U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship and Immigration Services

[redacted]

FILE: LIN 03 177 54986 Office: NEBRASKA SERVICE CENTER Date: JUN 9 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.

Marie Johnson

For 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 full service Mexican restaurant. It seeks to employ the beneficiary as a bilingual restaurant 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 was not a specialty occupation. On appeal, counsel asserts that the petitioner is not a fast food or self-service food establishment, and as such, the duties of the proffered position are specialized and complex.

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) counsel's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 bilingual restaurant manager. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; the petitioner's letter in support of the petition, and counsel's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would be responsible for managing all aspects of the restaurant, including the hiring, development, and performance evaluation of staff; optimizing profits and increasing sales, managing schedule shifts; and handling all operational issues to ensure that the petitioner's standards of quality and service are met. The petitioner also provided an extensive list of specific duties, including tasks such as ensuring that proper cash handling procedures are followed, and approving all food or beverage comps or promotions. In the petitioner's response to the director's request for further evidence, the petitioner provided a breakdown of the percentage of time the beneficiary would spend in the various duties outlined in the initial petition. Counsel also added two items to the beneficiary's primary responsibilities, namely, selecting and pricing menu items, and overseeing food preparation. The petitioner indicated the position required a baccalaureate degree in business or hotel management.

The director found that the proffered position was not a specialty occupation and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of food service manager. 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, counsel states that the position is not a fast food or self-service restaurant, but rather a full service Mexican restaurant that is expanding to include a bar. As such, counsel asserts that the duties of the proffered position are specialized and complex. Counsel further asserts that the director did not review the materials submitted in response to the director's request for further evidence. Finally, counsel states that the Specific Vocation Preparation (SVP) level for food service managers described in the Department of Labor's *Dictionary of Occupational Titles (DOT)* also establishes that the proffered position is a specialty occupation..

With regard to counsel's reference to the *DOT* and SVP levels for specific jobs, The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating 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, and it does not specify the particular type of degree, if any, that a position would require.

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." [redacted]

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. As correctly noted by the director, the *Handbook* indicates that most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. It also indicates that food service and 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 interest and aptitude. Based on the petitioner's description of its business activities, while the petitioner is not a fast food or self-service restaurant, it also is not a food service or restaurant chain, as described in the *Handbook*. In addition, the *Handbook* states that even restaurant chains hire graduates with degrees in other fields. Thus the *Handbook* does not establish that the minimum requirement for the proffered position is a baccalaureate degree in a specific specialty. In addition, the fact that the position requires bilingual language skills does not make the proffered position a specialty occupation.

With regard to parallel positions in similar healthcare settings, the petitioner submitted five vacancy announcements in its response to the director's request for further evidence and also on appeal. These five vacancy announcements are for a range of jobs within the food service industry. One position is for a food and beverage manager for a company servicing several hotel chains, and another is for an individual to assist a food service director who monitors food services contract workers throughout [redacted] These jobs are not viewed as parallel positions for similar firms. While one job vacancy for a Japanese restaurant in New York may be for a parallel position, this one vacancy announcement lacks detail as to the actual position and duties. Furthermore, one vacancy announcement would not be sufficient to establish an industry-wide standard. 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. The petitioner stated in its letter of support that the position was a new one. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 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 of the position appear numerous, and detail-oriented. Nevertheless, they also appear routine to any restaurant operation. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.