a Form I-797 Approval Notice and a copy of a previous Form I-129 H1B petition for [REDACTED]. Counsel states that [REDACTED] was previously approved for the position of culinary operations manager from January 1999 to November 1, 2001 at the petitioner's restaurant. Finally, counsel submits letters from the beneficiary's former employers in Bangkok, Thailand, and resubmits the educational equivalency document. 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. As the director stated, the *Handbook* classification of food service manager is

analogous to the proffered position. The *Handbook* states the following with regard to the duties of the position:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of the restaurant, its equipment, and facilities. Managers generally are responsible for all of the administrative and human-resource functions of running the business, including recruiting new employees and monitoring employee performance and training.

In most full-service restaurants and institutional food service facilities, the management team consists of a *general manager*, one or more *assistant managers*, and an *executive chef*. The executive chef is responsible for all food preparation activities, including running kitchen operations, planning menus, and maintaining quality standards for food service. In limited-service eating places, such as sandwich shops, coffee bars, or fast-food establishments, managers, not executive chefs, are responsible for supervising routine food preparation operations. Assistant managers in full-service facilities generally oversee service in the dining rooms and banquet areas. In larger restaurants and fast-food or other food service facilities that serve meals daily and maintain longer hours, individual assistant managers may supervise different shifts of workers. In smaller restaurants, formal titles may be less important, and one person may undertake the work of one or more food service positions. For example, the executive chef also may be the general manager or even sometimes an owner.

With regard to academic credentials, the *Handbook* states that while many experienced food and beverage preparation and service workers are promoted into managerial positions, applicants with a bachelor's or an associate degree in restaurant and institutional food service management should have the best job opportunities. The *Handbook* further states that most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. It also states that while restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, they often hire graduates with degrees in other fields who have demonstrated interest and aptitude. Thus, the *Handbook* does not establish that the proffered position, which is a food services position in a Thai restaurant with an unspecified number of employees, requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar ethnic restaurants, counsel submits six job vacancy announcements. The petitioner has not established that these announcements are for parallel positions in similar restaurants. For example, three announcements are for the Sodexo, the Aramark Company, and Harper Associates. All three companies provide food management services personnel for venues such as corporate dining rooms, schools, and, in one instance, at the company's corporate headquarters. These positions are not similar to the proffered position. In addition, while all these companies require a culinary arts degree or its equivalent, the record is not clear as to whether the degree required is a two-, three-, or a four-year baccalaureate degree. Another job vacancy announcement is for a position at Stanford University, which requires a degree in restaurant management. This position also does not appear analogous to the

proffered position. The only job vacancy that appears similar to the proffered position is the restaurant manager of a new family spaghetti restaurant concept in Blowing Rock, North Carolina. This position requires a culinary school graduate with a minimum of two years of experience. Once again, the record is not clear as to what level of culinary degree is necessary for entry into the position. The record also does not include any evidence from professional associations regarding an industry standard.

With regard to the second part of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), namely, the complexity or uniqueness of the proffered position, counsel describes the duties of the position, and refers to the budgeting and financial aspects of the positions. Counsel submits no further documentary evidence. 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 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, in her response to the director's request for further evidence, submitted three I-797 Approval Notices for other H-1B petitions. Counsel stated that all three petitions were for culinary operations manager positions with the petitioner. This documentation is not persuasive as to whether the petitioner usually requires a degree in a specific specialty for its culinary operations managers, as counsel provided no further documentary evidence as to the academic credentials and proof of employment for the individuals listed in the I-797 forms. On appeal, counsel submits the academic credentials and the educational equivalency document for Natakrih Mathirawat, one of the individuals for whom counsel submitted an I-797 Approval Notice. The submission of the documentation on one individual does not establish that the petitioner usually requires a degree or its equivalent for the proffered position. In addition, the educational equivalency document submitted with regard to Mr. Mathirawat's academic credentials and his work experience does not establish that he has a degree in culinary arts, or its equivalent. (See discussion on page six with regard to the beneficiary's educational evaluation document which is written by the same evaluator.) Therefore the petitioner has not established the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(4)(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 appear routine to any restaurant or food service manager position. The *Handbook* classification and the petitioner's description of job duties for the proffered position are very similar. As previously stated, the *Handbook* does not indicate that food service managers necessarily require a baccalaureate degree for entry into the position. In addition, the petitioner has not provided any further detail as to any specialized or complex duties that the beneficiary would perform as a culinary operations manager in a Thai restaurant, other than training new personnel in aspects of Thai culture and cooking. Without more persuasive evidence, the petitioner has not established the fourth criterion of 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.

