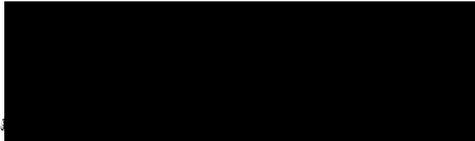


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U.S. Department of Homeland Security  
20 Mass, Rm. A3042, 425 I Street, N.W.  
Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: EAC 01 240 51266 Office: VERMONT SERVICE CENTER Date: APR 23 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:



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

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Mari Johnson*  
for Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The petitioner is a restaurant/catering business that seeks to employ the beneficiary as a chef cook. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. The AAO affirmed the director's findings.

On motion, counsel submits a credentials evaluation to demonstrate that the chef of a similar Bukharian Jewish Glatt Kosher restaurant holds a baccalaureate degree or higher in food science and technology. Counsel also submits a letter from [REDACTED] who states, in part, as follows:

Based on complex procedure in preparation of Glatt Kosher cuisine [REDACTED] requests that chef cook attain formal baccalaureate education in meal processing as well as undergo formal training of meal preparation in Glatt Kosher standards in order to be qualified for performing duties of chef cook in Glatt Kosher restaurant.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" 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.

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.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) Form I-290B and supporting documentation; (6) the AAO's dismissal of the appeal; and (7) the petitioner's motion to reopen. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a chef cook. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 9, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would prepare strict kosher meals in accordance with Glatt Kosher traditions, utilizing specific knowledge of Mediterranean food and specifically Bukharian Jewish cuisine. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in a culinary field.

The director found that the proffered position was not a specialty occupation because the proposed duties are not so complex as to require a baccalaureate degree. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position requires baccalaureate level training. A review of the training requirements for chefs and cooks in the *Handbook*, 2004-2005 edition, confirms the accuracy of the director's assessment to the effect that a baccalaureate or higher degree, or its equivalent, is not required for a chef cook job. Furthermore, the Internet website at [www.kosherculinaryacademy.com](http://www.kosherculinaryacademy.com) finds that the Jerusalem Kosher Culinary Academy offers a one-year professional kosher chef course. This information supports the findings of the DOL in its *Handbook*.

Regarding parallel positions in the petitioner's industry, the petitioner submitted evidence showing that the chef of a similar Bukharian Jewish Glatt Kosher restaurant holds a baccalaureate degree or higher in food science and technology. One business's hiring practices, however, do not constitute an industry standard.

The letter from [REDACTED] requesting a chef cook with formal baccalaureate-level education is noted. The evidence in the record, however, does not demonstrate that baccalaureate-level education in a culinary field is required rather than preferred.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. As counsel does not address this issue on motion, it will not be discussed further.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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 decision of the AAO, dated January 24, 2003, is affirmed. The petition is denied.