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U.S. Citizenship
and Immigration
Services

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FILE: SRC 04 053 50648 Office: TEXAS SERVICE CENTER Date:

JUL 22 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 operates and franchises restaurants. It seeks to employ the beneficiary as a food and beverage manager at its Longhorn Steakhouse in Miami, Florida. 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 a food and beverage manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's December 5, 2003 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: planning, organizing, directing, and coordinating food service activities; directing, hiring, and assigning hourly personnel; monitoring food preparation and methods, size of portions, garnishing, and presentation of food; reviewing menus and analyzing recipes to determine supplies needed, labor, and overhead costs; keeping required sanitation records; investigating and resolving complaints; and monitoring budget, payroll records, and financial transactions. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in hospitality management.

The director found that the proffered position was not a specialty occupation. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, 2002-2003 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 proposed duties are so specialized and complex as to require a bachelor's degree in hospitality management and related experience. Counsel states further that the petitioner normally requires that its managers hold a bachelor's degree in the hospitality field. Counsel also states that the AAO has determined that similar positions require a bachelor's degree. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 8, which according to counsel, requires a degree to enter into the position. Counsel submits copies of DOL publications, job postings, university curricula, an academic opinion, and letters from the petitioner's regional employment manager and vice president of operations for Florida and Alabama, as supporting documentation.

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, which is primarily that of a food service manager, is a specialty occupation. No evidence in the *Handbook*, 2004-2005 edition, indicates that a baccalaureate or higher degree, or its equivalent, is required for a food service manager job.¹

¹ It is also noted that a review of the petitioner's website at <http://www.longhornsteakhouse.com/Careers/MgmtOpps.asp> does not find a requirement of a bachelor's degree for its managerial positions.

Counsel's reference to and assertions about the relevance of information from the *DOT* are not persuasive. The *DOT's* SVP rating does not indicate 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 is meant to indicate only the total number of years of vocational preparation required for a particular position. The classification does not describe how those years are to be divided among training, formal education, and experience, nor specify the particular type of degree, if any, that a position would require.

Counsel submits copies of university guides to show that various U.S. universities offer baccalaureate and master's degrees in food service and hotel management. The AAO cannot assume, however, that the additional training that these degree programs provide is related to the complexity of the proffered position.

Counsel's citation of a previous AAO decision is noted. Counsel, however, provides insufficient discussion that persuasively demonstrates that the cited decision is analogous to the instant petition. It must be emphasized that that each petition filing 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 that individual record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record also contains an opinion from [REDACTED] Ph.D., Associate Dean of the School of Business Administration at Portland State University, who, asserts that positions such as the proffered position require a bachelor's degree in hospitality management. Going on record without supporting documentary evidence, however, 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)).

Regarding parallel positions in the petitioner's industry, on appeal counsel submitted three Internet job postings for food service positions. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, that the advertised positions are parallel to the instant position, or that the advertised positions require a degree in a specific specialty. Two of the advertisements are for food and beverage directors for hotels; although baccalaureate-level education is required, no particular field of study is stipulated. Another advertisement is for a food and beverage director for the corporate headquarters of AMF Bowling Worldwide, Inc., whose duties include developing and implementing promotional food and alcohol related programs on a national and regional level, and managing three regional food and beverage managers. The petitioner, however, has not demonstrated that the duties of the proffered position are as complex as the duties of this corporate-level food and beverage director. Thus, the advertisements have no relevance.

The record also does not include any evidence from 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. On appeal, counsel submits a copy of a letter from the petitioner’s regional employment manager who states, in part, that he prefers that the petitioner’s managers have a university background in hospitality management. This writer, however, does not state that a university background is required. Counsel also submits a copy of a letter from the petitioner’s vice president of operations for Florida and Alabama, who states, in part, that a bachelor’s degree is usually an industry requirement for food and beverage managers, and that he currently has over 100 managers with a related bachelor’s degree. The record, however, does not contain any evidence of the petitioner’s past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. 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)).

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.

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.