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U.S. Citizenship
and Immigration
Services

D2



FILE: LIN 04 013 55387 Office: NEBRASKA SERVICE CENTER Date: MAR 28 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:

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

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 is a resort that seeks to employ the beneficiary as a restaurant manager. 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 and the beneficiary is not qualified to perform a specialty occupation. On appeal, the petitioner's food and beverage director submits a statement and additional evidence including the following: a letter detailing the educational backgrounds and employment experiences of the petitioner's current managers; a timeline and description of the beneficiary's employment experience; and letters from the curriculum team leader of a U.K. college, the petitioner's dining room manager, and conference services manager regarding the beneficiary's employment experience.

The AAO will first address the director's conclusion that the position is not 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.

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 restaurant manager. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's October 2, 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: exceeding all guest expectations and ensuring guest satisfaction; controlling food, beverage, and labor costs; developing, implementing, and maintaining approved specifications on all menu and bar items; ordering and requisitioning all restaurant products; following standards and expectations set by the Food and Beverage department; hiring, training, and reviewing all subordinate managers and supervisors; hiring and training all servers, hosts, bussers, cooks, dishwashers, and bartenders; ensuring uniform and service specs of all subordinate staff; scheduling staff; understanding accounting policies; working with other managers in "shoulder seasons"; motivating, coaching, and training managers and hourly service staff; working in the dining room and kitchen; leading by example; working with catering and events manager and sales department; hiring, firing, and working with subordinate personnel; developing strong working relationships with other departments; and ensuring a proper "overall look" of the property. The petitioner indicated that a qualified candidate for the job would possess a college or culinary school degree and a minimum of three years of related experience.

The director found that the proffered position, which is that of a food service manager, was not a specialty occupation. Citing to the Department of Labor's *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, the petitioner's food and beverage director states, in part, that the proffered position is of strategic importance and, therefore, requires a related bachelor's degree. He states further that the petitioner's current food service related managers hold the equivalent of a related bachelor's degree through education and experience.

The record contains the following documentation related to the proffered position:

- Reference to the *Matter of Sun*, 12 I&N Dec. 535 (D.D. 1966) and quotations from the following publications: *America's Top Jobs for College Graduates*; *Career Guide to America's Top Industries (1998-1999 Edition)*; *Kurzban's Immigration Law Sourcebook 8th Edition*; and *Encyclopedia of Career and Vocational Guidance*;
- Resumes of the petitioner's current employees indicating the following: the petitioner's food and beverage director holds a bachelor's degree in hospitality and tourism management; the petitioner's dining room manager holds a Higher National Diploma in hotel, catering, and institutional management from a U.K. university; the petitioner's "Pines Food and Beverage Manager" holds a bachelor's degree and an associate's degree (specialties not notated on resume); and the petitioner's executive chef holds a diploma in culinary arts from a U.S. technical college;

- Letter, dated December 4, 2003, from the Curriculum Team Manager of Chichester College in the U.K., explaining the beneficiary's degree program; and
- Four letters of recommendation.

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 the petitioner that the proffered position, which is 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 position. The petitioner's citation to *Matter of Sun* is noted. This decision, however, dealt with membership in the professions, not membership in a specialty occupation. While these terms are similar, they are not synonymous. The term "specialty occupation" is specifically defined in section 214(i) of the Act, 8 U.S.C. § 1184(i). That statutory language effectively supersedes *Matter of Sun*. The petitioner's references to the various publications mentioned above are also noted. None of the information quoted by the petitioner, however, indicates that a baccalaureate degree in a specific specialty is required for a food service manager position.

The record does not contain any evidence regarding parallel positions in the petitioner's industry. 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 states that all of the petitioner's current managers related to food service hold a related bachelor's degree or an equivalent thereof. The record, however, does not contain independent evidence that these managers hold the equivalent of a bachelor's degree in a related and specific specialty. The petitioner, therefore, has not met its burden of proof in this regard. See *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.

The director also found that the beneficiary was not qualified to perform the duties of a specialty occupation because he does not hold a baccalaureate degree in a related area. As stated previously, no evidence in the *Handbook* indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for a food service manager position. Furthermore, the petitioner described the required qualifications for the proffered position as a college or culinary school degree and three years of related experience. In this case, the record contains an evaluation from a company that specializes in evaluating academic credentials indicating that the beneficiary's BTEC Higher National Diploma in Hotel, Catering, and Institutional Management is the U.S. equivalent of two years of undergraduate work. The record also indicates that the beneficiary holds more than three years of related experience. As such, the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The petition may not be approved, however, because the proffered position is not 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.