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U.S. Citizenship
and Immigration
Services

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FILE: EAC 04 025 54218 Office: VERMONT SERVICE CENTER

Date: JUN 10 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 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 catering hall, banquet facility, and conference center that seeks to employ the beneficiary as 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 on the basis that the petitioner had failed to establish that the proposed position meets the definition of a specialty occupation as set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Immigration and Nationality Act (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 proposed position.

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) the petitioner’s RFE response and supporting documentation; (4) the director’s denial letter; and (5) the Form I-290B and appellate brief. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a catering hall, banquet facility, and conference center. It proposes to hire the beneficiary as a food service manager. The Form I-129 stated that the duties of the proposed position would entail managing “all logistics, personnel, and food for catered events.” The petitioner offered an expanded listing of the duties in its letter of support:

- Oversees office staff, floor staff[,] and maintenance.
- Opens the building.
- Closes the building.
- Booking parties, which include[s] pricing, amount of guarantees, room placements[,] and timing of said parties.
- Giving catering estimates to perspective [sic] clients.
- Receiving payments for parties.
- Party planning, which includes menu selections, floor planning, detailing party, linen selections, upgrading[,] and estimating final payments.
- Scheduling staff for parties.
- Entering payroll hours on time sheets and checking hours against staffing sheets.
- Keeping employees records update[d] with applications and forms.
- Getting party sheets ready for the kitchen and MaitreD’.
- Entering booked parties into the computer.
- Entering menus into the computer.
- Keeping party folders organized and updated with payments.
- Making phone calls to schedule appointments for payments, final counts, floor plans or any changes of parties.
- Fill in anytime at any position to where it is deemed to ensure that the party or facility is running smoothly.

The director denied the petition, finding “[t]he evidence of record does not establish that the job offered qualifies as a ‘specialty occupation’” As such, the director found that the petitioner had satisfied none of the four criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established the proposed position as a specialty occupation.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position is in fact a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty, as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.¹

¹ While not raised on appeal, the AAO notes that in her RFE response, counsel submitted the *Dictionary of Occupational Titles* (DOT) Standard Vocational Preparation (SVP) rating for the position as evidence that a baccalaureate or higher degree or its equivalent is required for entry into the position. 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

In its discussion of the duties of food service managers, the *Handbook* states the following:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of the restaurant, its equipment, and facilities. Managers generally are responsible for all of the administrative and human-resource functions of running the business, including recruiting new employees and monitoring employee performance and training.

In that the duties of a food service manager as discussed in the *Handbook* are closely aligned to those of the proposed position as set forth in the petition, the AAO next turns to the *Handbook's* discussion of the educational qualifications required for entry into the field.

In its discussion of the educational requirements for food service managers, the *Handbook* offers the following information:

Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. 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. 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. Waiters, waitresses, chefs, and fast-food workers demonstrating potential for handling increased responsibility sometimes advance to assistant manager or management trainee jobs. Executive chefs need extensive experience working as chefs, and general managers need prior restaurant experience, usually as assistant managers.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. A number of colleges and universities offer 4-year programs in restaurant and hotel management or institutional food service management. For 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. Both 2- and 4-year programs provide instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science. Some programs combine classroom and laboratory study with internships providing on-the-job experience. In addition, many educational institutions offer culinary programs in food preparation. Such training can lead to a career as a cook or chef and provide a foundation for advancement to an executive chef position.

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.

The *Handbook* explains unequivocally that a bachelor's degree is not the normal minimum requirement for entry into the proposed position, and its findings do not support the assertion that a bachelor's degree is required for entry. The statement that a bachelor's degree provides "particularly strong preparation" for a position or that employers "prefer" to hire candidates with such a degree is not synonymous with the "normally required" standard imposed by the regulation.

Therefore, the proposed position does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Nor does the proposed position qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. No evidence has been submitted to attempt to establish that the proposed position qualifies as a specialty occupation under this prong.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is very similar to the food service manager position described in the *Handbook*.

Accordingly, the petitioner cannot establish its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

As counsel noted in the initial submission letter, this is the first time that the petitioner has filled this position. Therefore, the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) cannot be satisfied.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Counsel contends that the proposed position is more complex than food service managers at other, similar organizations. Counsel states the following:

The marketing materials submitted by the petitioner indicated that it catered to three distinct and different groups of customers: the general public who does not observe any dietary laws, the Indian community who may be vegetarian, Hindu[,] or of the Muslim faith[,] and the Jewish community who [sic] adheres to complex kosher laws. Given the significance these dietary laws have in the religious life of these communities, it is not

merely a matter of mastering these laws as in understanding them, it is also a matter of incorporating them into the management of food service.

While preparing food for the Indian and Jewish communities may be involve a great deal of knowledge and preparation, such skills do not rise to the level of complexity required to satisfy the fourth criterion. If counsel's assertion were taken to its logical conclusion, any food service manager position required to prepare food for any ethnic community would qualify under this criterion. Nor does the fact that the beneficiary would be required to prepare food for three groups of customers qualify the position under this criterion, as many culinary establishments in large metropolitan areas serve many diverse ethnic groups.

Thus, the duties of the proposed position do not lead to a conclusion that they would require the beneficiary to possess a higher degree of knowledge and skill than that normally expected of food service managers in other, similar organizations. Therefore, the proposed position does not qualify as a specialty occupation under the fourth criterion.

The proposed position does not qualify for classification as a specialty occupation under any of the four criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1), (2), (3), and (4). Accordingly, the AAO will 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.