



U.S. Citizenship  
and Immigration  
Services

*[Handwritten signature]*

[Redacted]

FILE: WAC 02 113 53881 Office: CALIFORNIA SERVICE CENTER Date: **APR 26 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:

[Redacted]

**PUBLIC COPY**

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

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.

*for* *Mani Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**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 restaurant that seeks to employ the beneficiary as a manager/executive chef. 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 submits a statement and the petitioner provides 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 letter of support for the petition, dated January 24, 2002; (3) the director's request for additional evidence; (4) The petitioner's response to the director's request for further evidence, dated April 4, 2002; (5) the director's denial letter; and (5) 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 manager/executive chef. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letter of

support and response to the director's request for further evidence. According to the initial petition, the beneficiary would perform duties that entail selecting and pricing menu items, using food and other supplies efficiently, and achieving quality in food preparation and service. In addition, the beneficiary would find and evaluate new ways of recruiting and training employees. The petitioner also indicated that as general manager and executive chef, the beneficiary would regularly help with cooking, clearing of tables and other tasks. In its response to the director's request for further evidence, the petitioner indicated that a bachelor's degree with a minor in business administration, along with experience in running a Thai restaurant and understanding the Thai dishes to be served, were necessary qualifications for the position.

The director found that the proffered position was not a specialty occupation and referred to the classifications of food service managers, and chefs, cooks, and food preparation workers in the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition. Based on these classifications, the director noted the proffered position did not require a baccalaureate degree in a specific specialty for entry into the position. 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).

On appeal, the petitioner explains the current work situation in the petitioner's three restaurants and the need for assistance in the overall management of the restaurants. The petitioner also stated that its restaurant is unique and is not a chain restaurant. The petitioner provides documentation that the restaurant received the Reader's Choice dining award from the *Sacramento Magazine* in the years 2000 and 2001.

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. The proffered position, as described by the petitioner, combines the administrative duties of a restaurant manager with the cooking skills of an executive chef. As correctly noted by the director in her decision, neither of these professions requires a baccalaureate degree in a specific specialty for entry into the position. Thus, the petitioner has not established this criterion.

Regarding parallel positions in the petitioner's industry, the petitioner submitted no further documentation regarding the academic credentials of present managers/chefs of other Thai restaurants. 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 evidentiary documentation on the academic credentials of its principal manager/chef and on the other co-owner of the petitioner’s business. The present principal manager/chef has a baccalaureate degree in environmental design. The other co-owner, who is involved, in part, with the training of staff and the provision of additional help, has a baccalaureate degree in speech, rhetoric, and communication. As previously stated, 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 submitted documentation on academic credentials does not establish that the petitioner normally requires a baccalaureate degree in a specific specialty for the manager/chef position. Therefore the petitioner has not established 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 involved in managing and cooking for multiple ethnic restaurants appear to be time-consuming and detail-oriented; however, they 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. 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.

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.