



U.S. Citizenship
and Immigration
Services

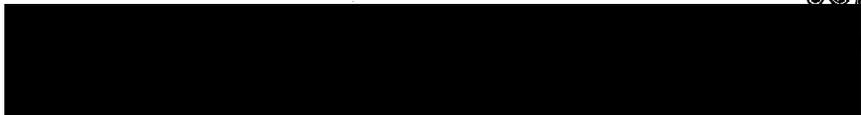
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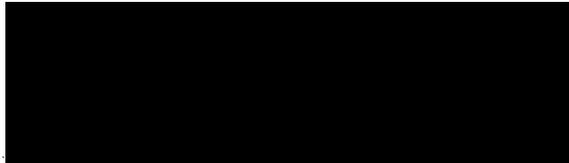
FILE: WAC 04 066 53807 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

IN RE: Petitioner:
Beneficiary:



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 operates a chain of Chinese fast food restaurants. It seeks to employ the beneficiary as an operations-general manager at a location in Honolulu, Hawaii. 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 an operations-general 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 assessing and analyzing the management of food and beverage product objectives; identifying problems and making recommendation for cause of actions; developing and implementing systems for food and beverage management and delivery systems and improving efficiency of the systems; evaluating and controlling food and labor costs; maintaining overall responsibility for developing and implementing marketing programs and strategies to ensure increasing sales, profitability, and market share for the assigned location; studying statistical data, customer preferences, and marketing strategies in the field of restaurant management to provide feasible and efficient operation; monitoring financial status of the restaurant; planning and taking corrective action; reviewing store's budget and proposing adjustments based on business trends as needed; conducting operational effectiveness review to ensure functional or project systems are applied and functioning as designed; analyzing accounting reports including profit and loss (income statement), detail general ledger, etc. and marketing reports on spread sheets, statistics charts and documenting findings of studies and preparing recommendations for implementation of systems and procedures to corporate headquarters. The petitioner indicated that it requires candidates with a minimum of a bachelor's degree in hospitality management, business administration or the equivalent for the position.

The petitioner indicated that the beneficiary's duties are similar to those of an operations/management analyst and further explained the position as follows:

Operations or Management Analyst (30%): performing analyses of management and operational problems and formulate mathematical methods using computer to interpret information for decision-making, policy formulation, etc.; assessing and analyzing the management of food and beverage product goals, personnel scheduling, fixed cost control, and logistics inventory control, etc. identifying problems and make recommendation to store members and headquarters for cause of actions; defining data requirements, and gathering and validating information by applying judgment and using statistical tests to reach the most efficient methods; preparing reports to upper management defining problem, evaluation and possible solution. The candidate should have taken courses such as quantitative methods, statistical techniques, some economics, economic analysis/forecasting, etc.

Marketing Research and Survey (15%): Maintain overall responsibility for developing and implementing integrated marketing programs to ensure increasing sales, profitability, and market share for the assigned locations. These activities involve coordination with headquarters in conducting consumer surveys and area market researches quarterly, and also in producing related reports; candidates should have two courses in marketing or research method to perform the job adequately.

Finance/Accounting (30%): prepare review and analyze about 20 accounting reports regularly i.e. profit and loss (income statement), detailed general ledger, purchase recap report, cost of goods sold, inventory audit, average guest check and productivity report and benchmark performance report, etc. in order to monitor and improve financial status of the restaurant. He or she needs to conduct financial analysis for comparison according to time, location,

food cost and personnel, etc. Also, the general manager has to review monthly, annual budgets periodically and make adjustment based on business trends as needed. The General Manager should have taken at least two courses in accounting and one course in finance.

Training, Planning and Development (25%): the manager has to conduct annual plan and review constantly to see if company goal is met. Assisting area manager in establishing new store frequently. Responsible for training new management staff such as operations managers, assistant managers or management trainees and new teams. Supervise one or two restaurants; conducting market research; and establishing new management of food and beverage systems. Candidate should have taken courses in business policy, system management, human resource management, management policy, and strategy formulation to perform these duties.

The petitioner stated that all of its managers have a bachelor's degree in hospitality administration, business administration or the equivalent.

