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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

**PUBLIC COPY**

MAY 01 2003

File: WAC 01 068 53500

Office: CALIFORNIA 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:

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

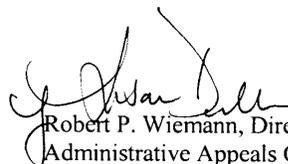
INSTRUCTIONS:

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 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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Chinese restaurant with 15 employees and a stated gross annual income of \$432,421. 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 or that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel submits a brief and additional documentation.

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, counsel asserts 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. Counsel further asserts 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:

[The beneficiary] will coordinate activities of and direct indoctrination and training of chefs and cooks, and other restaurant workers engaged in preparing and cooking foods and providing service in the restaurant. Specifically, he will plan menus and banquet operations; coordinate food surpluses and utilization of leftovers; estimate food consumption, and purchase foodstuffs and kitchen supplies; review menus, analyze recipes, determine food, labor and overhead costs; and assign prices to menu items; direct food apportionment policy to control costs; supervise cooking and other kitchen personnel and coordinate their assignments to ensure economical and timely food production; observe methods of food preparation and cooking, sizes of portions, and garnishing of foods to ensure food is prepared in prescribed manner; investigate and resolve customers' complaints about food quality or service; test foods by tasting and smelling them; devise special dishes and develop recipes; and explain the restaurant's policies and practices to newly hired workers and oversee their training.

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.

Counsel contends that the *Handbook* supports the argument that the proffered position is a specialty occupation by indicating that, while several avenues of entering the profession are available, a bachelor's degree in restaurant or food service management provides a particularly strong preparation for a career in the field. The *Handbook* specifically notes:

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.

Counsel also submits course descriptions for the bachelor of culinary arts programs at seven colleges and universities in an attempt to demonstrate that a baccalaureate degree in culinary arts or a related field is the normal minimum requirement for entry into the occupation. The fact that a bachelor's degree is available in a particular field does not indicate that such degree is the normal minimum requirement for entry into the occupation. As previously stated, training received at community colleges and technical institutes, as well as degrees in unrelated subjects, are also acceptable for entry into the occupation.

Counsel further asserts that the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the Department of Labor's *Dictionary of Occupational Titles (DOT)* (4th Ed., Rev. 1991). However, the *DOT* is not considered to be a persuasive source of information regarding whether a particular job 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.

The Department of Labor has replaced the *DOT* with the *Occupational Information Network (O\*Net)*. Both the *DOT* and *O\*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training and experience required to perform the duties of that occupation. The Department of Labor's *Occupational Outlook Handbook (Handbook)* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into an occupation and advance within that occupation. For this reason, the Bureau is not persuaded by a claim that the proffered position is a specialty occupation simply because the Department of Labor has assigned it a specific SVP rating in the *DOT*. Thus, the petitioner has not

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

In an attempt to demonstrate that the degree requirement is an industry standard, counsel submitted letters from [REDACTED] the manager of the Imperial Mandarin Restaurant in Cerritos, California and [REDACTED] Chairman of the American Chinese Restaurant Association. Ms. [REDACTED] stated that her restaurant hired an executive chef with a bachelor's degree in culinary arts in February 2000 because of the complexity of preparing different styles of Chinese food. She did not, however, provide any evidence to corroborate her statement. Furthermore, one restaurant's hiring practice does not constitute an industry standard. Mr. [REDACTED] stated that it is a common practice in the restaurant industry to hire executive chefs who hold a bachelor's degree in culinary arts or its equivalent. He did not, however, provide any independent evidence to corroborate his statement. 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).

The petitioner also submitted 16 Internet job advertisements for executive chef and similarly titled positions. A careful review of these advertisements reveals that the advertised jobs cannot be considered parallel positions in similar organizations. The prospective employers are not small ethnic restaurants, but rather large restaurants in institutional settings such as golf clubs, retirement homes, resorts, and casinos. Furthermore, only half of the advertised positions require a bachelor's degree in food and restaurant management, culinary arts, or a related field. The other positions require a bachelor's degree or its equivalent, but there is no stated requirement of a bachelor's degree in a specific specialty. 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 shown that it required a baccalaureate degree in a specific specialty or its equivalent as part of the hiring process.

