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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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Washington, D.C. 20536

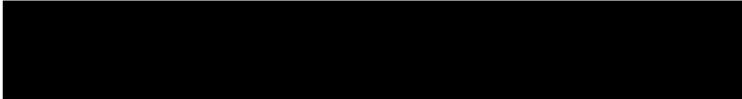


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File: LIN-99-257-53347 Office: Nebraska Service Center Date:

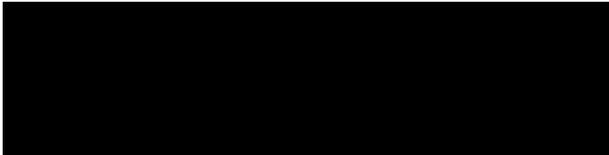
IN RE: Petitioner:
Beneficiary:



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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the director and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant with 16 employees and a gross annual income of \$525,000. It seeks to employ the beneficiary as a chef de cuisine (executive chef) for a period of two years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

an 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.

The director denied the petition because the petitioner had not established that there is a standard requirement of a baccalaureate degree in a specialized area for employment as a chef or restaurant manager. On appeal, counsel argues in part that the beneficiary's proposed duties are clearly managerial and culinary, for which both theoretical knowledge and practical experience is required. Counsel further argues that an executive chef in today's global and sophisticated market requires a bachelor's degree in restaurant management, culinary arts or a related field, or its equivalent.

Counsel's statement on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1. meeting with professional and managerial employees and suppliers (15%);
2. overseeing the purchase of meats, fish and other foods and ingredients (15%);

3. inspecting orders upon deliveries, in order to achieve and maintain a high level of quality (15%); maintaining high hygienic standards for food;
4. planning menus; developing and implementing payroll and budgets for culinary operations (25%);
5. overseeing all culinary operations in the kitchen; directing the kitchen staff and assigning individual tasks (20%);
6. managing, directing and overseeing the hiring, training, evaluation, discipline and firing of the kitchen staff (ongoing).

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

First, the Service does not agree with counsel's argument that the proposed duties are so complex or unique as to require a bachelor's degree in restaurant management or a related field. The proffered position appears to be that of a chef. A review of the Department of Labor's Occupational Outlook Handbook, 2000-2001 edition, at pages 336-337 finds no requirement of a baccalaureate degree in a specialized area for employment as a chef. Some chefs learn their trade through on-the-job training or through apprenticeship. Others hold certificates, associate degrees, and baccalaureate degrees from senior colleges and universities, junior and community colleges, or culinary institutes. Thus, the petitioner has not

shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Second, the petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as restaurant management, for the offered position.

Third, the petitioner did not present any documentary evidence that businesses similar to the petitioner in their type of operations, number of employees, and amount of gross annual income, require the services of individuals in parallel positions. It is noted that the record contains two letters from New York restaurant managers who state that they require baccalaureate or higher degrees in culinary arts management or hotel and restaurant management or an equivalent. The record, however, contains no documentary evidence that such restaurants are similar to the petitioner in their number of employees or amount of gross annual income. It is also noted that the record contains letters from restaurant owners who indicate that experience is the most important qualification for a chef position. It is further noted that the record contains a letter from an official of the National Restaurant Association who states that it is his opinion that an upscale specialty restaurant should possess a minimum of a bachelor's degree or its equivalent in restaurant management or food science. The official does not, however, state that such degree is an industry standard nor does he submit any evidence of such. It is additionally noted that none of the writers of letters in the record have provided evidence in support of their assertions, nor have they indicated the number or percentage of chefs who hold such degrees.

Finally, the petitioner did not demonstrate that the nature of the beneficiary's proposed 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.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.