



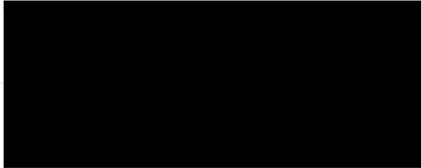
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U.S. Department of Justice

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: LIN-02-011-51318 Office: Nebraska Service Center

Date: JUL 18 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:



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 Director, Nebraska Service Center, denied the nonimmigrant visa petition. The director subsequently reopened the case, denied the petition again, and certified his decision to the Associate Commissioner for Examinations for review. The decisions of the director will be affirmed. The petition will be denied.

The petitioner is a private club with 130 employees and a gross annual income of \$6.5 million. It seeks to employ the beneficiary as a sous chef for a period of three years. The director denied the petition because the petitioner had failed to establish that the occupation of sous chef requires a bachelor's degree in culinary arts or a related field.

On motion, counsel argued in part that the degree requirement is common to the industry in parallel positions among similar organizations. Counsel further argued that the petitioner normally requires a degree or its equivalent for the position and also 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 in a specific field of study.

The director, on motion, affirmed his previous decision reasoning that the petitioner had not submitted sufficient evidence to establish that the offered position is a specialty occupation.

Counsel has not submitted a brief or any additional documentation in response to the notice of certification.

Section 214(i)(1) of the Act, 8 U.S.C. 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

theoretical and practical application of a body of highly specialized knowledge, and 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.

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

Organize and manage all banquets and functions; prepare or direct preparation, cooking and food storage; ensure that approved menus and apportionment regulations are followed; decorate special dishes or presentations; receive, inspect and see to proper storage of supplies and perishable commodities;

Assist in the maintenance of kitchen records, menu sheets and forecasts of food requirements; coordinate with kitchen staff on inspection routines of kitchen facilities, equipment and utensils; in the absence of Executive Chef, assume full responsibility for the operation of the kitchen; plan menus and estimate food and labor costs in consultation with the Executive Chef; implement staff rosters and supervise the activities of cooks and assistants; discuss food preparation issues with Executive Chef, Manager, club members and staff; requisition food, kitchen supplies and equipment; demonstrate techniques to cooks and advise on cooking procedures; prepare and cook food; select and train staff.

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.

The Service does not agree with counsel's argument that the position of sous chef would normally require a bachelor's degree in culinary arts or a related field. A review of the Department of Labor's (DOL) Occupational Outlook Handbook (Handbook), 2002-2003 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.

Similarly, the Handbook at page 78 does not state that a baccalaureate or higher degree in a specialized area is required for employment as a food service manager. Executive chefs need extensive experience working as chefs. Some restaurant and food service managers are promoted from the ranks of restaurant workers. Others hold baccalaureate and associate(two-year) degrees in restaurant management and other fields of study. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

It is noted that counsel submitted material from the Cornell Hotel School website showing the job placement of the school's 2001 graduates and a listing of the employers that have hired graduates of the Cornell Hotel School. According to this material, 26% of the school's 2001 graduates got jobs at hotels, resorts, and convention centers. While this material shows that a four-year degree in hotel and restaurant management is a good preparation for employment as a chef, it does not demonstrate that a bachelor's degree in hotel and restaurant management or a related field is the minimum requirement for entry into the occupation. The Handbook indicates that some chefs learn their trade through on-the-job training or apprenticeship. Others hold certificates, associate degrees, and baccalaureate degrees from senior colleges and universities, junior and community colleges, or culinary institutes. The petitioner has not shown that a bachelor's degree in culinary arts or a related field is the minimum requirement for entry into the occupation.

Counsel asserted on motion that the petitioner normally requires a degree or its equivalent for the offered position. In support of his assertion, counsel submitted an affidavit from the Executive Chef of the Saint Louis Club, Pierre Chambrin. [REDACTED] states that the position of sous chef, like all of the other positions on the executive culinary staff at the Saint Louis Club, requires at

least a bachelor's level of education and a professional background in culinary arts or a related field. Mr. Chambrin provides the following list of the educational and culinary experience credentials of the existing executive culinary staff:

- (1) Pierre Chambrin
Culinary School - 2 years
Internship - 1 year
39 years of culinary experience
- (2) Philippe Ducrocq
Culinary School - 2 years
Internship - 1 year
39 years of culinary experience
- (3) Christophe Fiche
Culinary School - 2 years
Internship - 1 year
14 years of culinary experience
- (4) Don Thurston
Community College Associates' Degree
28 years of culinary experience

Clearly, all the members of the Saint Louis Club's executive culinary staff are highly qualified chefs with many years of experience. However, neither counsel nor the petitioner has provided any evidence to demonstrate that the combined education, training, and experience of the individuals listed above are equivalent to a bachelor's degree in culinary arts. Furthermore, the petitioner has not submitted any evidence that the Saint Louis Club requires a bachelor's degree in culinary arts or the equivalent as part of the hiring process.

It is noted that one of the members of the executive culinary staff, Don Thurston, holds an associate's degree in culinary arts from a community college. In view of the foregoing, it is concluded that the record does not contain sufficient evidence to demonstrate that the employer normally requires a bachelor's degree in culinary arts or the equivalent for the proffered position.

Counsel further argued that the degree requirement is common to the industry in parallel positions among similar organizations. In support of his argument, counsel submitted an evaluation of the offered position by [REDACTED] Associate Professor of Hotel Administration in the Department of Management at Cornell University. Dr. Sturmann states:

[I]t is a general practice within the field of restaurant management, particularly within the fine dining class, to hire a sous chef with a bachelor's-level educational

[sic] and professional background in culinary arts or a related field.

The Service may, in its discretion, accept letters and advisory opinions as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. Matter of Sea Inc., 19 I&N Dec. 791 (Comm. 1988). In this case, Dr. Sturmann has not provided any independent evidence to corroborate his statement. Therefore, this letter is not sufficient to demonstrate that the degree requirement is common to the industry in parallel positions among similar organizations.

Counsel stated on motion that the beneficiary will be responsible for banquet, party, and special events functions of the Saint Louis Club, functions which represent 51-52% of the Club's revenues and support the rest of the club operations due to the relatively high profit margin. Counsel further stated that the management of this aspect of the club's operations makes the position a complex and specialized one. The petitioner has not, however, demonstrated 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 director's decisions are affirmed. The petition is denied.