

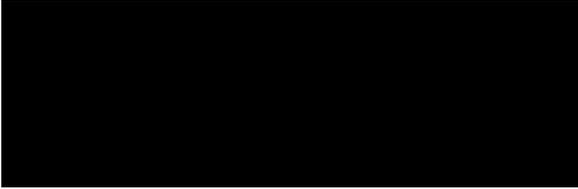
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U.S. Citizenship
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FILE: WAC 02 248 50435 Office: CALIFORNIA SERVICE CENTER Date: FEB 25 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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, Director
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 hospitality and food services 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 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 service manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's July 18, 2002 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: overseeing the management, budget and operation of the food and beverage service operation; negotiating and administering contracts for foodstuffs, service and supplies; evaluating equipment and overseeing maintenance, purchase of new equipment or replacement of existing equipment; keeping informed of the latest advances in equipment, processing procedures, and management techniques through attending trade shows, reading trade publications, etc.; studying the day-to-day operations and making adjustments as necessary to promote efficiency, assure safety and cleanliness and increase profitability; overseeing menu planning, making adjustments according to the demographics of the guests, seasons, availability of certain foods and profitability; overseeing the daily operations of the kitchen(s); policing the whole site periodically to observe operations over the entire 15 acre venue; overseeing provisioning and assuring maintenance of the necessary inventory of perishables, non-perishables and staples, including calculating and arranging for special orders of supplies for holidays and seasonal events; overseeing human resources/personnel issues for the departments, including recruiting, hiring, training, firing, promoting and scheduling employees; training, reviewing, and taking necessary precautions for the safety of guests, employees and vendors; resolving customer complaints; and overseeing record-keeping, computer inputs, and preparation of necessary personnel and financial reports for the department. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hotel or restaurant management.

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, the petitioner states that the duties of the proffered position are sufficiently complex to establish it as a specialty occupation. The petitioner also states that it previously submitted four expert opinions that established that the position was a specialty occupation. The petitioner asserts that the *Handbook* should not be the exclusive basis for determining whether a position is a specialty occupation. Specifically, the petitioner refers to the Department of Labor's Occupational Employment Survey/Standard Occupational Classification (OES/SOC), which states that food service managers are "Job Zone 4" occupations, a classification which includes accountants and many other professional 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 routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. While the petitioner is correct in stating that the *Handbook* indicates that many businesses prefer people with degrees in restaurant and institutional food management, the petitioner goes on to emphasize that food service and restaurant companies often hire graduates with degrees in other fields. The petitioner also states 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 required for entry into the occupation.

The petitioner references information from the OEC/SOC's Job Zone category to support its claim that the proffered position is a specialty occupation. The Job Zone category does not indicate 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. A Job Zone category is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

The petitioner did not submit any evidence regarding parallel positions in the petitioner's industry. The record includes four opinion letters, one from a consultant in organizational behavior and organizational development, one from the chief executive officer of California Fresh Deli, Inc./Progressive Pizza Trends, one from the chief executive officer of a chain of Mexican restaurants, and one from a professor at Johnson & Wales University. Three of the four opinion letters state that a bachelor's degree would be the industry standard for the proffered position, but do not state that the degree would need to be in a specific specialty. The fourth expert, the professor at Johnson & Wales University, did state that the position would typically require a degree in hospitality management or a related field. CIS may, in its discretion, accept letters and advisory opinion statements 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). The petitioner's own experts support the position put forth in the *Handbook*, that a degree in a specific specialty is not required for entry into the occupation. 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. The petitioner did not provide any information regarding its previous hiring practices. 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.