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**U.S. Citizenship
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Services**

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FILE: LIN 04 132 53344 Office: NEBRASKA SERVICE CENTER Date: AUG 31 2005

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 director of the service center 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 operates a private golf and fly fishing club and seeks to employ the beneficiary as a banquet 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 banquet manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail reviewing all written communication i.e. resumes, banquet event orders, etc. to determine appropriate staffing levels, supplies, room assignments and event setups; communicating all changes within the banquet department and making adjustments according to the above items; communicating information to the kitchen and other supportive departments prior to and during the event; being responsible for maintaining a strong client relationship and ensuring that all agreed specifications are communicated to and executed by all staff; maintaining constant communication with the special event manager as it applies to the client and their needs; responsible for the appropriate and timely set up of all functions and meetings while maintaining standards of food, beverage and event specifications; communicating all daily activities, in person or in writing, to other catering personnel to ensure smooth transition and follow-up execution through to billing; responsible for the maintenance of all policies, procedures and quality standards within the department, utilizing a continuous improvement approach to ensure a high quality, cost effective and customer focused operation; managing the inventory, control and breakage of china, glass and silver as it relates to banquet services; providing daily support and guidance to fellow banquet personnel as well as monitoring job performance to ensure a successful banquet experience by members/guests; maintaining a high level of service by participating constantly in training and personally coaching all banquet staff; inspecting and overseeing the cleanliness and maintenance of all function space and service areas relating to banquet usage; coordinating with other departments when necessary to achieve this directive; responsible for weekly scheduling and payroll for the banquet department; conducting china, glass, silver and furnishing inventories as it relates to the banquet department; generating banquet event orders as required; maintaining up-to-date information on banquet and member special events as well as other food and beverage programs; attending all client, department and club meetings as directed; maintaining accurate par levels for banquet supplies; maintaining a working knowledge of federal, state, and local regulations as they relate to the food and beverage operation; meeting regularly with the special events manager to ensure proper lines of communication have been achieved. The petitioner indicated that the proffered position requires a bachelor's degree from an accredited hospitality program. The petitioner indicated that the incumbent in the proffered position reports to the special events manager and food and beverage director, and supervises the banquet staff.

The director issued a request for additional information and noted that the evidence provided in the initial petition was reviewed but it was not evident that the position requires a specialty degree. The director noted that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicated that post-secondary education is preferred but that many employers will accept a liberal arts degree with hotel experience for the position of food services manager. The director requested evidence to demonstrate that the position meets one of the above listed criteria to qualify as a specialty occupation.

The petitioner responded and stated "the standard for the position of banquet manager in the private club industry is at least a B.S. in Hospitality or its equivalent in years of experience." The petitioner stated that professionalism is a must for every member of the management team and provided the following list of managers and their degrees:

- General Manager: B.S. in Hotel Administration and 19 years of experience in hospitality;
- Food & Beverage Director: B.S. in Engineering and 15 years of experience in hospitality;

- Catering & Sales Manager: B.S. in German Studies and 15 years of experience in hospitality;
- Sommelier: B.S. Engineering and 14 years of experience in hospitality;
- Service Manager: B.S. in Political Science and 10 years of experience in hospitality;
- Director of Service: B.S. in Hospitality Management and 10 years of experience in hospitality;
- Dining Room Manager: B.S. and M.S. in Hospitality Management and one year of experience in hospitality.

The petitioner explained “it takes at least ten years experience in the industry for a manager who has a bachelor’s degree in anything else and only one year of experience if he has a degree in hospitality.” The petitioner noted that it contacted nearby private clubs and indicated that those clubs also require its banquet managers to have a bachelor’s degree in hospitality or its equivalent. The petitioner also provided internet job postings in support of its contention that a bachelor’s degree in hospitality is the minimum education requirement for the proffered position.

The director did not classify the offered position as a specialty occupation. The director referred to the petitioner’s reference to the *Handbook* for food service managers that indicated “applicants with a bachelor’s or an associate degree in restaurant and institutional food service management should have the best job opportunities.”

The director noted that the *Handbook* stated:

Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. Restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude. Some restaurant and food service manager positions—particularly self-service and fast-food—are filled by promoting experienced food and beverage preparation and service workers. . . .

A bachelor’s degree in restaurant and food service management provides particularly strong preparation for a career in this occupation.

