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**DA**

U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



**JUN 18 2003**

File: LIN 03 113 52737 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)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

**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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The nonimmigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office ("AAO") on appeal. The appeal will be dismissed.

The petitioner is a private supper club with 14 employees and a stated gross annual income of \$323,109. It seeks to extend its authorization to employ the beneficiary as a chef/kitchen manager for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

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

The term "specialty occupation" is defined at section 214(i)(1) of the Immigration and Nationality Act (The Act), 8 U.S.C. § 1184(i)(1), 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h) (4)(ii) 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 the petitioner had not shown that a baccalaureate degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the occupation.

On appeal, the petitioner's President, [REDACTED] states the petitioner is a private supper club that requires the services of a professional chef/food service manager with a baccalaureate degree in food service management or a related field in order to compete in the current market. Mr [REDACTED] further states that the degree requirement is common to the industry in parallel positions among similar organizations.

When determining whether a particular job qualifies as a specialty occupation, the Bureau considers the specific duties of the offered position combined with the nature of the petitioning entity's business operations. In a letter that accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

Cooking, prep. work, cleaning, inventory, cost control, waste management, party planning, menu planning, employee supervision.

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 proffered position appears to be that of an executive chef. A review of the Department of Labor's *Occupational Outlook Handbook*, (*Handbook*) 2002-2003 edition, at pages 55-57 finds no requirement of a baccalaureate or higher degree in a specific specialty or its equivalent for employment as an executive chef. Most food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs. Food service and restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in these fields leading to an associate degree or other formal certification. While a baccalaureate degree in restaurant and food service management is desirable for employment in the field, other types of training such as that received at community colleges and technical institutes, as well as degrees in unrelated fields and subjects, are also acceptable for entry into the field of food service management. Thus, the petitioner has not shown that a baccalaureate degree in food services management or a related field is normally the minimum requirement for entry into the occupation.

In an attempt to demonstrate that the degree requirement is an industry standard, the petitioner submits three letters from officials of other country clubs. [REDACTED] General Manager of Tom-O-Shanter Country Club in West Bloomfield, Michigan, stated that his club's executive chef has a bachelor's degree from Johnson & Wales University. [REDACTED] General Manager of Evansville Country Club in Evansville, Indiana, stated that his club's executive chef has a bachelor's degree from the Culinary Institute of America. [REDACTED] General Manager of The Union Club in Cleveland, Ohio, stated that his club's chef has a bachelor's degree. None of these individuals, however, has provided any independent evidence to document the educational credentials of his country club's previous and current executive chefs. Simply going on record without supporting documentary evidence is not sufficient for meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, the hiring practices of three other country clubs are not sufficient

to demonstrate an industry standard. Thus, the petitioner has not shown that the degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not provided any evidence to show that it required a baccalaureate degree in a specific specialty or its equivalent as part of the hiring process for the proffered position.

Finally, the petitioner has not shown that the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate degree in a specific specialty or its equivalent. The duties of the position do not appear to be any more specialized or complex than those normally performed by executive chefs. The DOL, which is an authoritative source for educational requirements for certain occupations, does not indicate that a bachelor's degree in a specific specialty or its equivalent is the normal minimum requirement for employment as a chef.

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.