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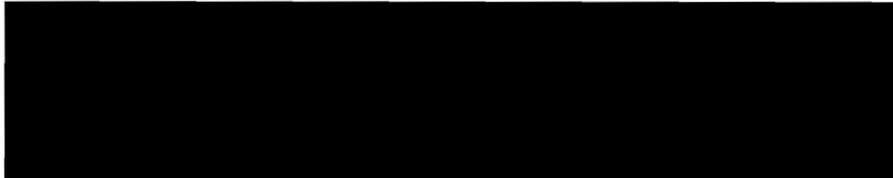
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U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*DL*



FILE: WAC 07 071 50027 Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2008**

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 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 is a restaurant/banquet/catering business that seeks to employ the beneficiary as a catering and event manager. 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.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, with counsel's brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before reaching its decision.

It is noted that on appeal counsel also addresses the director's separate decision denying the beneficiary's request for an extension of stay. Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form I-129 or I-539. As this office does not have jurisdiction over the portion of the director's decision regarding the beneficiary's request for an extension of stay, this issue will not be reviewed.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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:

An 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 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) consistently interprets the term “degree” in the above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

To determine whether a particular job qualifies as a specialty occupation, CIS does not simply rely on a position’s title. The specific duties of the proffered position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. CIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000).

The petitioner seeks the beneficiary’s services as a catering and event manager. Evidence of the beneficiary’s duties includes: the petitioner’s January 4, 2007 letter in support of the petition and counsel’s June 7, 2007 response to the director’s RFE. As stated by the petitioner, the proposed duties are as follows:

Consult with customers to determine objectives and requirements for on-site and off-site events such as meetings, conventions, conferences, weddings, funerals, anniversary and engagement parties, holiday celebrations, and sporting events; Plan and develop programs, agendas, budgets, and services according to customer requirements; Review event bills for accuracy and approve payment; Coordinate services for events; maintain records of all event aspects including financial details, budget records, expense records, billing financing, and payment; Monitor event activities to ensure compliance with applicable laws and regulation; Develop and manage the development, promotion, and budget of the petitioner’s event/convention/catering activities working with outside marketing specialists; Perform bookkeeping and accounting functions of the catering/convention/event division; and, Report to and advise the owner regarding financial and budgetary data, including systems for recording costs.

The director found that the proposed catering and event manager duties do not require a bachelor's degree. Citing the Department of Labor's (DOL) *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 concluded 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 asserts that the proffered position is not an ordinary restaurant manager position, but rather is more akin to a meeting and convention planner, as it entails, along with some food service manager duties, extensive meeting and event planning duties. Counsel describes the petitioner as an upscale, high-end Arabic restaurant that caters to upper-class clientele, and states that the petitioner is expanding its catering and event planning services, as described by the petitioner in response to the director's RFE. Counsel asserts: "The fact that the position of a catering/events manager is new to Luna Café adds more complexity to the position." Counsel cites the DOL's *O\*Net* and the *Dictionary of Occupational Titles (DOT)* to state that a food service manager position has an SVP rating between six and seven, which indicates that some positions within this category will require a bachelor's degree or an equivalent thereof, and that a meeting and convention planner position has an SVP rating between seven and eight, which indicates that most of these positions require a four-year bachelor's degree. Counsel also cites the DOL's *Handbook* to state that a bachelor's degree is clearly required for any position within the meeting and convention planner category. As supporting documentation, counsel submits: excerpts from DOL's *Handbook*, the *O\*Net*, and the *DOT*; a description of the petitioner's business, a sample menu, and business advertisements from the petitioner's owner and manager; and internet job advertisements for similar positions.

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 acknowledges counsel's references to the DOL's *DOT* and the *O\*Net*. Counsel's assertions about the relevance of information from the *DOT* and the *O\*Net*, however, are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are

to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not find that the proffered position is a specialty occupation. The *Handbook*, 2008-09 edition, reports that the educational requirements for a position as a food service manager vary. The *Handbook* indicates:

Many restaurant and food service manager positions – particularly self-service and fast-food - are filled by promoting experienced food and beverage preparation and services workers.

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.

The *Handbook* also recognizes: "a postsecondary degree is preferred by higher end full-service restaurants and for many corporate positions, such as managing a regional or national restaurant chain or franchise or overseeing contract food service operations at sports and entertainment complexes, school campuses, and institutional facilities," and "[f]or 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."

The *Handbook* does not include discussion indicating that a bachelor's degree or its equivalent in a specific discipline is a requirement to perform the duties of this occupation. It is noted that employer preference is not synonymous with the normally required language of the regulation. The variety of paths available to enter into a restaurant manager position precludes the conclusion that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the proffered position.

The AAO acknowledges counsel's assertion that the proffered position is not an ordinary restaurant manager position, but is rather more akin to a meeting and convention planner.<sup>1</sup> The AAO does not find that the duties associated with the planning of the described events are so complex or unique, but rather are duties common to the management duties of many restaurants. The petitioner has failed to distinguish the proffered position from that of a position that is routinely performed by non-degreed restaurant managers. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of a restaurant manager. Of further note, although the record contains a financial statement and a State of New Jersey Sales and Use Tax Quarterly Return

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<sup>1</sup> A search of the petitioner's website at <http://www.saharacafejn.com/events.shtml> finds that the petitioner accommodates "corporate gatherings, receptions, brunches, luncheons, and cocktail parties."

Confirmation for the first quarter of 2007, the petitioner's gross annual income, net annual income, and current number of employees remain unclear, as the record contains no evidence such as the petitioner's federal income tax returns and quarterly wage reports. It is also noted that Items 12, 13, and 14 on the Form I-129 petition requesting this information were left blank. 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 petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Regarding parallel positions in the petitioner's industry, counsel submits Internet job postings for a variety of positions including catering managers, special events managers, banquet/catering supervisors, and assistant catering managers. Most of the listings provided do not specify a requirement of a bachelor's degree in a specific specialty. In addition, most of the listings rely on duties unlike the duties listed by the petitioner, such as the duties associated with catering and food service positions at four-year universities. Moreover, these listings do not indicate that the businesses publishing the advertisements are similar to the petitioner in size, number of employees, or level of revenue. Thus, the advertisements are insufficient to establish that a degree requirement is common to the industry in parallel positions among similar organizations.

The record does not include any evidence from firms, individuals, or professional associations regarding an industry standard. In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. In the instant petition, the petitioner has not submitted sufficient documentation to establish that the duties of the proffered position involve duties that are complex or unique; rather the petitioner has provided a general description of the occupation without identifying any complex or unique tasks pertinent to the petitioner's business that would elevate the position to one that requires the knowledge associated with a bachelor's degree in a specific discipline. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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.** On appeal, counsel indicates that the proffered position is a new position. The evidence of record thus does not establish this criterion. In addition, the AAO observes that the petitioner's desire to employ an individual with a bachelor's degree or equivalent does not establish that the position is a specialty occupation. The critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results. If CIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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 the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

On appeal, counsel states: “The fact that the position of a catering/events manager is new to Luna Café adds more complexity to the position.” As indicated in the discussion above, the petitioner has not established that the proposed duties exceed in scope, specialization, or complexity those usually performed by food service managers, an occupational category that does not normally require a baccalaureate or higher degree in a specific specialty. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a typical food service manager position. Further, as indicated earlier in this decision, the petitioner’s unsupported claims regarding the basic information of its business do not establish a requirement for the level of knowledge requisite for this criterion. To the extent that they are described in the record, the duties of the proffered position do not demonstrate a level of specialization and complexity that would require knowledge usually associated with the attainment of a baccalaureate or higher degree 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.

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.