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U.S. Citizenship
and Immigration
Services

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FILE: LIN 04 186 51063 Office: NEBRASKA SERVICE CENTER Date: NOV 03 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All materials 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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is a food and facilities management services company. It seeks to employ the beneficiary as a food service manager and to continue her classification 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 ground that the record failed to establish that the proffered position qualifies as 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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as a leading provider of outsourced food and facilities management services to businesses, health care facilities, colleges and universities, as well as primary and secondary schools. Services provided by the company include food and beverage procurement, preparation and menu planning, as well as the operation and maintenance of food service and catering facilities. The petitioner states that it was established in 1998, has 100,000 employees in the United States and Canada, and earns a group-wide gross annual income of \$12.5 billion. The petitioner originally hired the beneficiary in 2001 as a marketing specialist, with H-1B classification valid from August 16, 2001 to July 1, 2004, and seeks in the instant extension petition to employ her in a new position – as food service manager at a hotel in Evanston, Illinois. The duties of the proffered position are described as follows in the petitioner's Form I-129:

Will manage all aspects of the hotel's dining operations; will be responsible for hiring, training and supervising subordinate managers and employees; will monitor day-to-day food production and status of two dining rooms; will oversee sanitation levels of the facilities; will create and monitor dining and store budgets; will create menus for dining rooms; will build and maintain vendor relations; will oversee equipment maintenance and upgrades; will oversee and monitor all food control, inventory systems, and labor control systems for department.

According to the petitioner, a baccalaureate degree or the equivalent in business administration, business management, or a closely related field is required to perform the duties of the job. The beneficiary is qualified for the position, the petitioner declares, by virtue of her bachelor of arts degree in business administration from Washington State University, awarded on July 29, 2000.

In his decision the director cited information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* indicating that the occupation of food service manager does not normally require a baccalaureate or higher degree in a specific specialty. The record did not show that there is a common industry standard requiring a specialty degree for such positions, the director found, or that the petitioner normally requires a specialty degree for the proffered position. The director was not persuaded by the evidence of record that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The director concluded that the record failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel reiterates the petitioner's contention that the proffered position is a highly skilled position that requires a professional with baccalaureate level knowledge in business administration, business management or a closely related field. According to counsel, food service managers, like computer programmers and analysts, represent an occupation in transition that once could be performed by individuals with less than baccalaureate level education but has now evolved into an occupation that normally requires a baccalaureate degree. The petitioner submits two advertisements for related positions as evidence that a degree requirement is the industry standard for food service managers.

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook*’s occupational descriptions as a reference, as well as the petitioner’s past hiring practices for the position. *See Shanti, Inc. v. Reno, id.*, at 1165-66.

The AAO agrees with the director that the duties of the proffered position are reflected in the *Handbook*’s occupational category of food service manager. The duties of the occupation are described as follows in the *Handbook*, 2006-07 edition, at 45:

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.

With regard to the educational requirements for food service managers, the *Handbook* states as follows:

Experience in the food services industry, whether as a full-time waiter or waitress or as a part-time or seasonal counter attendant, is essential training for a food services manager. Many food service management companies and national or regional restaurant chains recruit management trainees from two- and four-year college hospitality management programs which require internships and real-life experience to graduate. Some 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 experience, interest and aptitude

A bachelor’s degree in restaurant and food service management provides particularly strong preparation for a career in this occupation For those not interested in pursuing a four-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

Id. at 46-47. What the *Handbook* makes clear is that, even if many food service managers have baccalaureate degrees in hospitality management, there is ample opportunity to enter the occupation with credentials short of a four-year baccalaureate degree in a specific specialty, such as a two-year associate degree or vocational certification. Accordingly, the proffered position does not meet the first alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), because a baccalaureate or higher degree in a specific specialty is not the normal minimum requirement for entry into the position.

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes two job announcements from Aramark Corporation – like the petitioner, a provider of food and facilities management services to a range of customers. One is for a retail/hospitality food service

manager at the 300-bed Valley Medical Center in Renton, Washington, and the other is for a food production manager at a 700-bed health care facility in Fayetteville, North Carolina. These organizations are in a different line of business from the hotel in Evanston, Illinois involved in the instant petition, and the documentation of record provides no information as to their size and scale of operations relative to the hotel. Moreover, while both advertisements indicate that a bachelor's degree is required for the position, neither states that it must be in a specific specialty. The AAO determines that the subject job announcements are not persuasive evidence that a bachelor's degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position of food service manager to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor does the record establish that the food service manager at issue in this petition is such a complex or unique position that it can only be performed by an individual with a baccalaureate degree in a specific specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The position is not unique, and the record does not demonstrate a level of complexity beyond that normally encountered in the occupation, which the *Handbook* states does not normally require a baccalaureate degree.

With respect to the third alternative criterion of a specialty occupation, there is no evidence in the record documenting previous employees in the proffered position, their academic degrees, and the petitioner's previous requirements for the position. Thus, the record does not establish that the employer normally requires a bachelor's degree in a specific specialty or its equivalent for the position, as required for it to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The AAO notes that the petitioner will accept the beneficiary's baccalaureate degree in business administration as full qualification for the position. The requirement of a degree with a generalized title such as business, without further evidence of a specific course of study closely related to the proffered position, does not establish the proffered position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558, 560 (Comm. 1988).

As for the fourth alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The job duties are consistent with the *Handbook's* description of a food service manager, an occupation which the *Handbook* indicates does not normally require baccalaureate level knowledge in a specific specialty.

For the reasons discussed above, the petitioner has failed to demonstrate that its catering manager position meets any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A) to qualify as a specialty occupation. The record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.