**U.S. Department of Homeland Security**
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**U.S. Citizenship and Immigration Services**

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FILE: SRC 01 239 50933 Office: TEXAS SERVICE CENTER Date: JAN 27 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

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 restaurant that seeks to employ the beneficiary as a food service 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. On appeal, counsel submits a brief.

Section 214(i)(l) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(l), 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 counsel's brief. The AAO reviewed the record in its entirely before issuing its decision.

The petitioner is seeking the beneficiary's services as a food services manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's June 15, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to the June 15, 2001 letter, the beneficiary would perform duties that entail: management and oversight of the restaurant business;

managerial guidance on expansion opportunities and growth; and executive level analysis regarding financial, tax and legal matters of the company. The director requested that the petitioner provide more specific detail about the beneficiary's proposed duties. The petitioner stated that the beneficiary's duties would entail: scheduling duties for the employees; preparing lunch dishes; ordering supplies; supervising the employees; supervising the restaurant cleaning and closing; preparing the supplier's checks and the payroll; and depositing the sales cash and checks in the bank. The petitioner indicated that a qualified candidate for the job would possesses a bachelor's degree.

The director found that the proffered position was not a specialty occupation because it does not require a baccalaureate degree or its equivalent.

On appeal, counsel acknowledges that the previous counsel's response to the director's request for evidence was unresponsive and contained no supporting evidence. Counsel also states that the proffered position can be equated to that of an attorney, in that the daily duties of both positions may be ministerial and clerical, but the overall duties and responsibilities are much greater. In addition, counsel asserts that having a degree in any field indicates diligence, intelligence and analytical skills.

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 Department of Labor's *Occupational Outlook Handbook* (*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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. A review of the Food Service Manager job description in the *Handbook* confirms that a baccalaureate degree is not required: "Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. . . . Some restaurant and food service manager positions, particularly self-service and fast food, are filled by promoting experienced food and beverage preparation and service workers." It is clear that a baccalaureate degree is not required for entry into this profession.

Regarding parallel positions in the petitioner's industry, on appeal, counsel provides one advertisement for a Director of Dining Services for a retirement community, which states that a degree is preferred. Not only is the business not similar to the petitioner's, the advertisement only states that a degree is preferred, not required. In addition, it does not state a field of specialization for the degree. There is no evidence that this employer is similar to the petitioner, or that the advertised position is parallel to the instant position. Thus, the advertisement has little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. 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. In the response to the director's request for evidence, counsel states, "All management position employees in this company are required to possess at minimum a baccalaureate degree or equivalent to work at this business presently in other restaurant locations and in the past [sic]." The record, however, does not contain any evidence of the petitioner's past hiring practices beyond counsel's statement and, therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Counsel's personal observations do not constitute evidence in these proceedings. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(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. While part of the position description in the petition includes business analysis and providing guidance on expansion opportunities, the primary responsibilities appear to be basic restaurant management. 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*). Additionally, there is no indication that a degree must be in a specific specialty related to the proffered position.

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.