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U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: EAC-00-268-50620

Office: Vermont Service Center

Date: 11 APR 2002

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)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision 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.

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 that 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 that 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, 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 The director's decision will be withdrawn and the matter remanded for further action and consideration.

The petitioner is a bakery with six employees and a gross annual income of \$500,125.00. It seeks to employ the beneficiary as an engineer-technologist for a period of three years. The director determined that the petitioner had not established that the offered position is a specialty occupation.

On appeal, the petitioner submits a brief and additional documentation.

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 determined that the proffered position was equivalent to that of a baker or chef, and therefore, was not a specialty occupation requiring the services of an individual with a bachelor's or higher degree. On appeal, the petitioner argues that the Service erred in equating the proffered position to that of a baker or a chef. The petitioner asserts that the Service has ignored evidence regarding the complicated and technical nature of the position, as well as the educational and degree requirements needed to fill the position.

The petitioner's statements on appeal are persuasive. In the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Develop recipes and formula for baking traditional Russian Bread; Introduction of new equipment and baking technology (know-how) for production of varieties of Russian Bread.

In response to a subsequent Service request for additional information, the petitioner submitted a more detailed description of the duties of the proffered position which can be paraphrased as follows:

- \* Introduction of baking technology (know-how) for production of variety of Russian bread;
- \* Develops and implements new formulas for Russian bread production;
- \* Controls distribution of flour and mixes of flour in the right order;
- \* Controls storage conditions, preparation of ingredients and distribution for production;
- \* Controls the proper correlation of components (doses) of flour, yeast, water, solutions and other ingredients;
- \* Controls the special technological processes for preparation of sourdough, liquid semi-finished products, leavened dough, and dough according to the outline of lab control;
- \* Weight and shape control for individual pieces of dough;
- \* Controls technological regime in proofer (time, temperature, moisture, quality of the pieces of dough);
- \* Controls technological regime in the oven (loading of dough, temperature, time of baking);
- \* Maintains quality control of baked bread;
- \* Informs director of any violations of technological process;
- \* Participates in design & implementation of methods to improve quality of products;
- \* Evaluates quality of work of employees;
- \* Detects any possibility of infections and violations of sanitary control;
- \* Controls technology for the remaking of defective goods;
- \* Participates in experimental baking processes and in the process of reproduction of sourdough (ferments);

- \* Demands from baker that bread is produced according to recipes and technological processes, including the correction of any violations.
- \* Calls to account employees who violate technological process;
- \* Properly and promptly does all paperwork according to the specified forms.

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.

Clearly, the duties of the proffered position are too involved and complicated to be equated with those of a baker or a chef. The description of the proffered position's duties reflects the beneficiary will in fact supervise bakers and other employees throughout the petitioner's production process. The proffered position appears to be that of a food scientist and technologist. A review of the Department of Labor's Occupational Outlook Handbook, 2002-2003 edition, finds that a bachelor's degree in food science is sufficient for working in some jobs in applied research or for assisting in basic research, but a master's or doctoral degree is required for basic research. Degrees in related sciences such as biology, chemistry, or physics or in related engineering specialties also may qualify persons for some food science jobs. In view of the foregoing, it is concluded that the petitioner has demonstrated that the proffered position is a specialty occupation within the meaning of regulations.

Nevertheless, the petition may not be approved at this time. The director has not determined whether the beneficiary qualifies to perform services in a specialty occupation. Accordingly, the matter

will be remanded to make such a determination and to review all relevant issues. The director may request any additional evidence which is deemed to be necessary. The petitioner may also provide additional documentation within a reasonable period to be determined by the director. Upon receipt of all evidence and representations, the director will enter a new decision.

**ORDER:** The decision of the director is withdrawn. The matter is remanded for further action and consideration consistent with the above discussion and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for review.