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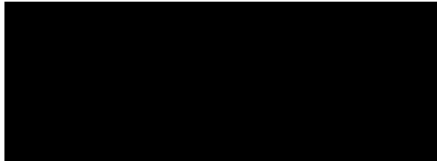
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U.S. Citizenship
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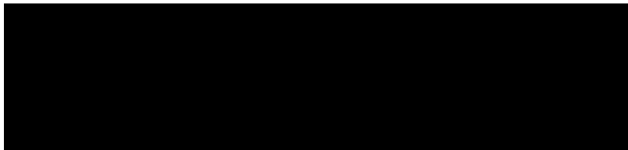


FILE: EAC 06 179 52497 Office: VERMONT SERVICE CENTER Date: NOV 20 2007

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 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 catering company that seeks to employ the beneficiary as a service operations manager. It endeavors to classify her 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 because the proffered position does not qualify as a specialty occupation. On appeal, counsel submits a brief and additional information asserting that the offered position qualifies as a specialty occupation.

The issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (5) the Form I-290B with supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a service operations manager. Evidence of the beneficiary's duties includes the Form I-129 petition with attachment and the petitioner's response to the director's request for evidence. According to this evidence the beneficiary would:

- Oversee daily office operations;
- Organize and monitor catering orders;
- Conduct marketing and customer service duties;
- Coordinate with sales managers and sales associates on catering details and customized menus;
- Be in charge of purchasing orders for events and coordinating special instructions for events;
- Coordinate with the petitioner's in-house team by organizing and maintaining the office and employee conduct;
- Establish and evaluate the positioning for the petitioner's food services in the local marketplace;
- Conduct research concerning the public's characteristics, such as its size, demography, prices of competitors, and effective promotional tools that can draw people's attention to the petitioner's services in New York;
- Determine appropriate tools for promotions and marketing;
- Act as liaison with the sales team and expeditor together with the kitchen department regarding the presentation and expediting of catering orders;

- Synchronize orders in each department and coordinate each catering job for smooth and accurate dispatch; and
- Present daily reports to the president and discuss client feedback and solutions for maintaining the petitioner's reputation.

The petitioner finds the beneficiary to be qualified for the proffered position by virtue of her foreign education which has been determined by a credentials evaluation service to be equivalent to a bachelor's degree in business administration and marketing from an accredited college or university in the United States.

The AAO routinely consults the Department of Labor's *Operational Outlook Handbook (Handbook)* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for general/operations managers. The *Handbook* notes that the formal education and experience of operations managers varies as widely as the nature of their responsibilities. Many have a bachelor's or higher degree in business administration or liberal arts, while others obtain their positions by promotion from lower level management positions. Thus, it is possible to obtain a position as a general or operations manager without a college degree by promotion from within the organization based upon performance alone. It is apparent from the *Handbook* that a baccalaureate or higher degree, in a specific specialty, is not the minimum requirement for entry into the offered position. Positions requiring a college degree are filled from a wide range of unrelated educational disciplines. A degree in a specific educational discipline is not required. Thus, the petitioner has not established the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), that a baccalaureate or higher degree, or its equivalent, is normally the minimum requirement for entry into the position.

The petitioner asserts that a degree requirement is common to the industry in parallel positions among similar organizations, and in support of that assertion submits copies of job advertisements, opinion letters, and letters from other catering companies in the petitioner's market place. The documentation submitted, however, does not establish the petitioner's assertion, and shall be discussed as follows:

- Three Job Advertisements

The job advertisements presented do not establish that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. The advertisements presented are not from catering companies similar in nature and scope to that of the petitioner. Further, the advertisements do not establish that a degree in a specific educational discipline is required for the positions advertised. One advertisement is from a Fortune 500 company seeking a food service director, and requires that the successful candidate hold a bachelor's degree in institutions management, or food and nutrition. A second advertisement is for a catering supervisor position with a wildlife conservation society at the Bronx Zoo and states that a bachelor's degree is "desired," but not required, for the advertised position. The third advertisement is a banquet manager position at a Sheraton Hotel. That advertisement states that a bachelor's degree is required, but does not indicate that the degree need be in any particular educational discipline.

- Opinion Letters

(1) Professor [REDACTED] – Associate Professor of Hotel Administration, Cornell University

[REDACTED] states that the duties of the proffered position are “. . .highly specialized and complex, to the extent that the position requires bachelor’s-level educational training and/or professional experience in business administration, business management, hospitality management, or a related area, in order to be properly performed.” [REDACTED] further opines that it is common in the industry for high-end catering firms with expansion plans aiming at the top level of the catering market (such as the petitioner) to hire an operations manager, with duties comparable to those detailed by the petitioner, with the appropriate bachelor’s-level background in business, hospitality management or a related field, and to require such a background for comparable management positions.