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 at small restaurants. 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 restaurant manager.

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.

Pursuant to section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), to qualify as an alien coming to perform services in a specialty occupation the beneficiary must hold full state licensure to practice in the occupation, if such licensure is required to practice in the occupation. In addition, the beneficiary must have completed the degree required for the occupation, or have experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The director also determined that the petitioner had not shown that the beneficiary qualifies to perform services in a specialty occupation.

On appeal, counsel asserts that the beneficiary's 22 years of work experience as a chef are equivalent to the attainment of a baccalaureate degree in a specific specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

1. Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
2. Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty

occupation from an accredited college or university;

3. Hold an unrestricted State license, registration, or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
4. Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record shows that the beneficiary does not have a bachelor's degree in any field, nor has he completed any college-level course work at an institution of higher education.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by an evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience.

The record shows that the beneficiary worked as a cook in Shanghai, China from January 1978 through February 1983. From March 1983 through December 2000 the beneficiary worked as an executive chef in Shanghai, China and Tokyo, Japan.

The record contains two evaluations and an advisory opinion letter regarding the beneficiary's training and work experience. [REDACTED] an evaluator for Foundation for International Services, Inc., determined that the beneficiary has, as a result of his 22 years of work experience as a chef, the equivalent of a bachelor's degree in culinary arts from an accredited college or university

in the United States. Mr. [REDACTED] stated that he based his evaluation on the beneficiary's resume, employment letters, and certificates of technical skill issued by the Chinese government.

[REDACTED] another credentials evaluator for the Foundation for International Services, found the beneficiary's training and work experience equivalent to the attainment of a bachelor's degree in culinary arts. Mr. [REDACTED] indicated that he based his evaluation on the beneficiary's resume, employment letters, certificates of technical skill, and an advisory opinion letter from [REDACTED] Director of International Credentials at Johnson & Wales University.

Ms. [REDACTED] found the beneficiary's training and work experience equivalent to a Bachelor's degree in Culinary Arts. [REDACTED] Department Chair, Center for Food Service Management at Johnson & Wales University, co-signed Ms. [REDACTED] letter indicating that he concurred with her finding. Ms. [REDACTED] stated that she based her finding on the beneficiary's resume, work letters, and certificates of technical skill.

The Bureau uses an independent evaluation of a person's foreign credentials in terms of education in the United States as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In this case, neither Mr. [REDACTED] nor Mr. [REDACTED] has submitted any evidence to show that he is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Furthermore, neither Mr. [REDACTED] nor Mr. [REDACTED] has submitted evidence setting forth his credentials to determine educational equivalency to a bachelor's degree in culinary arts. Mr. [REDACTED] holds a bachelor's degree in education and a master's degree in educational administration, and Mr. [REDACTED] holds a bachelor's degree in psychology and a master's degree in experimental and social psychology. Neither evaluator appears to have any education or experience in culinary arts, hotel and restaurant management, or a related field. Therefore, the evaluations by Mr. [REDACTED] and Mr. [REDACTED] are accorded little weight.

Although Ms. [REDACTED] states that she has the authority and responsibility for the evaluation and granting of college-level credit for all international transfer students, she does not specify that she is authorized to grant college-level credit for training and/or work experience in the field, nor does she indicate that Johnson & Wales has a program for granting such credit. Ms. [REDACTED] noted that the beneficiary completed his professional certification as a third grade cook in 1990 and as a first grade cook in 1996. She stated: "[t]his is a Senior Technical Degree and one [of] the highest professional Chef certifications available in that vocational system." Ms. [REDACTED] determined that the beneficiary has, as a result of his education, professional training, and progressively more responsible work experience, the educational background equivalent of an individual with a bachelor's degree in culinary arts. Ms. [REDACTED] did not, however, provide an explanation as to how she arrived at this conclusion, nor did she provide copies of any relevant reference material upon which she relied to arrive at this conclusion. As such, the advisory opinion letter from Ms. [REDACTED] and Mr. [REDACTED] is accorded little weight.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the Bureau may determine that equivalence to completion of a baccalaureate degree in a specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition for expertise in the specialty occupation as a result of such training and experience. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

