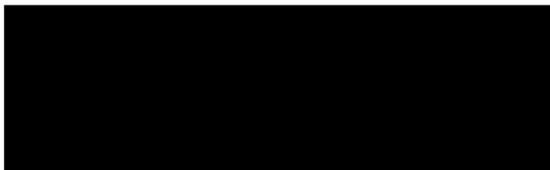


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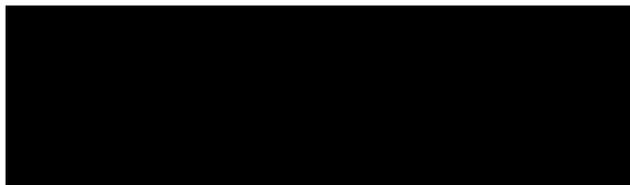
FILE: SRC 05 229 50994 Office: TEXAS SERVICE CENTER Date:

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 restaurant that seeks to employ the beneficiary as a management and budget analyst. 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information stating that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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) the Form I-129 and supporting documentation; (2) the director's request for evidence; (3) the petitioner's response to the director's request for evidence; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a management and budget analyst. Evidence of the beneficiary's duties was set forth in the Form I-129 petition with attachments, and in response to the director's request for evidence. According to this evidence the beneficiary would:

- Manage the business aspects of the restaurant;
- Analyze budgets and expenditures including the cost estimation of food, beverages and supplies;
- Consult in various administrative and resource tasks including the recruitment of employees and establishment and satisfaction of personnel and customer service standards;
- Estimate food consumption to minimize surplus;
- Maintain inventory with suppliers;
- Organize the delivery of fresh food and beverages in coordination with the executive chef;
- Meet with sales representatives from restaurant suppliers to replenish stock in tableware, linen, cooking utensils, furniture, fixtures and raw materials;
- Maintain records of all employees and prepare payrolls
- Execute necessary applications and paperwork to ensure uninterrupted compliance with licensing regulations and social security laws;
- Document taxes, wages, hours, and unemployment compensation;

- Manage supply and equipment purchasing and every aspect of accounts payable and receivable including the deposit of daily receipts; and
- Be in charge of marketing.

The petitioner finds the beneficiary qualified to perform the duties of the proffered position by virtue of her master of science degree with a concentration in foodservice management from Ohio State University.

Upon review of the record, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation. The AAO routinely consults the Department of Labor's *Occupational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for food service managers as described in the *Handbook*. For example, the petitioner states that the beneficiary will manage the business aspects of the restaurant. She would estimate and manage food and beverage costs, arrange for the delivery and receipt of supplies, prepare payroll and recruit employees. These duties are normally performed in the petitioner's business environment by food service managers, not management and budget analysts as stated by the petitioner. The *Handbook* notes that food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for maintenance and upkeep of the restaurant. Managers are generally responsible for all of the administrative and human-resource functions of the business, including recruiting new employees and monitoring employee performance and training. The duties described by the petitioner fall squarely within these responsibilities. The *Handbook* notes that a bachelor's degree in restaurant and food service management provides strong preparation for a career in this occupation. Candidates are recruited, however, from two and four-year college hospitality management programs, as well as from technical institutes and other institutions offering programs leading to associate degrees or other formal certification. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

The petitioner does not state that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree in a specific specialty for entry into the offered position, and offers no evidence in this regard. Thus, the petitioner has not established the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the evidence of record does not establish that the duties of the position are so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or that the duties are so complex or unique that they can be performed only by individuals with a degree in a specific specialty. As outlined by the petitioner, the duties to be performed are routine in the industry for food service managers and similar employees. Such employees ordinarily and regularly estimate food consumption, maintain inventory with suppliers, arrange for the delivery and receipt of supplies, estimate food and beverage costs, and recruit employees. The duties identified by the petitioner are routinely performed in the industry by food service managers who have less

than a baccalaureate level education. The petitioner has failed to establish either of the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed. The petition is denied.