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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 264 50784 Office: VERMONT SERVICE CENTER Date: JUN 02 2006

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:

[REDACTED]

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.

for Michael T. Kelly
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 donut shop that seeks to employ the beneficiary as a food services manager and to classify her 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 on the basis that the 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 bachelor's or higher degree, but one in a specific field of study that is directly related to the proposed position.

The record of proceeding before the AAO contains, in part: (1) Form I-129 with supporting documents including the petitioner's company support letter; (2) the director's decision; and (3) Form I-290B with accompanying brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner seeks the beneficiary's services as a food services 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 RFE. According to this evidence, the beneficiary would perform duties that entail overseeing the daytime production in the kitchen; ensuring that the prescribed food safety procedures are followed by all employees handling food; investigating and resolving customer complaints about food quality and service; estimating food consumption; conducting inventory; dealing with suppliers and scheduling timely delivery of supplies; tallying cash and charge receipts; logging employees' hours; firing, hiring, and training subordinate employees; and complying with the laws that affect the day-to-day operations of the business. The petitioner stated that the job duties require the beneficiary to have a bachelor's degree.

The director found that the duties reflect those normally performed by small restaurant supervisors/managers. The director referred to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, which indicated that there is no requirement of a bachelor's or higher degree in a specialized area for employment in these positions. 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 concedes that a degree in a specific specialty is not an industry-wide requirement, but contends that the proposed position is a specialty occupation because this particular position is so complex or unique that it can be performed only by an individual with a degree.

The petitioner need only satisfy one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to establish that a position is a specialty occupation. Counsel only asserts that the proposed position is specialty occupation under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), that the petitioner's particular position is so complex or unique that it can be performed only by an individual with a degree. The AAO examined the position under all of the regulatory criteria. Upon a thorough of the record, the AAO finds that the petitioner has not established any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proposed position is not a specialty occupation. In the following analysis, the AAO confines most of its review to the single criterion asserted by counsel, that is, the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine 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 bachelor's degree in a specific field of study as the minimum for entry into the occupation as required by the Act.

The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for its information about the duties of particular occupations. Based on the petitioner's description and a thorough review of the *Handbook*, the AAO finds that the duties of the proposed position most resemble those of a food service manager at a small restaurant. 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 duties of the proposed position reflect those listed in the *Handbook* for food service managers such as analyzing prices and handling customer complaints, overseeing the daytime production in the kitchen; ensuring that the prescribed food safety procedures are followed by all employees handling food; and estimating food consumption.

To determine whether the position is a specialty occupation, the AAO first turns to the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) - a bachelor's or higher degree or its equivalent, in a specific field of study, is normally the minimum requirement for entry into the particular position. The AAO looks at the *Handbook's* discussion of the educational requirements for food service managers and travel agents to determine whether

or not the petitioner has established this criterion. A review in the *Handbook* of the educational requirements for food service manager positions reveals the following:

Experience in the food services industry, whether as a full-time waiter or waitress or as a part-time or seasonal counter attendant, is essential training for a food services manger. Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs which require internships and real-life experience to graduate. Some 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 experience, interest and aptitude. Many restaurant and food service manager positions—particularly self-service and fast-food—are filled by promoting experienced food and beverage preparation and service workers. Waiters, waitresses, chefs, and fast-food workers demonstrating potential for handling increased responsibility sometimes advance to assistant manager or management trainee jobs. Executive chefs need extensive experience working as chefs, and general managers need prior restaurant experience, usually as assistant managers.

The *Handbook* indicates that jobs in food service management do not normally require at least a bachelor's degree in a specific specialty for entry into the field. Some employers consider those with relevant work experience suitable for jobs in this area. Some employers prefer, but do not require, food service managers to possess bachelor's degrees in specific fields of study. The *Handbook* also notes that many employers fill management positions by promoting experienced staff or related personnel.

As previously stated, CIS interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any bachelor's or higher degree, but one which is *in a specific specialty* that is directly related to the proposed position. In the September 13, 2004 company support letter, the petitioner did not state that it has a specific degree requirement for the proposed positions. Instead, the petitioner stated that in "this industry, a bachelor's degree is a virtual prerequisite for most employers." The petitioner indicated that other employers in the industry preferred, but did not require, a bachelor's degree in a specific specialty, namely – in restaurant or food service management. The petitioner's lack of an educational requirement establishes that the proposed position does not qualify as a specialty occupation. The fact that some employers require a bachelor's degree in food service management is not enough to establish that the proposed position itself is a specialty occupation. As indicated in the precedent decision *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), for a position to qualify as a specialty occupation:

A petitioner must establish that the position realistically requires knowledge, both theoretical and applied, which is almost exclusively obtained through studies at an institution of higher learning. The depth of knowledge and length of studies required are best typified by a degree granted by such institution at the baccalaureate level. It must be demonstrated that *the position requires a precise and specific course of study which 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 of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. (Emphasis added.)

In accordance with the decision in *Matter of Michael Hertz Assocs.*, the petitioner establishes none of the criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A) because it appears to accept any bachelor's degree without specification. Additionally, as no specific course of study is required for entry into restaurant manager

occupations and those without specific bachelor's degrees can be promoted into the positions, the petitioner fails to establish that a bachelor's or higher degree in a specific field of study is the normal minimum requirement for entry into the proposed position. Thus, the petitioner has failed to establish that the position is one that qualifies as a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The petitioner has failed to establish any of the remaining criteria: that a degree requirement is common to the industry in parallel positions among similar organizations; that the petitioner normally requires a degree or its equivalent for the position; or that 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 bachelor's or higher degree.

The AAO turns to the second alternative prong of the second criterion, which is the criterion that counsel contends has been satisfied. A petitioner satisfies the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) if it establishes that a particular position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific field of study. The duties, as described by the petitioner, appear to be the typical duties of managers at small restaurants, positions which the *Handbook* indicates do not require a bachelor's degree in a specific field and can be filled by a non-degreed individual who gets promoted from within based on experience. Counsel asserts that the petitioner's high standards for food and health establish that the proposed duties can only be performed by someone with a bachelor's degree. Again, counsel does not indicate that the degree need be in a specific area of study. Counsel's assertions are not supported by any document in the record. 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)). In addition, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

No evidence contained in the record demonstrates that the proposed position is a specialty occupation. The petitioner has not overcome the decision and the director's decision is upheld.

The burden of proving eligibility for the benefit sought remains entirely 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.