- (iii) Published material by or about the alien in professional publications, trade journals, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary indicates on his resume that he worked as a cook at Xin Cheng Hotel in Shanghai, China from January 1978 to October 1980 and subsequently as a chef at the International Peace Health Hospital in Shanghai, China. The petitioner has not provided any letters from these employers providing the beneficiary's job title or describing his duties during his employment for those organizations. Therefore, this claimed work experience will not be considered in determining whether the beneficiary's training and work experience are equivalent to a bachelor's degree in a specific specialty.

From March 1983 to August 1990 the beneficiary states that he worked for the Hua Ting Sheraton Hotel & Towers in Shanghai. The petitioner provided an employment letter that is not on company letterhead stationery. [REDACTED] General Manager of Hua Ting Hotel & Towers, stated that the beneficiary worked as an executive chef for his company from March 1983 to August 1990. The writer did not provide any information as to the duties the beneficiary performed during his employment.

The beneficiary states he worked as an executive chef at the Shanghai Galaxy Hotel from September 1990 to September 1994. The petitioner provided an employment letter, also not on letterhead stationery, signed by [REDACTED] the general manager of that hotel. The writer stated that the beneficiary was employed by that hotel as an executive chef, but provided no details regarding the beneficiary's duties during his employment for that hotel.

From October 1994 to December 1996 the beneficiary worked as executive chef at the Jingda (Trend) Hotel. The petitioner provided an employment letter, also not on letterhead stationery, from [REDACTED] General Manager of the Jingda Hotel. The writer stated that the beneficiary was responsible for the administrative work of the food and beverage department, and all work related to

cooking, training cooks, and coordinating the work of all kitchen sections.

From January 2000 to January 2001, the filing date of the petition, the beneficiary worked as executive chef at Shanghai Audio & Video City Restaurant. The petitioner submitted an employment letter, also not on letterhead stationery, from [REDACTED] General Manager of the Yinxiang Cheng Hotel. The writer stated that the beneficiary was responsible for cooking Chinese dishes, designing and organizing menus, training and supervising the cooks, estimating food consumption and making a purchase plan, scheduling the kitchen staff to make sure all jobs are done properly, and responding to customer comments and suggestions.

The Bureau takes note of the fact that these employment letters are all written on plain paper rather on company letterhead stationery. Therefore, it is not possible to determine whether these letters were actually written by hotel or restaurant managers as claimed. Furthermore, the writers of these letters have not provided any evidence to show that the beneficiary's work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation or that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation. Therefore, the employment letters are accorded little weight.

The petitioner also submitted three certificates of technical skill level issued to the beneficiary by the National Tourist Bureau of the People's Republic of China. The beneficiary was certified as a third grade cook on December 20, 1990; as a first grade cook on June 11, 1996; and as a master chef on November 9, 1999. Counsel also submitted an Occupational Qualification Certificate (Senior Skill Level) issued to the beneficiary on March 27, 2001. The fact that an individual may have attained certification in a particular job is not sufficient in itself to qualify the job as a specialty occupation. Certification can be obtained in a wide variety of jobs that would not qualify as specialty occupations such as automobile mechanic, dental assistant, medical transcriptionist, and automotive body repairer.

Neither counsel nor the petitioner has submitted any evidence to demonstrate recognition of the beneficiary's expertise in a specialty occupation by recognized authorities in a specialty

occupation. No published material by or about the alien in professional publications, trade journals, or major newspapers has been submitted. Nor has any evidence been submitted to show that the beneficiary holds licensure or registration to practice a specialty occupation in a foreign country or that the beneficiary has membership in a recognized foreign or United States association or society in a specialty occupation. Furthermore, neither counsel nor the petitioner has submitted any documentation from a recognized authority stating that the beneficiary has made significant contributions to the field of culinary arts.

In view of the foregoing, it is concluded that the petitioner has not submitted sufficient documentation to clearly establish that the beneficiary's employment background is equivalent to a baccalaureate degree in a specific specialty.

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.