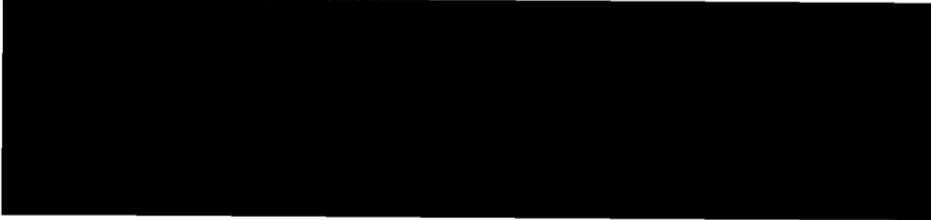


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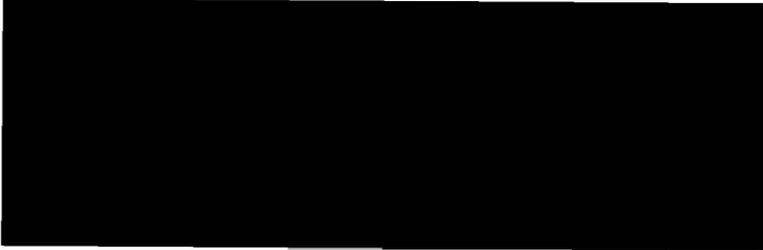
FILE: EAC 04 018 52451 Office: VERMONT SERVICE CENTER Date: **JUL 21 2006**

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, Chief  
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 The director's decision will be withdrawn and the petition remanded for entry of a new decision.

The petitioner is a food and beverage company that seeks to employ the beneficiary as a restaurant 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.

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) the 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 restaurant manager. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's 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 managing and supervising food service activities in the restaurant; overseeing cooking and preparing food products; ordering and purchasing supplies; directing stock control; supervising sales; hiring and terminating employees; training personnel; reviewing financial transactions and maintaining budgets; overseeing food quality and service; maintaining standards; developing personnel and achieving profitability. The petitioner seeks to employ the beneficiary who holds a bachelor's degree in hotel and administrative management from Ecole Hoteliere de Lausanne, Switzerland.

The director stated that the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that there are alternative ways to become a restaurant manager in the food service industry. They may be appointed based on their education or a combination of education and work experience or on progressive work experience, the director stated. The director found that although some of the petitioner's staff hold a baccalaureate degree, the degrees held are not in a specific field that is directly related to the restaurant industry. Moreover, the director stated that the duties of those employees do not require a baccalaureate degree in a specific academic field.

On appeal, counsel states that CIS regulations do not require the beneficiary to supervise staff holding a baccalaureate degree that is related to the proposed position. Counsel states that the *Handbook* reflects that the offered position requires a baccalaureate degree, and he states that the regulations do not require that the petitioner establish that the position "exclusively requires a minimum of a baccalaureate degree in a related area." Counsel contends that the letter, submitted on appeal, from Hospitality Executive Search, Inc. attests that the petitioner normally requires a baccalaureate degree for the offered position. Counsel also submits an affidavit from the assistant food service manager and another manager to show that the petitioner normally requires a baccalaureate degree in a specific specialty for its positions.

Upon review of the record, the petitioner has established one 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.

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has 175 employees. It operates a 145-seat, white table cloth restaurant and 190-seat bar lounge which serves lunch, dinner, late dinner, Sunday brunch, and private functions. It also has rooms to host a private function for up to 500 guests. Based on the nature of the petitioner's business operations and other evidence in the record, the AAO finds that the position that is offered here would require a baccalaureate degree in restaurant and food service management, restaurant and hospitality management, or a related field. Accordingly, the petitioner establishes the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petition will not be approved at this time as the evidence of record is insufficient to demonstrate that the beneficiary is qualified to perform the duties of the offered position, a restaurant manager. The record contains the beneficiary's diploma; however, the petitioner did not submit evidence indicating that the diploma is the equivalent of a U.S. bachelor's degree in a field that is related to the offered position from an accredited institution in the United States. The petition will therefore be remanded in order for the director to address the issue of the beneficiary's qualifications. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether the beneficiary is qualified to perform the duties of the offered position, and any other evidence the director may deem necessary. The director shall render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361.

**ORDER:** The director's December 11, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.