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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 MASS. 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: EAC 02 115 53446 Office: VERMONT SERVICE CENTER Date: **JAN 05 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:



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 which 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 Citizenship and Immigration Services (CIS) 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, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is engaged in the [REDACTED]. It has eight employees, a gross annual income of \$489,899, and seeks to employ the beneficiary as an [REDACTED]. The director denied the petition because the proffered position did not qualify as a specialty occupation.

On appeal, counsel submits a brief and additional information. Counsel asserts that: the requirement of a baccalaureate degree for the proffered position is a standard requirement in the industry; and the duties of the offered position are of such complexity that a baccalaureate degree is a minimum requirement for the position.

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), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in a specialty occupation.

The issue to be discussed in this proceeding is whether the position offered to the beneficiary qualifies as a specialty occupation.

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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in field 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.

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.

When determining whether a particular job qualifies as a specialty occupation, the AAO considers the specific duties of the offered position, combined with the nature of the petitioning entity's business operations. The duties of the proffered position were detailed as follows, with the filing of the I-129 petition:

[The beneficiary] is being offered temporary employment in the position of Executive [REDACTED]. The duties undertaken by a[n] Executive [REDACTED] include the following:

The incumbent's responsibilities will include revision, investigation and recommendation of food products to ensure maximum productivity. He will develop new menus and recipes to suit the taste of our customers. [H]e will be responsible for the reorganizations of operations and will create artistic and innovative displays for restaurant promotions and the agency enhancements. The incumbent will oversee and be involved in the preparation of Indian style soups, sauces, entrees and deserts. The incumbent will also season, marinate and cook meats, vegetables and breads using a clay "Tandoor" oven. [H]e will observe and test foods being cooked by tasting, smelling and piercing it to ensure that it meets the standards of our kitchen. The beneficiary will be involved in the hiring, training and development process of personnel. The beneficiary will manage quality control, estimate

food consumption, requisition supplies, oversee purchases and, in short, consult cuisine management for restaurant promotion and recognition.

As with any Executive Chef, the usual minimum requirement for performance of the job duties is a Bachelors degree in Hotel & Restaurant Management or a related field. These minimum prerequisites for the offered position clearly mark it as a specialty occupation.

Subsequent to the filing of the I-129 petition, the director requested additional evidence from the petitioner. The director requested that the petitioner provide: a detailed statement of the petitioner's proposed duties and responsibilities; the educational requirements of the offered position; evidence that a baccalaureate degree in a specific specialty is a standard minimum requirement in the industry; and a listing of employees in similar positions with their educational backgrounds.

In response to the director's request, the petitioner provided a detailed job description that was virtually the same as the description submitted with the filing of the I-129 petition. The petitioner noted that the description provided met the description of an Executive Chef in the Department of Labor's Dictionary of Occupational Titles (DOT), having an SVP value of eight and thereby establishing that the position was professional in nature. The petitioner also provided advertisements for executive chef positions stating that those advertisements required candidates to have a minimum of a bachelor's degree for the position. Reference was also made to an opinion letter submitted with the I-129 petition. The beneficiary is the only executive chef to be employed by the petitioner and the only employee holding a bachelor's degree.

The director denied the petition finding that the job offered did not qualify as a specialty occupation.

On appeal, counsel asserts that: the requirement of a baccalaureate degree for the proffered position is a standard requirement in the industry; and the duties of the offered position are of such complexity that a baccalaureate degree is a minimum requirement for the position.

The petitioner has not met any of the regulatory requirements to qualify the offered position as a specialty occupation. 8 C.F.R. § 214.2(h)(4)(iii)(A). In the *Occupational Outlook Handbook*, 2002-03, (*Handbook*) at 307, the Department Of Labor describes, in part, the duties of an Executive Chef as follows:

Executive chefs and head cooks coordinate the work of the kitchen staff and often direct the preparation of

certain foods. They decide the size of servings, plan menus, and buy food supplies. Although the terms of chef and cook still are used interchangeably, chefs tend to be more highly skilled and better trained than most cooks. Due to their skillful preparation of traditional dishes and refreshing twists in creating new ones, many chefs have earned fame for both themselves and for the establishments where they work.

The duties associated with the proffered position are similar to those listed above. The *Handbook* further notes that to achieve the level of skill required of an executive chef, many years of training and experience are necessary. Though many chefs learn their craft through on the job training, formal training is becoming increasingly popular. Employers usually prefer training given by trade schools, vocational centers, colleges, professional associations, or trade unions. Postsecondary courses range from a few months to 2 years or more. *Id.* at 308. It is, therefore, apparent that a baccalaureate degree or its equivalent is not the minimum requirement for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Second, the petitioner has failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations, or, alternatively that the offered position is so complex or unique that it can be performed only by an individual with a degree. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In support of this assertion the petitioner submitted an opinion letter from Klaus Tenbergen, Professor of Culinary Arts at Kendall College. Professor Tenbergen opined that it was a general practice in the industry for companies with substantive restaurant operations to hire executive chefs with a bachelor's level education. Professor Tenbergen does not state, however, the basis for his opinion. No reference is made to any study, survey or other industry data upon which the opinion is premised. It is, therefore, of little evidentiary value with regard to this particular assertion. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It should further be noted that the job advertisements submitted do not establish that a degree requirement is common to the industry. The four advertisements submitted are insufficient in scope to establish an industry standard. Furthermore, the advertisements do not establish that a bachelor's degree is a minimum requirement for entry into the position. One states that a four-year culinary degree is preferred, not required. Another simply states that the candidate must possess a culinary degree, without making reference to the level of study required (i.e. Associate/Bachelor or Vocational). A third advertisement states simply "degree required" without reference to the type or extent of the degree. The advertisements do not establish an industry standard.

Third, there is no indication that the employer normally requires a degree of its equivalent for the position, and finally, the position's duties are not so specialized or complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties are typical of those required of executive chefs in the industry.

The petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. It is, therefore, concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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 and the appeal shall accordingly be dismissed.

ORDER: The appeal is dismissed.