The director found that the *Handbook’s* statements do not support that a bachelor’s degree in hospitality management is the minimum for entry into the position because 2-year degree graduates fill many such positions as well as persons without such degrees. Additionally, the director determined that the submitted internet job posting did not establish that the degree requirement is common to the industry in parallel positions among similar organization. The director did not find that the record contained sufficient documentation to conclude the petitioner normally requires a degree for the position. The director determined that the duties of the position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor’s degree.

On appeal, counsel submits a letter from a professor at the University of Delaware in support of his contention that a bachelor’s degree is the minimum requirement for management positions at private clubs. Counsel submitted copies of the State of Colorado, **Class Services Descriptions** regarding food service

managers in support of his contention that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel contends that the affidavit from the petitioner's human resources manager establishes that the individual previously holding the proffered position was the holder of a bachelor's degree in hospitality management, and thus, that the petitioner requires a bachelor's degree for the position.

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 considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 872, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The *Handbook* reveals that the beneficiary's duties are most similar to those of a food service manager, an occupation that is not a specialty occupation. According to the *Handbook*, food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. The *Handbook* notes that food service managers oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of a restaurant, its equipment and facilities. The *Handbook* states that food service managers generally are responsible for all of the administrative and human resources functions of running the business, including recruiting new employees and monitoring employee performance and training.

As discussed above, the *Handbook* does not indicate that a baccalaureate degree is the normal minimum requirement for entry into the occupation.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the particular position, banquet manager of a private club. Counsel contends that a letter from an associate professor of hospitality at the University of Delaware supports his contention that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the occupation. Counsel refers to the author of the letter who opines:

[p]rivate clubs are a very specific segment of the hospitality industry. The majority of them are member-owned without the professional and administrative support that is generally available to the other segments in the hospitality industry through their corporate offices. As a result, the theoretical knowledge, specialized skills and other academic credentials are very critical to clubs as compared to any other hospitality operations. To meet such requirements management positions within the private club industry are taken by people with at least a BS in hospitality. . . .

The author of the letter does not provide any independent and verifiable evidence to support his conclusions. The author does not indicate that he reviewed the position description and related the position to the specific business operations of the petitioner. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

There is no evidence in the record to establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that only an individual with a degree can perform it. The petitioner submitted two internet job postings for positions at private clubs and one job posting for a position at a hotel. The petitioner has submitted evidence describing the size of its membership; therefore, the record does not establish that the petitioner is similar to the clubs in the postings. The postings do not indicate that a bachelor's degree in hospitality management is required for the positions. One posting indicates that an HRM degree is preferred and the second private club indicated that the applicant should be enrolled in a 4-year hospitality program with an emphasis on club management.

On appeal, counsel contends that the food service manager position classification requirements from the State of Colorado, Class Services Descriptions support his contention that food service manager positions require a bachelor's degree. Upon review of the submitted information, the AAO does not find that a bachelor's degree is required for food service management positions. The Colorado substitution requirements provide for a two-year associates degree and allow one year of experience in the position to substitute for one year of education. Thus, the minimum educational requirements for a "food service manager one," without a degree, would be a two-year associate degree and two years work experience. As CIS regulations generally require three years qualifying work experience for one year of education, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Colorado requirements are insufficient to meet the minimum equivalency requirements for a baccalaureate degree in a specialty for the food service manager position.

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner has provided an affidavit from its human resources manager. The petitioner stated that the previous banquet manager had a bachelor's degree in hospitality management but did not provide evidence of such degree or proof of employment such as payroll records or W-2's. The petitioner has not stated or proved that it has a history of hiring banquet managers with a degree in hospitality management since 1998, the year it was established. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel refers to the affidavit from the human resources manager to highlight “the multitude of complex tasks. . . .” The petitioner noted that the person in the proffered position will supervise the banquet staff but did not indicate the number of personnel. The record does indicate the acreage of the club but not the volume of the business conducted – such as the number of banquets managed or how large the capacity. The record indicates that the person in the proffered position reports to the special events manager and the food and beverage manager. The petitioner does not distinguish these positions from the proffered position in order to clarify the level of responsibility and complexity of the duties of the proffered position. The petitioner has not related the listed duties to its business beyond what is normally encountered in the occupational field of a food service manager. The petitioner has not shown, in relation to its business, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The proposed duties and stated level of responsibility failed to establish that the position offered met any of the required criteria for classification as a specialty occupation. Again, the evidentiary record depicts the duties of the proffered position as a food service manager, an occupation that does not require a degree in a specific specialty.

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.