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FILE: WAC 05 151 54372 Office: CALIFORNIA SERVICE CENTER Date: DEC 19 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 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 director of the service center 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 has a restaurant and franchise operation. It seeks to employ the beneficiary as a marketing manager, and 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 director denied the petition on the basis that the proffered position fails to qualify as a specialty occupation. Counsel submitted a timely appeal.

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) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the director's request; (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 petitioner is seeking the beneficiary's services as a marketing manager. Evidence of the beneficiary's duties includes: the Form I-129 petition and the attachments accompanying the Form I-129 petition, the petitioner's support letter, and the petitioner's response to the RFE. According to this evidence, the beneficiary would perform duties described as follows: conduct research of potential new Japanese cuisine franchise products, oversee menu development, conduct a regional and nationwide survey, develop pricing strategies with the goal of maximizing the franchise restaurant's profits, have contact with potential buyers of a franchise restaurant, and draft the terms and conditions of the franchise agreement. In the September 6, 2005 letter the petitioner indicates that it requires a bachelor's degree for the proposed position.

The director denied the petition. He stated that the 2004-2005 edition of the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) indicates that the proposed duties resemble those of a marketing manager, which does not require a baccalaureate degree in a specific field. The director found that the evidence of record did not distinguish the beneficiary's duties from those normally performed by a marketing manager. He noted that the letter from the president and owner of [REDACTED] Japanese did not establish the proposed position as requiring a baccalaureate degree in a specialty academic field.

On appeal, counsel states that the petitioner operates restaurants in Kern and Tulare Counties in California, with the view of franchising. Counsel asserts that the director erred by requiring that the baccalaureate degree for the proposed position "be in a specific field of study" as this language is not in the regulation relied on by the director. Counsel states that the letter from [REDACTED] Japanese establishes that a bachelor's degree is common to the industry in parallel positions among organizations similar to the petitioner.

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.

To qualify a position as a specialty occupation the petitioner must establish one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). It is noted that the petitioner requires a baccalaureate degree for the proposed position. Counsel states that the regulations do not require that the baccalaureate degree "be in a specific field of study." Counsel's assertion is undermined by section 214(i)(1) of the Act: it defines the term "specialty occupation" as an occupation requiring theoretical and practical application of a body of highly specialized knowledge, and the 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. Furthermore, case law such as *Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm. 1988), indicates that for a position to qualify as a specialty occupation the petitioner must establish that it requires a "precise and specific course of study that relates directly and closely to the position in question" and that "there must be a close corollary between the required specialized studies and the position," and that "the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility."

The record reflects that the petitioner does not require a baccalaureate degree in a specific academic field for the proposed position. It requires any baccalaureate degree. Accordingly, the petitioner fails to establish the proposed position as a specialty occupation under section 214(i)(1) of the Act and under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 on this ground.

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.