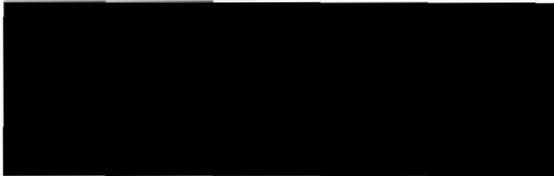


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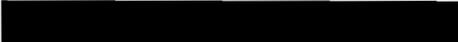
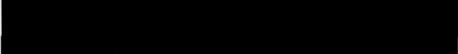
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Dr

FILE: WAC 03 081 53667 Office: CALIFORNIA SERVICE CENTER Date: **MAY 24 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 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 carry-out restaurant and catering company that 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 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 requests for additional evidence (RFE); (3) the petitioner's responses to the director's requests; (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 service manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 2, 2002 letter in support of the petition; and the petitioner's responses to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: researching and developing Filipino-Asian recipes palatable to U.S. consumers; identifying marketable Filipino-Asian menus and the raw materials and other supplies needed for commercial production; establishing a supply chain for unique supplies and raw materials; estimating food consumption; placing food orders with suppliers and scheduling delivery of food and beverages; arranging for equipment maintenance and repair; interviewing, hiring and firing employees; scheduling work hours of employees; conveying company policies and practices and overseeing necessary training to new employees; supervising the kitchen and dining areas; investigating and resolving customers' complaints about food quality or service; overseeing maintenance of company and governmental food service facility and sanitation standards; purchasing food; selecting and planning menus; overseeing the staffing of kitchen and dining room operations; maintaining health, safety and sanitation levels; performing clerical and financial duties; and possibly supervising a sales and advertising staff. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 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 that the duties of the proffered position are sufficiently complex to establish it as a specialty occupation. Counsel asserts that the *Handbook* and the petitioner's preferences should be the guide to what is the normal minimum requirement for entry into the occupation. Counsel states that the *Handbook* indicates that the industry prefers individuals with bachelor's degrees in restaurant and institutional food service management or graduates with degrees in other fields who have demonstrated interest and aptitude. Counsel states that education less than a four-year degree or experience alone may be sufficient for entry into the proffered position, but it is not necessarily the normal minimum requirement for entry into such a position. Counsel further states that the duties of the position, including its administrative and human resources tasks, personnel duties, and marketing and public relations duties, require an individual with a bachelor's degree. Counsel asserts that the petitioner's expansion plans have been placed on hold pending CIS's decision on this petition, and that it should be allowed to choose a professional to meet its business needs and plans.

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 turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a 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. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While counsel is correct in stating that the *Handbook* indicates that many businesses prefer people with degrees in restaurant and institutional food management, counsel also emphasizes that food service and restaurant companies often hire graduates with degrees in other fields. Counsel asserts that a bachelor's degree is an industry standard. As noted above, 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 *Handbook* entry for food service managers clearly indicates that a baccalaureate or higher degree, or its equivalent, *in a specific specialty* is not normally required for entry into the occupation.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry, nor is there any evidence to establish that the proffered position is so specialized and complex that it can only be performed by an individual with a bachelor's degree. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. To the extent that there is any evidence in the record regarding its past hiring practices, the petitioner did not establish that a degree in a specific specialty is required for the proffered position. The petitioner describes two of its employees as being food service managers; one is reported as having an associate's degree in architecture and the other as having a bachelor's degree in healthcare management. Despite the director's request, the petitioner did not provide copies of these employees' educational credentials. 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, the educational backgrounds of these two employees does not establish that the petitioner requires a bachelor's degree in a specific specialty for entry into the occupation. The petitioner has not met its burden of proof regarding the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.