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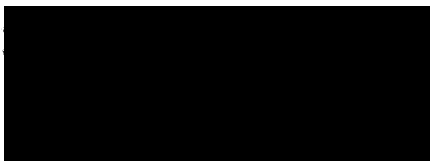
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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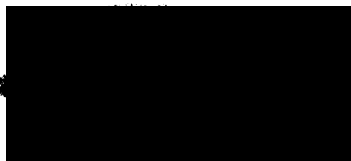


FILE: EAC 03 237 57067 Office: VERMONT SERVICE CENTER Date: **MAY 16 2005**

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
Robert P. Wiemann, Director
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 sustained. The petition will be approved.

The petitioner is a gourmet Japanese food catering company. It seeks to employ the beneficiary as a manager, business development. The petitioner, therefore, 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 because the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 manager, business development. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the company support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail researching business practices and activities in the restaurant and catering industry; compiling, reviewing, analyzing, and interpreting market demographics and economic environments; reviewing and analyzing acquisition opportunities in the food industry, and evaluating the suitability of new investments; reviewing and evaluating considerations such as site location, leasing options, rent, staffing, workflow, and the use of space in order to recommend strategies to maximize efficiency and profits; commissioning market research and business and design studies to outside consultants; developing and formulating customized marketing and financial strategies; planning and implementing advertising and promotional activities; formulating financial and general corporate objectives; administering short and long-term operating and financial planning; reviewing, analyzing, and approving business plans; preparing financial forecasts and establishing budgetary controls; interpreting financial results; directing all fiscal reports; and preparing and interpreting reports for the company's president. The petitioner stated that a candidate for the proffered position must possess a bachelor's degree in economics or a closely related specialty.

The director determined that the proffered position was not a specialty occupation. According to the director, the petitioner has one employee and is transitioning from the seed stage to the start-up/hiring stage of development. The director stated that the submitted evidence describing the position does not demonstrate that the duties are complex and professional in nature. The director noted that the petitioner failed to submit a certified labor condition application (LCA) from the Department of Labor (DOL).

On appeal, counsel states that the proffered position is a specialty occupation. Referring to the DOL's *Occupational Outlook Handbook*, counsel states that it reveals that the duties of a financial manager are similar to those of the proffered position. Counsel submits an evaluation from [REDACTED] Ph.D., Chair, Economics and Finance, Zicklin School of Business, Baruch College, CUNY.

Upon review of the record, the petitioner has established that the proffered position is a specialty occupation.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. As described by the petitioner, the beneficiary's duties require knowledge of economic principles, financial modeling and research, and methods of valuation and debt and equity financing. Such knowledge is associated with a baccalaureate degree in economics, finance, or a related field. Accordingly, the petitioner established 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has established that the proffered position is a specialty occupation.

The AAO notes that the record contains a properly certified LCA. The record also contains a copy of the beneficiary's transcript, which shows that the beneficiary holds a bachelor's of arts in business and commerce from Keio University in Japan, and a credentials evaluation. The credentials evaluation service, e-ValReports, found this degree equivalent to a bachelor's degree in business economics from an accredited university in the United States. Thus, the beneficiary is qualified for the proffered position.

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 sustained. The petition is approved.