With regard to the beneficiary's qualifications to perform the duties of the position, the director requested further evidence as to how the petitioner had established the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C). In

particular, the director requested an educational equivalency document to establish that the beneficiary's university studies were the equivalent of a baccalaureate degree from an accredited U.S. educational institution.

In response, the petitioner submitted an educational equivalency written by [REDACTED] International Education Council, Sacramento, California. This document stated that the beneficiary had completed two years of university level studies in business administration with a concentration in hotel and restaurant management, and the beneficiary also had 15 years of professional work experience in hotel and restaurant management. Dr. [REDACTED] determined that the beneficiary's university studies in combination with his work experience were the equivalent of a baccalaureate degree in business administration with a concentration in hotel, restaurant and culinary arts from an accredited U.S. college or university. In his decision, the director determined that the documentation submitted by the petitioner was not sufficient, and stated that the petitioner should submit copies of the letters describing the beneficiary's work history that were the basis for [REDACTED] educational equivalency evaluation. On appeal, counsel submits the following documentation:

A letter from [REDACTED] Director of Human Resources, [REDACTED] Bangkok. This letter outlined the beneficiary's work responsibilities from February 1986 to October 2000 at the [REDACTED]. The beneficiary is shown as having four positions, the titles of which suggest jobs with progressively more responsible duties. The beneficiary's last position was [REDACTED] in the pastry-bakery kitchen.

A letter from [REDACTED] Executive Chef, Shangri-La Hotel, that describes the hotel's hosting the 33rd ASEAN Ministerial Meeting and post meeting conference in July 2000. This letter describes the beneficiary as being the leader of the kitchen and stewarding departments.

A letter of thanks from [REDACTED] General Manager, [REDACTED] for the beneficiary's help with the Thailand Food Fair in 1994.

A letter of thanks from [REDACTED] that describes the visit of the Thai king and other foreign heads of state to the hotel. The letter thanks the beneficiary for the success of these visits and praises the beneficiary's team spirit and the spirit of the beneficiary's team members.

Upon review of the record, the educational evaluation document submitted by the petitioner is based upon the beneficiary's education, training and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the work experience portion of the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The AAO will accept the evaluation insofar as it establishes that the beneficiary has the equivalent of two years of university-level studies in business administration with a concentration in hotel, restaurant and culinary arts.

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 that 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 AAO now turns to the beneficiary's prior work experience, and whether it included the theoretical and practical application of specialized knowledge required by the specialty. As described in the letters submitted by the petitioner with regard to the beneficiary's work experience, the beneficiary's previous positions with the Shangri-La Hotel do not necessarily involve the theoretical and practical application of specialized knowledge usually obtained through university level studies in hotel and restaurant management. The beneficiary's employers or supervisors for the beneficiary clearly establish the beneficiary's work ethic and willingness to perform individually and as part of a team. Nevertheless, the employers describe the beneficiary's duties generically; no specificity to the beneficiary's daily activities, number of persons supervised, or his level of responsibility is provided. Thus, the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge. Furthermore, no supervisor or employer indicates that the beneficiary's work experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation.

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. While Dr. Walther can be considered a recognized authority based on his resume and other qualifications attached to his evaluation, the regulatory criterion requires two recognized authorities. In addition, Dr. Walther's evaluation is primarily

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.¹ 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).

looking at the beneficiary's duties in various positions that he held, as opposed to outlining any specific contributions that the beneficiary may have made in the field of restaurant and hotel management.

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 proffered 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.