



U.S. Citizenship  
and Immigration  
Services

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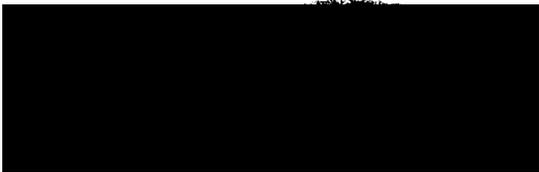


FILE: WAC 03 111 55292 Office: CALIFORNIA SERVICE CENTER Date: 306 9 4 2004

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

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



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.

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 kosher French bakery and pastry shop. In order to employ the beneficiary as a kosher French pastry chef, the petitioner endeavors to classify him 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 on the basis that the petitioner had not established that the proffered position meets the definition of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel annotates the Form I-290B (Notice of Appeal) to assert that the evidence of record has established that the proffered position is a specialty occupation. Counsel emphasizes the fulltime nature of the proffered position, a French statute requiring a certificate of professional proficiency for such a position, and the beneficiary's attainment of that certificate. Counsel also attaches documents that corroborate the French statutory requirement and the beneficiary's possession of the certificate that the statute requires.

In reaching its decision in this proceeding, the AAO reviewed the entire record, including: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the matters submitted in response to the RFE; (4) the director's denial letter; and (5) the Form I-290B as annotated by counsel, and the documentary evidence submitted with that form.

For the reasons discussed below, the AAO has concluded that the director was correct in denying the petition. Accordingly, the appeal shall be dismissed and the petition shall be denied.

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

Thus, it is clear that Congress intended this visa classification for aliens that are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least *a baccalaureate or higher degree in the specialty*.

In line with this section of the Act, 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which [1] 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 [2] 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.” (Italics added.)

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.

In accordance with the statutory and regulatory provisions to which 8 C.F.R. § 214.2(h)(4)(iii)(A) is related, Citizenship and Immigration Services (CIS) has consistently interpreted 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. Applying this standard, CIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specialty occupation as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created that visa category.

In the present matter, the evidence of record demonstrates that the proffered kosher French chef position requires a person who, like the beneficiary, is an Orthodox Jew who has achieved the aforementioned French certificate of proficiency (Certificat d’Aptitude Professionnelle) and has been trained according to the laws of the Kashrut. However, the evidence also clearly demonstrates that the certificate of proficiency which would equip the beneficiary to perform in the proffered position is not the equivalent of a U.S. bachelor’s degree. According to the educational evaluation in the record, the certificate is the equivalent of a U.S. vocational high school diploma. (In the words of the evaluation, “[t]hese studies are equivalent to United States senior vocational school graduation.”)

It follows that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which assigns specialty occupation status only to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty related to the position’s duties.

Also, the petitioner has not satisfied either of the alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first alternative prong assigns specialty occupation status to a proffered position if it has a requirement for at least a bachelor's degree in a specific specialty, and that requirement is common to the industry in positions which are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by CIS include: whether the Department of Labor's *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)).

As depicted in the record, the proffered position substantially comports with the general occupation of chefs, cooks, and food preparation workers, and the specific subset of "pastry professionals," as described in the 2004-2005 edition of the *Handbook* (at pages 365-368). However, the *Handbook* does not report that for positions in this occupation there is an industry-wide requirement for a bachelor's degree in a specific specialty. Also, there are no submissions from individuals, other firms, or professional associations in the petitioner's industry.

The petitioner also has not established that the proffered position qualifies under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under this provision, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. The record contains no evidence to this effect.

Next, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been satisfied, because the petitioner has not established that, because compelled to do so by the performance requirements of the proffered position, the petitioner normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

Finally, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), as the evidence of record has not established that proposed duties are so specialized and complex as to require knowledge associated with the attainment of a baccalaureate or higher degree in a specific specialty. To the contrary, the evidence of record indicates that the duties are not so specialized and complex as to require more than apprenticeship-type training leading to the equivalent of a vocational high school diploma.

Because the petitioner has not established that the proffered position qualifies as a specialty occupation under any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), the director's decision shall not be disturbed.

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.

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**ORDER:** The appeal is dismissed. The petition is denied.