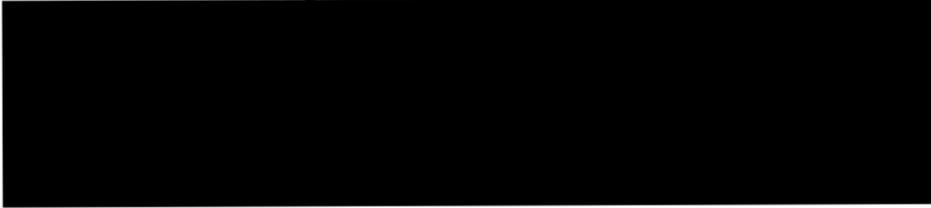




U.S. Citizenship
and Immigration
Services

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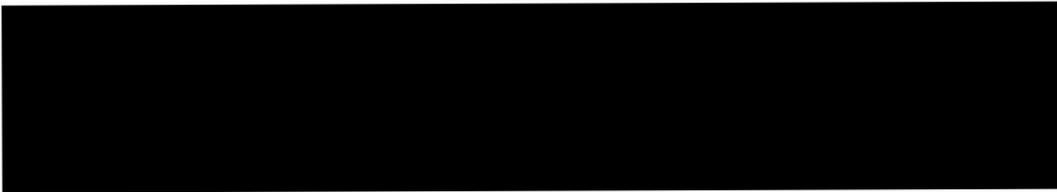
FILE WAC 04 228 53792 Office: CALIFORNIA SERVICE CENTER Date: MAR 21 2006

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.

for Michael T. Kelly
Robert P. Wiemann, Director
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 sustained.

The petitioner owns and operates restaurant operations. It seeks to employ the beneficiary as a food service manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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, including letters from the petitioner's president, a university professor, and "two local leaders in the food service industry in Hawaii."

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 denial letter; and (3) 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 I-129 petition; the petitioner's July 13, 2004 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: developing and recommending cost-saving strategies to senior management; developing and maintaining a food-purchase program; managing the organization and services of the dining room; managing the hiring, firing, training, and scheduling of the staff; planning and creating the menu with the chef and other cooking staff; creating, reviewing, and revising the petitioner's promotional programs, with assistance from professional marketing companies; recommending organizational improvements to senior management; and developing and implementing facility safety inspections and security procedures. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hotel administration.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states, in part, that the director overlooked the evidence. Counsel states further that the proffered position is clearly a senior management position, which requires a bachelor's degree. Counsel also states that the beneficiary would supervise four general restaurant managers at four different locations, and that the petitioner normally requires that its managers hold a bachelor's degree in restaurant management or an equivalent thereof. Counsel submits letters from the petitioner's president, a university professor, and "two local leaders in the food service industry in Hawaii" as supporting documentation.

The AAO disagrees with the director's finding that the proffered position is not a specialty occupation. In this case, the petitioner owns and operates restaurant operations, and has 170 employees and a gross annual income of \$6 million. The proffered position is that of a food service manager who will supervise four general managers of restaurants at four different locations. A review of the *Handbook*, 2006-2007 edition, finds that many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs that require internships and real-life experience to graduate.

It is noted that not all food service manager positions may be considered specialty occupations. Each position must be evaluated based upon the nature and complexity of the actual duties. In this instance, the duties are of such complexity as to require a baccalaureate degree in a specialized and related area. As such, the petitioner has overcome the director's objections. The beneficiary in this case holds a U.S. bachelor's degree in hotel administration. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations and that the beneficiary is qualified to perform the duties of the specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.