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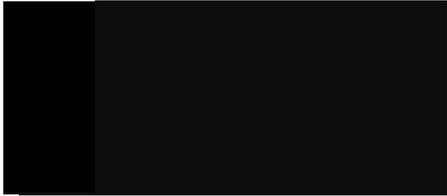
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U.S. Citizenship  
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Services

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FILE: WAC 04 256 50508 Office: CALIFORNIA SERVICE CENTER Date: **JUN 26 2006**

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, Chief  
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 owns, manages, and operates the Golden Peacock Banquet and Restaurant. It seeks to employ the beneficiary as an executive chef. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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)(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.

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 supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an executive chef. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's September 20, 2004 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: directing and participating in the daily preparation of standard and gourmet food items; planning and approving [food preparation] standards; creating menus and recipes; managing the daily kitchen and food delivery operations of the restaurant, banquets, and outdoor catering; planning and developing menus; determining and managing ingredient specifications and material purchases; setting standards for and supervising product and recipe testing, and quality control; developing culinary training programs for the food production employees; preparing operational reports and analyses, and making appropriate recommendations; and interviewing, selecting, training, and evaluating the production and support staff. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hotel and restaurant or catering management, a certification by a recognized culinary institution, or an equivalent thereof.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so specialized and complex as to require a baccalaureate degree in a specific specialty. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2004-2005 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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, in part, that the director mistakenly classified the proffered position as that of a chef or cook, as opposed to an executive chef, which is a managerial or food service manager position, according to the *Handbook*. Counsel states further that a review of the *Handbook's* food service manager category finds that a bachelor's degree is required for entry in this occupation. Counsel also states that the DOL assigns the food service manager position an SVP rating of 7 to 8, (referring to the DOL's *Dictionary of Occupational Titles (DOT)*), and a "Job Zone 4," (referring to the DOL's *O\*Net*), which according to counsel, require a degree to enter into the position. Counsel states that the record contains job listings, letters from similar businesses, and university curriculum printouts as supporting documentation. Counsel also states that CIS has previously approved similar positions.

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." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is a specialty occupation. No evidence in the *Handbook*, 2006-2007 edition, indicates that a baccalaureate or higher degree in a

specific specialty, or its equivalent, is required for a food service manager job. Executive chefs need extensive experience working as chefs, and general managers need prior restaurant experience. Further, although the evidence of record indicates that the petitioner has been in operation since August 2003, and the information on the petition reflects that the petitioner has 15 employees and a projected income of \$500,000, the record contains no evidence in support of these claims, such as quarterly wage reports and federal income tax returns. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Counsel's reference to and assertions about the relevance of information from the *O\*Net* and the *DOT* are not persuasive. The *O\*Net* and the *DOT* classification of occupations as "Professional, Technical, and Managerial" are not based upon the statutory and regulatory criteria for specialty occupations that govern this processing. Accordingly, the fact that the food service manager occupation is included within the aforesaid classification is not probative. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor does it specify the particular type of degree, if any, that a position would require.

Counsel's observation that higher education institutions offer degrees in hotel management leading to a Bachelor of Arts degree is noted. The AAO cannot assume, however, that the additional training that the baccalaureate program provides is solely related to the alleged complexity of the proffered position. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Regarding parallel positions in the petitioner's industry, the record contains letters from two businesses similar to the petitioner's. Both writers assert that their executive chief positions require a related college degree. Neither writer, however, specifies the requirement of a bachelor's degree. Further, the writers do not provide any evidence in support of their assertions or rely on industry surveys, data or other documentation to reach the conclusion that the position requires a bachelor's degree in a field related to hotel management. 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)). The *Handbook* is a compilation of results of nationwide industry questionnaires, surveys and personal interviews by the DOL, and indicates that there is no specific degree requirement for entry into the field. The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in that record of proceeding, the documents submitted by counsel are not

sufficient to enable the AAO to determine whether the position offered in the prior cases were similar to the position in the instant petition.

Each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although the AAO may attempt to hypothesize as to whether the prior cases were similar to the proffered position or were approved in error, no such determination may be made without review of the original records in their entirety. If the prior petitions were approved based on evidence that was substantially similar to the evidence contained in this record of proceeding, however, the approval of the prior petitions would have been erroneous. CIS is not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Neither CIS nor any other agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery* 825 F.2d 1084, 1090 (6th Cir. 1987), *cert denied*, 485 U.S. 1008 (1988).

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for food services managers and executive/sous chefs. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. Further, the petitioner has not demonstrated that the proposed duties of the proffered position are as complex as the duties listed for the advertised positions, such as: overseeing the food production of all the kitchens and catering functions at Stanford University; managing the quick service restaurants, snack stands, carts, staff dining room, and catering at The Bronx Zoo; and training and managing the kitchen personnel and supervising all related culinary activities at the Albuquerque Convention Center. Further, not all of the job postings stipulate the requirement of a related bachelor's degree. Thus, the advertisements are not probative.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has 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. As counsel does not address this issue on appeal, it will not be discussed further. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(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. 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).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the services of a specialty occupation. The record contains an evaluation from the IndoUS Technology & Educational Services, Inc., prepared by [REDACTED], a professor in the Computer Information Systems Department, at Raritan Valley Community College in New Jersey, who concludes that the beneficiary possesses the equivalent of a bachelor's degree in hotel management from an accredited college or university in the United States. Although Professor Reddy asserts that he has authority to grant college-level credit for training and/or work experience, the record contains no corroborating evidence in support of his assertion. 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)). Furthermore, the record contains no evidence that Raritan Valley Community College has a program for granting credit, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).<sup>1</sup> Thus, the evaluation carries no weight in these proceedings. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For this additional reason, the petition may not be approved.

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.

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<sup>1</sup> A review of this institution's website at <http://www.raritanval.edu/> does not reflect that Raritan Valley Community College has a program for granting credit, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).