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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

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



File: WAC-01-252-54283

Office: California Service Center

Date: OCT 31 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:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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 appeal will be dismissed.

The petitioner is a restaurant with one current employee and 30 projected employees, and a projected gross annual income of \$750,000. It seeks to employ the beneficiary as an executive chef for a period of three 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 duties described by the petitioner did not appear to be so complex as to require a baccalaureate degree. The director further found that the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook) also finds that a baccalaureate degree is not normally required for the proffered position. The director additionally found that the petitioner had not demonstrated that it normally requires a baccalaureate degree for the proffered position, or that such requirement is industry wide. On appeal, counsel states, in part, that the duties of an executive chef are more complex than the duties of a regular chef. Counsel submits an expanded description of the duties the petitioner anticipates the beneficiary would perform as an executive chef. Counsel submits excerpts from the opinions of industry experts in support of his claim, as well as job announcements from the Internet. Counsel further argues that in its Handbook, the DOL states that many years of experience and training are necessary for an executive chef position.

Counsel's statements on appeal are 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:

Petitioner requires the services of an *Executive Chef* who will initially design the kitchen and menu of the restaurant. Subsequently, the Beneficiary will oversee Petitioner's entire kitchen operation, including the management of professional chefs who are entrusted with the actual task of producing food and beverage items to meet the requirements of each separate dining experience, i.e. the wine bar and lounge, fine dining and conference/wine tastings.

Specifically, the *Executive Chef* will supervise the kitchen staff and be responsible for menu development, special event production, food cost budgeting to meet cost objectives established by upper management, project management, raw materials and equipment purchasing, presentation technique and for maintaining quality standards, proper equipment operation and maintenance and food safety and sanitation.

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 proffered position would normally require a bachelor's degree in restaurant management or a related field. The proffered position is that of an executive chef. In its Handbook, 2002-2003 edition, at pages 307-308, the DOL finds that although a high school diploma is

not required for beginning jobs, it is recommended for those planning a career as a cook or chef. An increasing number of chefs and cooks obtain their training through high school, post-high school vocational programs, or 2 or 4-year colleges. Chefs and cooks may also be trained in apprenticeship programs offered by culinary institutes, industry associations, and trade unions. Although the DOL additionally states that many years of training and experience are necessary for an executive chef or cook position in a fine restaurant, the DOL does not specifically state that a baccalaureate degree in restaurant management or an equivalent thereof is necessary for such positions. 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, although the record contains some Internet job advertisements, 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. 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.

Counsel has provided three letters from individuals involved in the restaurant industry. All state that the usual requirement for positions such as the proffered position is a baccalaureate degree in restaurant management or an equivalent thereof. Three letters are insufficient evidence of an industry standard. The writers have not provided evidence in support of their assertions. In addition, none of the writers have indicated the number or percentage of executive chefs who hold such degrees.

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.