[REDACTED] opinion, however, is of little evidentiary value with regard to the petitioner’s assertion as the opinion writer provides no basis for his opinion, such as reference to a labor market study, survey or some other source of reliable labor market information. [REDACTED] does not indicate the source of his knowledge that the petitioner is a high-end catering firm in New York City with gross revenues of over \$2.75 million, and that the petitioner is planning a major growth initiative. [REDACTED] does not indicate that he interviewed the petitioner, reviewed its business plan, visited the cite, or evaluated company records. The AAO notes that no information of record establishes that the petitioner has major expansion plans, that it earns \$2.75 million in gross revenue, or that it is a high-end catering company. There is, therefore, an inadequate factual foundation to support [REDACTED] opinion. 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)). As previously noted, the *Handbook’s* discussion of the educational requirements for the position clearly states that a wide range of unrelated educational disciplines will equip job applicants for positions as general or operations mangers. The findings set forth in the *Handbook* for the educational requirements of the position are based on national market research and opinions from employers in the labor market. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

(2) [REDACTED] - Professor of Marketing, Pace University

Professor Gould states that based upon his review of the duties of the proffered position, the position is a specialty occupation requiring bachelor’s-level educational training in business administration, marketing, or a related area, and the application of specialized knowledge in these fields. He further opines that, based on his experience as an evaluator and consultant, it is an industry standard for substantial catering and hospitality firms to hire operations managers with the appropriate bachelor’s-level background in business, hospitality management or a related field.

For the same reasons noted regarding [REDACTED] opinion above, Professor Gould's opinion is of little evidentiary value with regard to the petitioner's assertion. Again, the opinion writer provides no basis for his opinion, such as reference to a labor market study, survey or some other source of reliable labor market information. [REDACTED] indicates that he reviewed an outline of job duties and identified the petitioner as a high-end catering firm in New York City with \$2.75 million in gross revenue and 20 employees. He does not establish the source of his information about the petitioner, which is not supported by evidence in the record. He does not review the job duties in the context of the petitioner's business. 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)). As previously noted, the *Handbook's* discussion of the educational requirements for the position clearly states that a wide range of unrelated educational disciplines will equip job applicants for positions as general or operations managers. The findings set forth in the *Handbook* for the educational requirements of the position are based on national market research and opinions from employers in the labor market. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

(3) Don Del Nero, Department Coordinator, Hotel Restaurant Management - Bergen Community College

[REDACTED] states that within the petitioner's industry, ". . . it is well-known that a bachelor's degree in a relevant field of study is the minimum educational standard for managerial positions. Specifically, in order to perform the complex duties demanded of a managerial position responsible for the everyday operational logistics of such catering businesses, a bachelor's degree in business administration is necessary. Moreover, educational studies in the area of hospitality management, and/or actual experience in the field are preferable."

For the same reasons noted above, [REDACTED] opinion is of little evidentiary value with regard to the petitioner's assertion. [REDACTED] does not establish his expertise to render an opinion on the hiring practices of "upscale catering companies (such as the petitioner), holding a considerable market share in the New York City metropolitan area." Again, the opinion writer provides no basis for his opinion, such as reference to a labor market study, survey or some other source of reliable labor market information. He does not indicate how he arrived at the conclusion that the petitioner holds a "considerable market share of upscale catering companies in New York City". There is thus, an inadequate factual foundation to support his conclusion. As previously noted, the *Handbook's* discussion of the educational requirements for the position clearly states that a wide range of unrelated educational disciplines will equip job applicants for positions as general or operations managers. The findings set forth in the *Handbook* for the educational requirements of the position are based on national market research and opinions from employers in the labor market. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable,

CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

- Industry Opinion Letters

The petitioner presented opinion letters from [REDACTED] Managing Member of Pier Sixty, The Lighthouse (a New York catering company that claims to employ over 300 people and have over \$20,000,000 in gross annual revenue), and [REDACTED] CEO of Foremost [REDACTED] Caterers in New York. Both individuals state that managers working for top New York area upscale caterers must hold a bachelor's degree in business administration or management, with a focus on food service or hospitality, or have an educational/work experience equivalency of such education. Once again, neither opinion provides evidence in support of their statements regarding the educational requirements of the position in the industry, or documentary proof that their own managers actually possess bachelor's degrees in business administration or management with a focus on food service or hospitality. 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)). The opinions shall, accordingly, be afforded little weight. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept, or may give less weight, to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The documentation submitted does not establish the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner does not assert that it normally requires a degree in a specific specialty for similar positions in its organization as the position is new in its organization. The petitioner, accordingly, offers no evidence in this regard and has failed to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not established that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the duties are so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As described by the petitioner, the duties to be performed by the beneficiary do not establish that they are more unique, complex, or specialized than those normally performed by operations managers in the industry who are not required to have a baccalaureate level education, or who are not required to have a bachelor's degree in a specific educational discipline. For example, the petitioner states that the beneficiary will:

- Oversee daily office operations;
- Organize and monitor catering orders;
- Conduct marketing and customer service duties;

- Coordinate with sales managers and sales associates on catering details and customized menus;
- Be in charge of purchasing orders for events and coordinating special instructions for events; and
- Coordinate with the petitioner's in-house team by organizing and maintaining the office and employee conduct.

As described by the petitioner, all of these duties are routinely performed in the industry by management personnel and do not require the attainment of a baccalaureate level education in a specific educational discipline. The record does not describe the complexity of the duties in relation to the petitioner's catering business. The record contains no information about the petitioner or its business. 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)). The petitioner has failed to establish the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A) (2) or the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that the offered position meets any of the criteria listed at 8 C.F.R. § 214.2(h)(4)(iii)(A). 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 and the appeal shall accordingly be dismissed.

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