

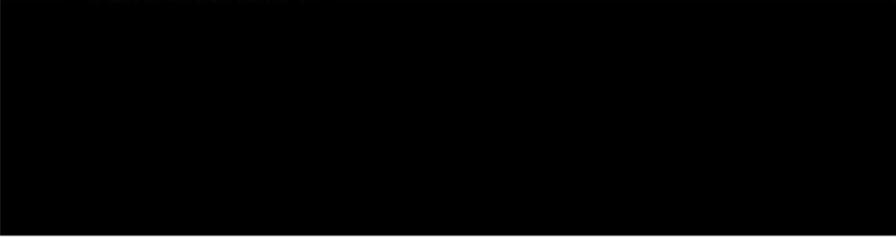
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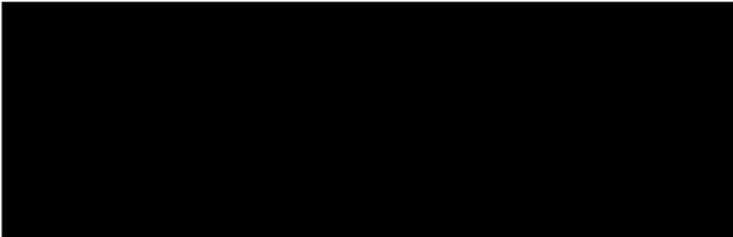
FILE: EAC 04 039 52709 Office: VERMONT SERVICE CENTER Date: MAR 30 2006

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*   
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 hotel and seeks to employ the beneficiary as a food and beverage supervisor. 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 a food and beverage supervisor. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company'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: supervising restaurant managers and beverage managers and their staff; performing scheduling; assignment of tasks to each manager; meeting with managers to set restaurant and catering protocol; teaching managers corporate regulations and implementations of such rules; overseeing daily activities of each manager; assuring quality standards are maintained and that facilities provide optimal level of service (20%); forming and managing the budget for the food and beverage department; assuming leadership of the financial success of the food and beverage operations (10%); exercising responsibility over ordering of food supplies; directing management and staff in the efficient and safe operation of all food and beverage operations (5%); supervising catering and restaurant activities in the hotel, including making of reservations, booking of parties, and corporate events (20%); providing supervision over the operations of the restaurant and catering facilities as related to guest relations and customer care, especially for Hilton honors members; ordering of food supplies; management of staff; scheduling of staff; special treatment and discounts for VIPs; and acting as host and maitre'd for important parties and events (10%); providing assistance to hotel and banquet staff to resolve problems or emergencies as related to parties, restaurant operations and catering; including scheduling problems, understaffing, flooding of premises, and shortage of food supplies or equipment (5%); working with clients to ensure catered events and business events are properly staffed, properly served and professionally attended to by the staff; ordering of food preparation and garnishment of all courses and smooth running of all events from start to finish (10%); aiding in establishment of standards for personnel administration and performance, service to patrons, advertising, publicity, food selection and service, and type of patronage to be solicited; and ensuring that company procedures, control systems and other established operating plans are understood and implemented (5%); budgetary duties that include allocation of funds, authorization of expenditures and assisting in planning the hotel's restaurant budget on a yearly, monthly and weekly basis (10%); interviewing, hiring and evaluation of all personnel for the hotel restaurant and catering facilities (5%). The petitioner stated that a bachelor's degree in hospitality management or a related area of study is required for the position.

The director issued a request for additional information to establish that the proffered position meets one of the above listed criteria. The director did not classify the offered position as a specialty occupation. The director noted the petitioner's reference to the Department of Labor's *Occupational Outlook Handbook (Handbook)* for food service managers. The director found that the *Handbook's* statements do not support that a bachelor's degree in hospitality management is the minimum for entry into the position because 2-year degree graduates fill many such positions as well as persons without such degrees. The director did not find that the record contained sufficient documentation to conclude the petitioner normally requires a degree for the position. The director determined that the duties of the position are not so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's degree.

On appeal, counsel submits a letter from a professor at Cornell University in support of the contention that a bachelor's degree is the minimum requirement for food and beverage manager positions. Counsel asserts that the director's reliance on the *Handbook* is misplaced, and counsel notes that the *Handbook* does not distinguish between food and beverage supervisors of a major hotel chain and other restaurant and food service managers. Counsel asserts that **that the position of a food and beverage supervisor for a company of the size, operating scope and nature of [REDACTED] requires a supervisor with a bachelor's level**

education and professional background. Counsel submits letters from three hotel chains in support of her contention that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel asserts that the petitioner normally requires a degree for the position.

