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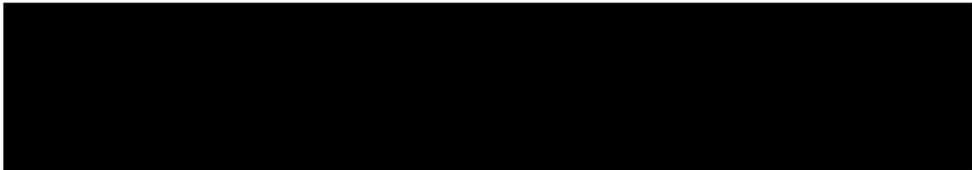


FILE: EAC 04 127 54101 Office: VERMONT SERVICE CENTER Date: JUL 31 2006

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 materials have been returned  
to the office that originally decided your case. Any further inquiry must be made to that office.

*Robert P. Wiemann*  
*10/2* 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 provider of various real property and business-related services. It seeks to employ the beneficiary as its catering 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 company engaged in purchasing and selling, as well as a broad range of other dealings with, real estate and business properties. The petitioner states that it was established in 2000, had either four employees (according to the Form I-129) or ten employees (according to an accompanying letter) at the time of filing, and has a gross annual income of \$400,000. The petitioner indicates that it created a catering department in 2003 to serve its clientele of African emigres, and proposes to hire the beneficiary as its catering manager for three years at an annual salary of \$35,000. The petitioner provides the following brief description of the position:

[The beneficiary] will directly advise the president, supervise and coordinate the day-to-day activities of the catering division of [the petitioner]. She will perform such management functions as budgeting and accounting, as well as give a new sense of direction to the catering division, using her experience and knowledge in African cuisine. She will also carry out such other duties as the requirement of the position will demand.

According to the petitioner, a baccalaureate degree and/or requisite experience in catering management or a 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 science degree in 1999 from the Open University in the United Kingdom. According to a credentials evaluation report in the record, the beneficiary's education is equivalent to a bachelor's degree in social sciences from an accredited college or university in the United States.

In his decision the director determined that the duties of the proffered position parallel those of a food services manager, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*, an occupation which the *Handbook* indicates does not normally require a baccalaureate or higher degree in social sciences, culinary arts, or any other specific specialty. The director was not persuaded by the evidence of record that the proffered position involves a level of complexity, uniqueness, or specialization that requires a bachelor's degree in a specific field of study and the theoretical and practical application of highly specialized knowledge. The record did not show that there is a common industry standard requiring a specialty degree for catering manager positions, the director declared, or that the petitioner normally requires a specialty degree for the proffered position. The director concluded that the evidence of 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 asserts that the petitioner's catering manager is a highly skilled position that requires a professional with at least a bachelor's degree. Counsel reiterates the petitioner's contention that the position requires a degree and/or requisite experience in catering management or a related field, and that the beneficiary's degree in social sciences – because of its interdisciplinary nature – is one such field. The duties of the proffered position are so specialized and complex, counsel maintains, that baccalaureate level knowledge is required to perform them.

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.

In accord with the director’s decision, the AAO determines that the duties of the proffered position are subsumed in the *Handbook’s* occupational category of food services 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. Accordingly, the catering manager position at issue in this petition 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 internet job announcements – one from a catering company seeking a catering event

manager and the other from Larry Flynt's Hustler Club seeking a manager. Neither of these companies is in the same line of business as the petitioner and the job advertisements provide no information as to their size and scale of operations relative to the petitioner. Moreover, the second advertisement does not describe the position as that of a catering manager. While both advertisements indicate that a bachelor's degree is required for the position, neither state that it must be in a specific specialty. The AAO determines that the internet 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 catering 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 catering manager position is so complex or unique 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). While the position clearly requires knowledge of African cuisine and experience in its preparation and cooking, the record does not show that such knowledge and experience requires an academic degree of any nature, much less one in a specific specialty.

With respect to the third alternative criterion of a specialty occupation, the proffered position is newly created and the petitioner has no hiring history for it. Accordingly, the petitioner cannot demonstrate that it 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). Moreover, the petitioner stated in its initial letter to the service center that a "baccalaureate degree and/or *requisite experience in catering management*" is required for the position. (Emphasis added.) This statement indicates that the petitioner would accept relevant experience in lieu of a degree, and not require that the experience be equivalent to a baccalaureate degree.

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 specific duties of the catering manager position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. The duties of the position are those of a food services manager, an occupation which the *Handbook* indicates does not require baccalaureate level knowledge in a specific specialty. Though knowledge of African cuisine is required to perform the duties of the job, and distinguishes the proffered position from that of other catering managers, the evidence of record does not show that such knowledge is associated with the attainment of a baccalaureate degree in a specific specialty. Furthermore, while the job may include some budgeting and accounting functions, there is no evidence that they exceed the managerial competence of a food services manager or that they require baccalaureate level knowledge in a specific specialty. Thus, the proffered position does not meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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).

Finally, if the previous petition granting the beneficiary H-1B classification, which was filed by another company, was based on similar evidence to that submitted in this proceeding, the approval would have been erroneous. The AAO is not bound by a decision issued by a service center or a district director, *see Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001), and is not required to approve a petition when eligibility has not been demonstrated merely because of a prior approval that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). 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 petitioner's record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). For the reasons previously discussed, the record of proceeding in this petition does not establish that the proffered position qualifies as a specialty occupation.

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.