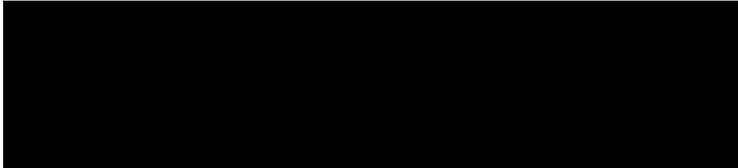


Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services



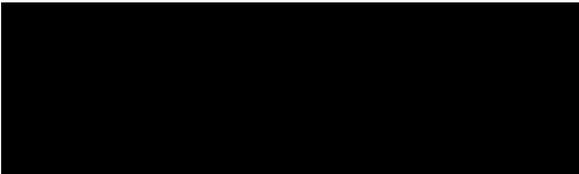
D 1

FILE: EAC 04 025 54369 Office: VERMONT SERVICE CENTER Date: **JUN 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:



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.

*for* *Michael T. Kelly*  
Robert P. Wiemann, Director  
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 Catholic church. It seeks to employ the beneficiary as a chef/cook and to classify him 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 did not 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, counsel's appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is a Catholic church serving the Polish-American community in Hartford and the State of Connecticut. In a letter accompanying the petition the petitioner indicated that it was establishing the position of chef/cook to provide the church's staff, guests, and patrons with authentic traditional and modern Polish cuisine at all of the church's events, meals, and celebrations. In response to the RFE the petitioner provided a detailed list of the duties of the chef/cook, and the percentage of time required by each duty:

- **Purchase all food for use in the rectory and for all parish events – 5%**  
This requires not merely going to the supermarket for groceries, but knowledge of the foods that are appropriate for consumption on church premises and by church staff, knowledge of the traditional ingredients expected to be served at parish events and Catholic holidays, and knowledge of the authentic ingredients that comprise traditional and modern Polish cuisine.
- **Efficient cost analysis of all expenditures, according to budgetary needs and nutritional requirements – 3%**  
This requires submitting a report outlining the budget needed for parish events, as well as maintaining a record of all culinary expenses associated with performing chef/cook duties for the church. Responsibility for reducing costs and providing accurate and complete prediction of costs of meals for church events. Use of specialized knowledge of the composition of certain foods, which will allow staff and patrons to enjoy a variety of dishes at events and daily staff meals conforming to their nutritional requirements.
- **Analysis of nutritional needs of staff and parishioners, with attention to special dietary issues regarding health and/or dietary preferences – 25%**  
This requires specialized knowledge of the composition of food, not just ingredients that comprise certain Polish dishes. Also, specialized training and knowledge in the culinary arts is required since alternative ingredients will have to be considered in preparing traditional and modern dishes.
- **Preparation of all menus – 5%**  
Course selection can only be performed by someone with a specialized knowledge of Polish cuisine. For example, at church events each Polish dish will be identified and its ingredients and history discussed in a short narrative so that patrons can learn more about Polish and Catholic culture and tradition.
- **Preparation of all food and supervision of service – 50%**  
Most of the time, particularly for events, meals will be prepared on a grand scale for several hundred guests and patrons. Cuisine preparation and service must be coordinated without mistake or mishap. The demands of the job require a bachelor's degree in culinary arts and nutrition, as well as professional training in a similar environment, like a large restaurant.
- **Clean-up and kitchen supervision, maintenance of kitchen and service supplies such as glassware and silverware – 5%**  
Responsible for maintaining a strict and accurate account of kitchen supplies and the maintenance of costly glassware and silverware in an impeccably clean and ornate condition.

Proper and professional kitchen demeanor and maintenance can only be performed by a trained professional with specialized knowledge of how it is to be done.

■ **Planning and executing cuisine preparation for large-scale events and parish festivities – 5%**

This requires creativity regarding décor and food and specialized knowledge of appropriate purchasing, preparation, and food service for large numbers of people. Also, budgeting and coordinating with other staff, such as the accounting department, the priests, and service and clean-up staff, will be necessary.

■ **Other duties as needed – 2%**

According to the petitioner, the chef/cook position requires a bachelor's degree in culinary arts and sciences or equivalent professional training and work experience. The petitioner asserts that the beneficiary qualifies for the position by virtue of his diploma from a two-year culinary school in Warsaw, granted in 1980, and twenty-two years of progressively advanced work experience and professional training in the field of culinary arts.

In his decision the director determined that the proffered position is not a specialty occupation. The director referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* about chefs and cooks indicating that a baccalaureate level of education in a specific specialty is not the normal, industry-wide minimum requirement for entry into such a position. The record did not establish that the proffered position was so unique that it could only be performed by an individual with a specialty degree, the director stated, or that the position qualified as a specialty occupation under any other criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the DOL *Handbook* supports the petitioner's claim that a four-year baccalaureate degree is required for executive chef and head cook positions, like the chef/cook in the instant petition, thus meeting the first alternative criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). Counsel also contends that the proffered position is so unique, and the specific duties thereof so specialized and complex, that it meets the alternative criteria of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) and (4). In this connection counsel refers in particular to the duty requiring the chef/cook to assess the special dietary needs of staff members and parishioners.

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.

The AAO agrees with counsel that the proffered position fits within the *Handbook's* occupational sub-category of executive chefs and head cooks, which reads in pertinent part as follows:

*Executive chefs and head cooks* coordinate the work of the kitchen staff and direct the preparation of meals. They determine serving sizes, plan menus, order food supplies, and oversee kitchen operations to ensure uniform quality and presentation of meals. The terms chef and cook often are used interchangeably, but generally reflect the different types of chefs and the organizational structure of the kitchen staff . . . . Chefs tend to be more highly skilled and better trained than cooks.

*Handbook*, 2004-05 edition, at 365. As for the educational and training requirements of executive chefs and head cooks, the *Handbook* goes on to say:

Executive chefs and head cooks who work in fine restaurants require many years of training and experience . . . . Some chefs and cooks may start their training in high school or post-high school vocational programs. Others may receive formal training through independent cooking schools, professional culinary institutes, or two- or four-year college degree programs in hospitality or culinary arts . . . . Many chefs are trained on the job, receiving real work experience and training from chef mentors in the restaurants where they work.

It is clear from the *Handbook* that there are many paths of education, training, and experience that can lead to an executive chef or head cook position, most of which do not include a four-year baccalaureate degree in a specific specialty. Since there is ample opportunity to enter the occupation with credentials short of a four-year degree in culinary arts or a related specialty, the chef/cook 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).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), there is no documentation in the record showing that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations. Nor does the record establish that the chef/cook position is so complex or unique that it can only be performed by an individual with a bachelor's degree in a specific specialty. Though counsel refers to the specific duty of acting as dietician for staff members and parishioners, there is no evidence in the record of any particular dietary needs of staff members or parishioners that distinguish the proffered position from that of any other chef/cook working for a large organization and preparing large meals. Accordingly, the proffered position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for 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).

Finally, the record does not establish that the specific duties of the chef/cook are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree, as required for the position to meet the fourth alternative criterion of a specialty occupation at

8 C.F.R. § 214.2(h)(4)(iii)(A)(4). The knowledge required to perform the chef/cook duties at issue in this petition is not baccalaureate-level knowledge in a specific specialty, but the vocational knowledge acquired from many years of culinary experience in Poland.

For the reasons discussed above, the record does not establish that the chef/cook position qualifies as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). 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).

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.