Counsel asserts that the director ignores the SVP classification given by the Department of Labor's *Dictionary of Occupational Titles (DOT)* for this position. Counsel asserts that the *DOT* shows that a bachelor's degree would be required for the proffered position. However, the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The DOL has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because it has a specific SVP rating in the *DOT*.

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* states, in part:

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.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. Almost 1,000 colleges and universities offer 4-year programs in restaurant and hospitality management or institutional food service management; a growing number of university programs offer graduate degrees in hospitality management or similar fields. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification. Both 2- and 4-year programs provide instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science.

As discussed above, the *Handbook* does not indicate that a baccalaureate degree is the normal minimum requirement for entry into the occupation.

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, food and beverage manager of a hotel. Counsel contends that a letter from an associate professor of hotel administration at Cornell University supports her contention that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the occupation. The professor's letter includes this opinion:

I believe that the subject position of "food and beverage supervisor" cannot be performed without bachelor's level training in hospitality management, hotel and restaurant management, or a related area, and that professionals who will be working as food and beverage supervisors with responsibility for specialized catering and restaurant management duties such as those outlined above, are required to demonstrate academic training in this area.

The professor does not provide any independent and verifiable evidence to support his conclusions. He states that he has reviewed an outline of the job duties of the proffered position, but he does not provide a copy of that outline. He notes that the duties of the proffered position include supervising subordinate restaurant managers and beverage managers and their respective staffs, and that the beneficiary will oversee and direct all catering and restaurant activities at the hotel. He asserts that he reviewed the position description in relation to the business operations of the petitioner. However, the author does not relate the form and content of his review. He does not relate what, if any, observations he conducted of the petitioner's business operations and the actual work performed in the proffered position in the petitioner's particular business. The record does not contain specific information about the size of the restaurant, services provided by the restaurant, catering facilities or services available, or the number of staff to be managed. The record does not

discuss how many subordinate restaurant and beverage managers are currently employed by the petitioner at this facility in order to assess the management responsibilities of the beneficiary. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

There is insufficient evidence in the record to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The petitioner submitted four internet job postings for positions. The record does not establish that the petitioner is similar in size and business to the entities in the postings. Additionally, some of the postings have different requirements for the position. For example, one posting is for an arena and requires experience for a major stadium, convention center or performing arts hall.

The petitioner submitted three letters from different hotel chains, namely from: the Human Resources Manager of the [REDACTED] the Assistant Manager of [REDACTED] at [REDACTED] [REDACTED] the director of human resources, [REDACTED]. All of the authors indicate that they are a major hotel chain, employing hundreds or thousands of persons on a nationwide basis. The authors of the letters indicate that that "in a major hotel like ours or like [REDACTED] it would be almost unheard of to hire a Food and Beverage Manager who did not have a Bachelor's Degree." The director of Human Resources of [REDACTED], states that her company employs one person as a food and beverage manager who has a bachelor's degree in the field of field of hotel, restaurant, and tourism administration. The other two authors state "at the present time, my own company employs two persons as Food and Beverage Supervisors. These two persons possess educational backgrounds in the field of Hospitality Management." The AAO notes that the authors do not indicate that the employees possess a bachelor's degree. Additionally, the authors claim to employ hundreds or thousands of employees yet specifically state that they employ either one or two food and beverage supervisors with a degree in a specific specialty or have background in that specialty. These letters does not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations. Additionally, the AAO notes that the company, [REDACTED] has the same address as the petitioner which calls into question whether the information provided in the letter is independent. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner has not established that the particular position is so complex or unique that it can be performed only by an individual with a degree, as required to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. The petitioner has provided a diploma of a person it contends was previously employed as a food and beverage supervisor. The petitioner has not provided sufficient corroborating evidence such as payroll or employment records. Further, evidence of one hiring action is not sufficient to establish that the petitioner has a history of exclusively recruiting and hiring only persons with a degree in a specific specialty. 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)).

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 has not described the proposed duties with sufficient specificity to establish that their performance necessitates highly specialized knowledge that is usually associated with at least a bachelor's degree in a specific specialty, as required by this criterion. Rather, the duties are described in generic and general terms such as scheduling, assigning tasks to managers, meetings with managers to set protocol, forming and managing the budget for the Food and Beverage Department, and supervision over the operations of the restaurant and catering facilities as related to guest relations and customer care. The petitioner's descriptions do not differentiate the proffered position as more specialized or complex than the general range of food service management positions, for which the *Handbook* indicates no usual association with a bachelor's degree in a specific specialty.

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.