

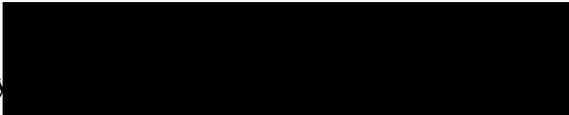


U.S. Citizenship
and Immigration
Services



FILE: SRC 03 038 50517 Office: TEXAS SERVICE CENTER Date: **APR 26 2004**

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:



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.



 Robert P. Wiemann, Director
Administrative Appeals Office

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prevent clearly unwarranted
invasion of personal privacy**

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a gourmet European food production, sales and service company that seeks to employ the beneficiary as a sous chef/food analyst. The petitioner, therefore, 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. On appeal, counsel asserts the director ignored documentary evidence submitted by the petitioner. Counsel submits additional documentation.

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 petitioner's undated letter of support; (3) the director's request for additional evidence; (4) counsel's letter, dated February 17, 2003, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as a sous chef/food analyst. Evidence of the beneficiary's

duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter in response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail: overseeing pastry production; assisting in catering and meal service functions; planning menus and presentation; estimating number of servings from various recipes and calculating unit cost; converting recipes for use in quantity production; forecasting customer traffic and ordering accordingly; maintaining production and sales records; and assisting in development of retail and wholesale offerings.

In the petitioner's response to the director's request for further evidence, the petitioner stated that it serves a specialty market, with primarily European-style product lines and a European clientele in the wholesale, retail, and food service categories. The petitioner stated that the proffered position required an in-depth knowledge of all aspects of food production, particularly in the European tradition. The petitioner also stated that the job itself was similar to a food service manager classification examined in another AAO decision. In this case, the position that was primarily a dietician was found to be a specialty occupation. The petitioner indicated that the position would require a baccalaureate degree in culinary arts with extensive experience in the food production and services industry, particularly as a pastry chef. The petitioner also stated that the Department of Labor's *Dictionary of Occupational Titles (DOT)* determined that the position of sous chef had a Specific Vocational Preparation (SVP) rating of eight.

The director found that the proffered position was not a specialty occupation and stated that the AAO decision referenced by the petitioner was not relevant to the instant petition. The director also stated that Specific Vocational Preparation (SVP) levels mentioned by the petitioner did not establish whether the position required a bachelor's degree for entry into the position.

On appeal, the petitioner provides a breakdown of the duties listed in the original petition. For example, in examining the elements of the supervision of pastry production, the petitioner states that skills such as knowledge of applied chemistry, of ingredient and nutrition, of government regulations, business concepts and production processes are necessary. In addition, the petitioner submits an evaluation assessment from Dr.

[REDACTED] In the document, D [REDACTED] states that he confirms the expert opinions submitted by Professors [REDACTED] Associate Professor of Hotel and Hotel Management, Rochester Institute of Technology, and [REDACTED] Assistant Professor of Hotel, Restaurant, and Tourism Management, New Mexico State University. The petitioner states that D [REDACTED] who holds a position at Queens College, has the authority to determine whether college-level credit for experience, training and additional courses can be granted.

With regard to the petitioner's mention of SVP ratings, it should be noted that the *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and it does not specify the particular type of degree, if any, that a position would require. For this reason, the director did not err in discounting the *DOT* information.

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 *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. With regard to sous chef positions, these jobs are beyond entry-level positions and are more analogous to positions that the *Handbook* describes as "executive chef" or "cook in a fine restaurant." According to the *Handbook* many years of training and experience are necessary to perform these jobs. The *Handbook* also states: "An increasing number of chefs and cooks obtain their training through high school, post-high school and vocational programs, or 2- or 4-year colleges. Chefs and cooks also may be trained in apprenticeships or programs offered by professional culinary institutes, industry associations, and trade unions." Thus, the *Handbook* does not establish that a baccalaureate degree in a specific specialty is required for entry into the proffered position.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding academic credentials required for other chefs in similar businesses. The petitioner did submit three documents identified as expert opinions as to whether the proffered position was a specialty occupation. Professor ██████████ stated that, due to the complexity and specialized nature of the job duties, a minimum of a bachelor's degree is required for the position. Dr. ██████████ stated that a bachelor's degree or its equivalent in culinary arts or a closely related field is an absolute requirement for the position, and that this requirement is standard in the industry. While both professors are recognized authorities in their field, neither professor provided any further documentary evidence to support his assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). In addition, ██████████ statement, which is submitted to affirm the assessments of Professors Mandabach and Sackler, is problematic. CIS has received correspondence from an official of Queens College that Dr. Itzkowitz does not have authority to grant college-level credit for work experience or training taken at other U.S. or international universities.¹ Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of SEA, Inc.*, 19 I&N Dec. 820 (Comm. 1988). Therefore, the document written by Dr. Itzkowitz is given no weight in this proceeding. 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. The petitioner submitted no documentary evidence with regard to any

¹ Letter to Mr. Ron Thomas, Immigration and Naturalization Service, Texas Service Center, from Jane Denkensohn, Assistant Vice President and Special Counsel to the President, Queens College, The City University of New York, November 7, 2001.

other sous chefs or food analysts in its employ and their academic credentials. Therefore the petitioner cannot meet this criterion.

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 appear routine for any pastry chef position. The record is also not clear as to the extent of the work to be done by the beneficiary in either pastry production or supervision and food analysis; the complexity or volume of the particular European pastries to be made, or whose production would be supervised by the beneficiary; or the volume of work to be handled in either pastry production or food analysis. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the proffered position, if the position had been determined to be a specialty occupation. The beneficiary does not possess a foreign baccalaureate degree in culinary arts that has been determined to be the equivalent of a U.S. baccalaureate in the same or related field. Therefore, the petitioner has to meet the regulatory criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and in 8 C.F.R. § 214.2(h)(4)(iii)(D). Although Washington Evaluation Service, Washington, D.C., provided an educational equivalency document that states the beneficiary has the degree equivalency of a bachelor's of arts in culinary arts based on her academic studies and work experience, Washington Evaluation Service is only qualified to provide an evaluation of the beneficiary's foreign studies pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3): "An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." Based on this regulatory criterion, the beneficiary's academic studies are found to be equivalent to two years of baccalaureate level studies in the culinary arts.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the petitioner can submit 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. As previously stated, neither the Washington Evaluation Service nor Dr. [REDACTED] have the authority to grant such credit. The writers of the two expert opinions did not identify themselves as having the authority to grant college-level credit for training or experience in the specialty. In addition the petitioner also has not provided sufficient documentation to satisfy the work experience criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). However, as the AAO is dismissing the appeal because the job is not a specialty occupation, it will not discuss this issue further.

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. The petition is denied.