

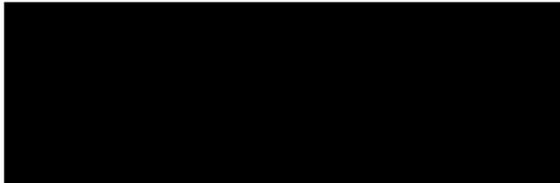
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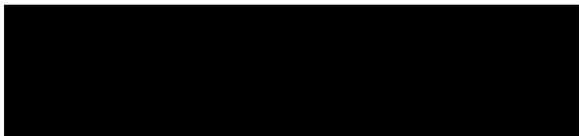
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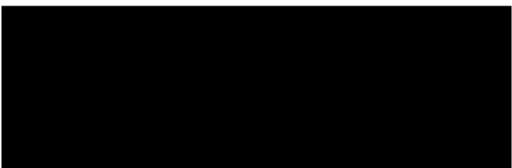
FILE: EAC 06 187 53450 Office: VERMONT SERVICE CENTER

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 management company that seeks to employ the beneficiary as an operations 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 does not qualify as a specialty occupation. On appeal, counsel submits a brief 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with counsel's brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an operations manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment, the petitioner's response to the director's request for evidence, and additional information submitted on appeal. According to this evidence the beneficiary would:

- Analyze sales as compared to previous years;
- Prepare and exceed sales targets;
- Teach and enforce company cleanliness standards;
- Teach and enforce company salesmanship programs;
- Ensure that the 110% guarantee program is in use;
- Inspect all equipment and ensure maintenance;
- Determine staffing levels and maintain appropriate staffing;
- Ensure all associates receive formal performance appraisals;
- Conduct manager performance reviews;
- Develop managerial talent in the restaurant;
- Determine unit goals;
- Insure that associate training programs are in place;

- Approve all associate hires;
- Enforce company policies;
- Terminate employees;
- Determine and approve scheduling pro formas;
- Ensure that the cost of goods exceeds company standards;
- Ensure that total labor cost exceeds company standards;
- Ensure that operating expenses exceed company standards;
- Ensure that Silver Diner brand atmosphere standards are delivered;
- Ensure that Silver Diner brand food standards are delivered; and
- Ensure that Silver Diner brand service standards are delivered.

The petitioner requires a minimum of a bachelor's degree in business management, hospitality management, or a related field for entry into the proffered position.

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. 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 assert that a degree in a specific specialty is common to the industry in parallel positions among similar organizations, or that it normally requires a degree or its equivalent in a specific specialty for entry into the position, and offers no evidence in this regard. The petitioner has failed to establish the referenced criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) or (3).

The petitioner asserts that the duties of the proffered position are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, and that the duties are so complex or unique that they can be performed only by individuals with a degree in a specific specialty. In support of these assertions the petitioner submits, on appeal, an opinion letter from [REDACTED], The Hospitality College, Johnson and Wales University. [REDACTED]

█ states that, in his opinion, performance of the duties of the proffered position requires the attainment of at least a U.S. bachelor's degree in food service management, business management, or an equivalent degree. █ bases his opinion on his education and experience, stating that the duties of the offered position are specialized and require professional theoretical knowledge in business and food service management. He further states that the position requires the theoretical and practical application of a body of highly specialized knowledge. █ discusses the duties of the position and opines that performance of the duties would normally require education at a baccalaureate level. He provides no evidence to support his opinion, however, such as labor market surveys or studies for similar positions establishing that a baccalaureate level education is the norm for the industry. Simply going on the 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 190 (Reg. Comm. 1972)). The opinion submitted is of little evidentiary value and shall be afforded little weight. CIS 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, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). According to the *Handbook*, a bachelor's degree in a specific specialty is not normally required for the position. The duties to be performed are routine in the industry for food service managers, and are regularly performed by individuals with less than a baccalaureate level education. The record contains no evidence to establish that the duties to be performed by the beneficiary in the petitioner's business environment are more specialized, complex, or unique than those performed by restaurant managers for other entities that do not require a baccalaureate level education. Again, the petitioner must submit evidence of the uniqueness or complexity of the duties to be performed. The petitioner has failed to establish 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.