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U.S. Citizenship  
and Immigration  
Services

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FILE: WAC 04 015 50121 Office: CALIFORNIA SERVICE CENTER Date: **JAN 18 2006**

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:

SELF-REPRESENTED

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 an Indian restaurant that seeks to employ the beneficiary as its “director for food management operational services.” 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 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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition on the basis that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation.

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.

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 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.

In its October 7, 2003 letter of support, the petitioner stated that the beneficiary would be responsible for the supervision and coordination of the petitioner’s catering and food service department; formulate long-range research and development goals and objectives; plan and execute quality control standards; review executive menus; analyze recipes; determine cost of operations and assign prices; develop and ensure proper handling of policies and procedures for executive kitchen practices; and hire and fire employees as necessary to develop and implement policies in the department. The petitioner also stated that the beneficiary would be in charge of the business management of the restaurant, utilizing his food and hospitality management knowledge and techniques. He would also be responsible for the food service department, ensuring that the quality control and nutritional standards of food preparation are met. The beneficiary would also be responsible for reviewing budgets and expenditure reports to monitor the costs and the implementation of short- and long-term policies. The beneficiary would likewise be responsible for the management of the department’s administration. He would create, develop, and supervise the coordination of food handling to ensure its proper handling, and be in charge of the codification of new projects for the billing system. The petitioner stated that the beneficiary would also research and formulate long range and development goals and objectives and plan and execute quality control standards and menus for banquets and catering services.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as 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 Department of Labor’s *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.<sup>1</sup>

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

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<sup>1</sup> While not raised on appeal, the AAO notes that in its RFE response, the petitioner submitted the *Dictionary of Occupational Title’s (DOT)* Standard Vocational Preparation (SVP) rating for this 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 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. As such, the AAO accords no weight to this information.

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.

Thus, 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. The AAO has reviewed the job postings submitted by the petitioner. However, the petitioner has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

Fantasy Springs Resort is a Native American casino. The Hilton Cleveland South and Hilton Parsippany are hotels. The Biltmore Estate is a large, historic mansion and tourist attraction. UniversalCityWalk is an attraction that combines restaurants, retail, and entertainment. There is no evidence in the record to establish that these companies are similar in size or scope of operations to the petitioner.

The Cheesecake Factory, Panda Express, and Houlihan's are restaurants, and CA1 Services is in the food service industry. However, there is no evidence in the record to indicate that the petitioner's operations are similar in size or scope of operations to either company. For example, the AAO notes that The Cheesecake Factory operates 75 restaurants, and Panda Express is the largest Chinese food service provider in the United States.

These postings do not verify that there is an industry-wide requirement for a degree in a specialty. The first job posting from T.G.I. Friday's does not state that a bachelor's degree in a specific specialty is required. As noted previously, CIS interprets the term "degree" to mean not just any in any field, but one *in a specific specialty* that is directly related to the proposed position. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can qualify a worker to perform a job, the proposed position does not qualify as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

Moreover, the first job posting from T.G.I. Friday's does not state that a degree is required. Rather, it simply states that a degree is "preferred." As noted previously, the fact that an employer may "prefer" to hire candidates with a degree is not synonymous with the "normally required" standard imposed by the regulation.

The second posting from T.G.I. Friday's only states that a degree is "beneficial." In similar veins, the postings from Moose, Inc. and Eurest Dining Services only state that degrees are "preferred."

The unnamed company advertising its vacancy through Elias Associates, Inc. "prefers" a 2- or 4-year degree. Sodexo requires a 2-year degree. The Hilton Cleveland South would find acceptable a candidate with a 2-, 3-, or 4-year degree, and the Hilton Parsippany would accept experience in lieu of a degree. U.S. Foodservice would also accept experience in lieu of a degree. The Biltmore Estate only "prefers" that a candidate's degree be in a specific area.

The job posting from Aqua does not state that a degree is required.

Finally, although they require a bachelor's degree, Pat & Oscar's, the first posting from UniversalCityWalk, Aramark, LatinosForHire, and the unnamed bakery advertising its vacancy through

Monster.com do not require that the degree be in a specific area of study. The second job posting from UniversalCityWalk states that experience would be accepted in lieu of a degree. The third job posting from UniversalCityWalk only states that a degree is "preferred."

The vacant position advertised by Yum! Brands, Inc. (Senior Director/Vice President, Operations, CaribLA) is not "parallel" to the proposed position. The position at Yum! involves managing over 700 restaurants in over 25 countries in the company's Caribbean and Latin American units. A great deal of the position's time involves international travel. Also, a master's degree is required.

As such, the petitioner has not demonstrated that its degree requirement exists in parallel positions among similar organizations.

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 has not established 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.

In its RFE response, the petitioner noted that this is a newly-formed company and that it has not yet started operations. Therefore, it has never before filled this position. Thus, 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.

The petitioner contends that the proposed position is more complex than such positions at other, similar organizations. In its RFE response the petitioner stated that "Indian food is one of the most difficult foods to prepare because of the mixture of different spices and ingredients to produce the desire[d] taste and texture and for the methods utilized in cooking." While preparing Indian food may involve a great deal of knowledge and preparation, the evidence of record does not establish that performance of the associated duties requires knowledge that is usually associated with attainment of a bachelor's degree in a specific specialty. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

To the extent they are described in the record, the duties of the proposed position do not support a conclusion that they would require the beneficiary to possess at least a bachelor's degree level of

knowledge in a specific specialty. 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), and the petition was properly denied. As the proposed position is not a specialty occupation, the beneficiary's qualifications to perform its duties are immaterial. 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.