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**U.S. Citizenship  
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FILE: WAC 03 205 53948 Office: CALIFORNIA SERVICE CENTER Date: FEB 07 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.

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 is a restaurant that provides services to airport passengers and personnel. It seeks to employ the beneficiary as a food service 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 previously submitted 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 food service 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 operating the kitchen such as supervising the chef, the assistant chefs, a manager, and dining room personnel; selecting menu items; purchasing food and inventory items including tableware, linens, cleaning supplies, and furniture; recruiting and terminating employees; overseeing food preparation; investigating and resolving issues involving food quality and customer complaints; and handling administrative duties such as payroll, unemployment compensation, and supply and equipment invoices. The petitioner's document entitled "Job Opening" stated that a candidate for the proffered position must possess a bachelor's degree in food service management or any related field and experience.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the beneficiary's duties are performed by a food service manager, and the *Handbook* reported that most companies recruit trainees from 2-and 4-year college hospitality management programs, and although companies prefer to hire people with degrees in restaurant management, they often hire graduates with degrees in other fields, and promote experienced food preparation workers. The director stated that the industry does not require a baccalaureate degree, and that the submitted evidence did not indicate that the petitioner normally requires applicants to possess a bachelor's or higher degree in food service management. Finally, the director stated that the proposed duties and stated level of responsibility did not indicate complexity or authority that is beyond what is normally encountered in the occupational field. The director found that the proffered position would not require a person with a bachelor's degree.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel asserts that the *Handbook* reports that food service and restaurant chains prefer to hire candidates with degrees in restaurant and institutional food service management. Counsel contends that employers commonly require a bachelor's degree due to the training and skills associated with it, and that most food service managers hold a bachelor's degree in hospitality and restaurant management. Referring to job postings from Career Builder.com, counsel claims that they show that companies require candidates to possess a bachelor's degree that is related to the field because of the knowledge and skills associated with the attainment of the degree. Counsel narrates the beneficiary's duties, and states that the petitioner needs a degreed candidate to perform the services of a food services manager.

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 first 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 in a specific specialty. 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)).

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 director properly concluded that the *Handbook* discloses that the duties of the proffered position are performed by a food service manager, an occupation that does not require a bachelor's degree in a specific specialty. The *Handbook* reports:

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.

The *Handbook* continues:

Food service managers ensure that diners are served properly and in a timely manner. They investigate and resolve customers' complaints about food quality or service. They monitor orders in the kitchen to determine where backups may occur, and they work with the chef to remedy any delays in service.

The AAO concurs with the director's determination that the *Handbook* indicates that food service managers do not require a bachelor's degree in a specific specialty. Accordingly, the petitioner cannot establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

The petitioner submitted three job postings to indicate that organizations require a bachelor's degree in food service management or any related field for a food service manager job. The job postings are not convincing.

The Aramark posting stated “[i]deal candidates” will possess bachelor’s degrees in specific disciplines. However, the term “ideal” does not mean that Aramark actually requires a candidate to possess a specific baccalaureate degree. Pei Wei Asian Diner sought candidates with bachelor’s degrees, though it does not indicate that the degree must be in a specific specialty. Only Jerry’s Famous Deli sought a candidate with a bachelor’s degree in business administration or restaurant management; however, the company also accepted candidates with equivalent experience in the field. By accepting experience in lieu of a specific degree, Jerry’s Famous Deli does not require a candidate to possess a bachelor’s degree. Furthermore, a single job posting does not establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position, food service manager. Accordingly, the petitioner cannot establish the first criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1).

Counsel refers to the *Handbook* statement that food service and restaurant chains *prefer* to hire candidates with degrees in restaurant and institutional food service management to establish that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the proffered position. As previously discussed, Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term “specialty occupation” as an occupation that *requires* theoretical and practical application of a body of highly specialized knowledge, and 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. Because the terms “prefer” and “require” are not synonymous, counsel’s reference to the *Handbook*’s statement is not persuasive.

To establish the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations - counsel submits job postings, and contends that employers commonly require a bachelor’s degree and that most food service managers hold a bachelor’s degree in hospitality and restaurant management. No independent evidence corroborates counsel’s contentions. The statements of counsel on appeal or in a motion are not evidence, and thus are not entitled to any evidentiary weight. *See INS vs. Phinpathya*, 464 U.S. 183, 188-89 n. 6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). The AAO has already discussed the shortcomings of the job postings. Thus, the evidentiary record fails to establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Again, the *Handbook* reveals that the duties of the proffered position are performed by a food service manager, an occupation that does not require a bachelor’s degree in a specific specialty.

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 specific degree or its equivalent for the position.

The director properly concluded that the duties of the proffered position do not exceed the scope of those performed by a food service manager, an occupation that does not require a specific baccalaureate degree. Thus, no evidence in the record satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4): 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 in a specific specialty.

The AAO notes that although the petitioner alleges that it requires a bachelor's degree in food service management or any related field for the proffered position, its job posting with Craigslist.org does not indicate this. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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.