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U.S. Citizenship
and Immigration
Services

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FILE: WAC 02 234 50707 Office: CALIFORNIA SERVICE CENTER Date: **JAN 06 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 documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 private household that seeks to employ the beneficiary as a chef. 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 position is not a specialty occupation. On appeal, counsel states that the proffered position is a specialty occupation and submits further documentation.

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 petitioner's letter of support; (3) the director's request for additional evidence; (4) the petitioner's response to

the director's request; (5) the director's denial letter; and (6) 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 chef. The petitioner described himself as the chief executive officer of a company that has business interested in the investment and property management fields. The petitioner stated that he and his wife devote considerable time to entertaining business associates, and that based on their duties with several major charities and arts institutions, they also entertain people in their house to raise funds for these organizations. According to the petitioner, the beneficiary would be responsible for all facets of meal preparation at the petitioner's home. He would plan and prepare meals for family, household staff and special events. He would plan daily menus, order, monitor and manage supplies and perform final preparation of meals. Utilizing a broad knowledge of various cuisines to prepare traditional dishes and create new ones, the beneficiary would also plan and prepare food and desserts for numerous guests. The beneficiary would often supervise household staff as they assist in the preparation and final service of large dinners. The petitioner indicated that the minimum requirement for the position is a bachelor's degree or foreign equivalent in culinary arts or a related field and the ability to perform the job duties.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of chefs, cooks, and food preparation workers. The director stated that the *Handbook* indicated no requirement for a baccalaureate degree in a specific specialty for entry into the position. The director also determined that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the director failed to consider that the beneficiary supervises other household employees and prepares complex American, Asian and continental dishes. Counsel asserts that the beneficiary works in a household that routinely entertains prominent guests from the culinary, entertainment, and political arenas. Counsel notes that photographs of both the staff supervised by the beneficiary and the guests entertained by the petitioner were submitted to the record. Counsel asserts that the proffered position requires a bachelor's degree and/or equivalent years of education and experience. Counsel submits a printout from the United States Personal Chef Association's website as to the minimum requirements to become a certified personal chef. Counsel also submits two vacancy announcements for chefs and resubmits photographs of the petitioner's other employees, guests and menus.

Upon review of the record, the petitioner has established none of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position appears analogous to an executive chef or head cook, as described in the *Handbook*. The *Handbook* states that to achieve the level of skills required of an executive chef or cook in a fine restaurant, many years of training and experience are necessary, and that an increasing number of chefs and cooks obtain their training through high school, post-high school vocational programs, or 2- or 4-year colleges. Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into the position. Thus, neither the petitioner nor the *Handbook* establishes that a baccalaureate degree in a specific specialty is required for entry into the position.

With regard to parallel positions in similar businesses, on appeal, counsel provides two vacancy announcements for chefs. However, the educational requirements for both jobs simply indicate a degree in culinary arts, without specifying if the degree is a two-year or a four-year program in culinary arts. While counsel provided documentation from an association for personal chefs, the information provided did not indicate that a baccalaureate degree in a specific specialty was required for certification as a personal chef, but rather provided a variety of means by which an individual could obtain certification based on his or her work experience and education. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner did not provide any documentation on the academic credentials of any previous executive or personal chefs that it had employed. Therefore the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(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. To the extent that they are depicted in the record, the majority of duties of the position appear routine to the duties of any executive chef. The fact that the beneficiary is responsible for both the household food services as well as special events, and supervises three additional staff during special events does not add to the complexity of the duties of the position. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;

- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials; or
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

In the initial petition, [REDACTED] evaluator, Foundation for International Services (FIS), Bothell, Washington, provided an educational equivalency document that stated the beneficiary had the equivalent of a baccalaureate degree in culinary arts based on his two years of studies at University College Suffolk in England, and that this education combined with the beneficiary's work experience was the equivalent of a bachelor's degree in culinary arts from an accredited U.S. college or university. However, FIS is not qualified to prepare an evaluation of this sort as it does not: "[Have] authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience" as required by the regulation. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

FIS is qualified to provide an evaluation of the beneficiary's foreign degree pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." In the evaluation, FIS determined that the beneficiary's foreign degree is equivalent to an associate's degree in culinary arts from an accredited college or university in the United States. This part of the evaluation is accepted, but the AAO does not accept the assessment of the beneficiary's work experience and other training as FIS is not qualified to make that assessment. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 820 (Comm. 1988). Therefore, the petitioner has to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and in 8 C.F.R. § 214.2(h)(4)(iii)(D).

When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO has already commented on the beneficiary's educational credentials, and will not address these further. With regard to the beneficiary's work experience, the petitioner submitted various letters from former employers. Among these letters are the following:

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

[redacted] managing director, The [redacted] Suffolk, England. [redacted] described the beneficiary's eight years of employment at three hotels owned by the [redacted] Services Limited. He described the beneficiary's initial work as a trainee chef and then stated that the beneficiary worked his way up to being head chef at the Waverley Hotel for one year. The beneficiary's final position was as head chef at a country house hotel for two years. [redacted] noted that the beneficiary took tremendous pride in his work.

[redacted] former executive head chef, Lake Placid Lodge, Lake Placid, New York. [redacted] described the beneficiary's employment for the summer of 1996 at Point Saranac Lake, a high-end resort hotel and [redacted] property. She described her ability to leave the running of the kitchen and all related responsibilities to the beneficiary during her absence from the property.

[redacted] managing director, Lake Placid Lodge [redacted] described the beneficiary's employment for eighteen months and stated that he began his employment as a chef de partie and concluded his employment as executive sous chef [redacted] stated that the beneficiary was an integral, very respected member of a talented group of young enthusiastic professionals determined to make a difference-to create a signature [redacted] American cuisine. She further stated that during the Lodge's initial three years of operation, this effort gained the lodge dining room tremendous recognition in the culinary world.

In addition, the petitioner described his employment of the beneficiary for two years as chef, and the beneficiary's employment in the United States with Erna's Elderberry House at [redacted] Oakhurst, California, which the petitioner described as a five-star diamond restaurant. However, the record contains no evidentiary documentation of the beneficiary's employment in Oakhurst, California, so this work experience is not included in the CIS evaluation of the beneficiary's work experience. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Based on the progressively more responsible positions held by the beneficiary during his eight years of work experience in England, his further combined work experience in New York, and present employment with the petitioner, the beneficiary appears to have almost ten years of work experience. However, the petitioner provided insufficient documentation of any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) to establish that the beneficiary's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise. While the petitioner submitted letters from two former employers with regard to the beneficiary's work accomplishments, neither letter writer provided evidentiary documentation to establish that he or she is a recognized authority. *See* 8 C.F.R. § 214.2(h)(4)(ii). Without more persuasive evidence, the beneficiary is not qualified to perform the duties of the proffered position.

Based on the previous discussion, the petitioner has not established that the proffered position is a specialty occupation, or that the beneficiary is qualified to perform the duties of the position. 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.

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