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U.S. Citizenship
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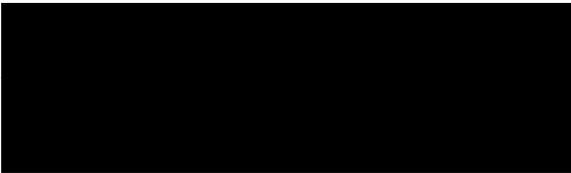
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FILE: SRC 04 009 50450 Office: TEXAS SERVICE CENTER Date: **MAR 09 2005**

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, 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 and seeks to employ the beneficiary as a restaurant 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, and because the beneficiary does not qualify to perform the duties of a specialty occupation. On appeal the petitioner submits a brief indicating that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first 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 a restaurant manager. Evidence of the beneficiary’s duties includes the I-129 petition with attachment and the petitioner’s response to the director’s request for evidence. According to this evidence the beneficiary would: be responsible for all operations of the restaurant including marketing and overall fiscal operations; implement policies and objectives of the company; hire and fire personnel; control inventory; oversee the establishment of Indian and Chinese fusion cuisine; assist with planning a sound cost effective menu, analysis, and design; plan and design the menu around existing equipment; perform market testing; and examine cost relationships, market history, and menu principles. The petitioner does not state that a degree in a specific specialty is required for entry into the proffered position, but notes that the petitioner is qualified by virtue of his degree in hotel and restaurant management.

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 *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 has also failed to establish that a degree in a specific specialty is common to the industry in parallel positions among similar organizations. In support of this proposition the petitioner submits copies of job advertisements. Those advertisements do not indicate, however, that a minimum of a bachelor’s degree in a specific specialty is common to the industry as a whole. Of the five advertisements submitted, only one requires a degree in a specific field, hospitality management. Three of the remaining four require a bachelor’s degree **and/or requisite industry and management experience**. (Emphasis added.) None of the experience requirements of these advertisements would equal a bachelor’s level education. The remaining advertisement

notes that a bachelor's degree is required, but does not state that the degree need be in any specific educational discipline. The educational requirements noted in the advertisements are consistent with the requirements previously noted in the *Handbook*. A degree in a specific specialty is not common in the industry. It should further be noted that the duties of the offered position are routine for food service managers in the industry. They are not so unique or complex that they can be performed only by an individual with a degree. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not state that it normally requires a degree in a specific specialty for the offered position, and offers no evidence in this regard. The petitioner has, therefore, failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the nature of the specific duties is not so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. In support of this proposition, the petitioner submitted an opinion letter from Janet M. DuVall, a vocational counselor with a master's degree in guidance and counseling. Ms. DuVall states that the duties of restaurant management positions involve highly complex tasks, and duties typically acquired by obtaining a baccalaureate level education. She basis her opinion upon a review of the Bureau of Labor Statistics *Occupational Information Network*, The Department of Labor's *Dictionary of Occupational Titles* and *Occupational Outlook Handbook*. None of these publications confirm Ms. DuVall's opinion. She does make specific reference to a *Handbook* citation indicating that most food service management companies, and national or regional restaurant chains recruit management trainees from "... 4-year college hospitality management programs..." Ms. DuVall's citation is only a partial citation of what the *Handbook* actually says, however, and is misleading as cited. As previously noted herein, the *Handbook* actually indicates that candidates are recruited 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. Expert opinions may be discounted or given little weight if they are in any way questionable. *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm. 1988). There is nothing particularly specialized or complex about the duties of the proffered position as those duties are routinely performed by restaurant managers in the industry. The petitioner has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The final issue to be considered is whether the beneficiary is qualified to perform the duties of the offered position. The most that can be said about the beneficiary's qualifications is that the petitioner deems him qualified to perform the duties of the position. That is the petitioner's prerogative. As noted, however, the position offered is not a specialty occupation. There is no regulatory requirement that the beneficiary possess a baccalaureate level education or its equivalent to perform the duties of such positions as the position is not subject to H-1B classification.

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.

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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.