The director requested a list of employees under the beneficiary's supervision, including brief job duties, education, and salaries/wages. Additionally, the director requested the company's line and block organizational chart describing its managerial hierarchy and staffing levels with the current names of all executives, managers, supervisors, and type and number of employees within each department or subdivision. The director requested signed copies of Form 1120 U.S. Corporate Income Tax Return, and DE-6 or payroll records. The director requested a list of all employees employed as executive, managers and professionals including their immigration status.

The petitioner provided the requested information and stated that the general manager that previously held the proffered position had a bachelor's degree in business administration. The petitioner stated that the operations-general manager supervises an assistant manager, a management intern, chef, counter help, cooks and kitchen help. Although the petitioner did not provide copies of its corporate income tax returns, it did provide bank statements showing two months of revenues and a Hawaii unemployment summary of deposits and filings for the quarter ending December 2003 as well as a California summary of deposits and filings for the quarter ending December 2003. The petitioner's payroll company prepared both of the payroll reports.

The director did not classify the offered position as a management analyst and found that the proffered position combined the duties of a first-line supervisor or manager with those of a marketing manager, marketing analyst and financial analyst. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)* which indicated that there is no requirement of a baccalaureate or higher degree in a specialized area for employment as a general manager or manager. The director noted that degrees in business or liberal arts are equally welcome. Furthermore, the director noted that a wide range of educational backgrounds is suitable for entry into marketing managerial positions. The director found the duties of the proffered position that are similar to those of a market research analyst and/or financial analyst were incidental to the duties of a fast food manager or supervisor. The director determined that 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.

On appeal, counsel emphasizes that 30% of the job duties are similar to the duties of an operations or management analyst. Counsel states that the duties of a market research analyst constitute 15% of the time and that the duties of a financial analyst constitute 30% of the time. Counsel indicates that the rest of the time is used to perform the duties of training, planning and development. On appeal, the petitioner submits a letter from a dean of business administration at Hawaii Pacific University who concludes that the proffered position requires candidates with a minimum of a Bachelor's degree in Hospitality Management or Business Administration. Additionally, the petitioner submits various corporate reports including accounting reports and samples of market surveys prepared by operations-general managers. The petitioner asserts that it normally requires a bachelor's degree for the proffered position, and that the proposed duties are complex and require a professional degree related to business. The petitioner contends that the proffered position is a specialty occupation. Additionally, counsel refers to the Department of Labor's *Dictionary of Occupational Titles (DOT)* to support his contention that the proffered position is a specialty occupation because "these training positions are all specialty occupations."

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. The *Handbook* explains:

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. One of

the most important tasks of food service managers is assisting executive chefs as they select successful menu items. This task varies by establishment . . . Managers or executive chefs analyze the recipes of the dishes to determine food, labor, and overhead costs and to assign prices to various dishes. In addition to their regular duties, food service managers perform a variety of administrative assignments, such as keeping employee work records, preparing the payroll, and completing paperwork to comply with licensing laws and reporting requirements. Most general managers retain the responsibility for the accuracy of business records.

Additionally, the *Handbook* notes food service managers use the Internet to track industry news, find recipes, and conduct market research, purchase supplies or equipment, recruit employees and train staff.

The *Handbook* states the following about the training and educational requirements for food service manager positions:

Mostly 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 that have demonstrated interest and aptitude.

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, operations-general manager of a restaurant.

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.

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. Although the petitioner indicated that it requires its managers to have a bachelor's degree in business administration or hospitality or a related field, the petitioner has provided no evidence besides its own internet advertisements. The advertisements do not indicate the location of the store. The petitioner stated that the previous manager of the store had a bachelor's degree but did not provide evidence of such degree or proof of employment such as payroll records or W-2's. 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)). Further, a requirement for a degree in business administration is not sufficient to establish a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

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. The petitioner submits a letter from a dean of business administration at Hawaii Pacific University who opines that the proffered position is a specialty occupation requiring a bachelor's degree in hospitality management or business administration. The author indicates that he based his opinion on the petitioner's job description. However, the author did not indicate whether or not he took into account the volume of the business conducted, the personnel to be managed, etc. 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 discussed above, a requirement for a degree in business administration is not sufficient to establish a specialty occupation. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 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.