



U.S. Citizenship
and Immigration
Services

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FILE: SRC 02 146 52365 Office: TEXAS SERVICE CENTER Date:

JUN 17 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 area]

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 director of the service center 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 specialty chef of Greek cuisine. 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 contends that the proffered position is 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.

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; 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 specialty chef. Evidence of the beneficiary's duties includes: the Form I-129; the April 2, 2002 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would manage the kitchen staff and perform duties that entail, in part: coordinating the restaurant's activities; planning menus; estimating food consumption; and purchasing foodstuff and kitchen supplies. The petitioner stated that a candidate must possess a bachelor's degree or its equivalent in culinary arts.

The director found that the proffered position was not a specialty occupation because the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A). Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that the *Handbook* reveals that a bachelor's degree is not required for a skilled chef position.

On appeal, counsel states that the proffered position qualifies as a specialty occupation. Counsel states that the position requires a specialized body of knowledge and that non-cooking factors such as trustworthiness are considered as very important by the DOL. Counsel avers that the DOL states that it takes about 8-15 years of employment as a cook to be considered a fully qualified chef; counsel mentions that this shows that a university degree or its equivalent may be requested in such cases. Finally, counsel asserts that his office has received many H-1B and labor certification approvals for specialty chef positions.

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 first considers the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent in a specific specialty 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 in a specific specialty. 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)).

Counsel asserts that CIS has already determined that the proffered position is a specialty occupation since CIS has approved other, similar petitions in the past. This record of proceeding does not, however, contain all of the supporting evidence submitted to the service center in the prior cases. In the absence of all of the corroborating evidence contained in their record of proceedings, the counsel's assertions are not sufficient to enable the AAO to determine whether the prior H-1B petitions are parallel to the instant petition. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R.

§ 103.8(d). In making a determination of statutory eligibility, CIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Counsel's claim that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) based on information in the *Handbook* is weak. The AAO finds that the *Handbook* reports that the duties of the proffered position are indeed performed by an executive chef. The *Handbook* states that executive chefs coordinate the work of the kitchen staff and direct the preparation of meals. They determine serving sizes, plan menus, order food supplies, and oversee kitchen operations to ensure uniform quality and presentation of meals.

This occupation does not require a bachelor's degree. According to the *Handbook*, executive chefs who work in fine restaurants require many years of training and experience. Some chefs start their training in high school or post-high school vocational programs. Others receive formal training through independent cooking schools, professional culinary institutes, or 2- or 4-year college degree programs in hospitality or culinary arts. In addition, some large hotels and restaurants operate their own training and job-placement programs for chefs and cooks. Most formal training programs require some form of apprenticeship, internship, or out placement program that are jointly offered by the school and affiliated restaurants. Professional culinary institutes, industry associations, and trade unions also sponsor apprenticeship programs in coordination with the U.S. Department of Labor. Many chefs are trained on the job.

The *Handbook* unequivocally explains that a bachelor's degree is not the normal minimum requirement for entry into the proffered position. The *Handbook's* findings therefore undercut counsel's contention about the importance of non-cooking factors and discredits his statement that a university degree or its equivalent may be required for a chef position because many years of employment as a cook are required in order to qualify for employment as a chef. The submitted menus and promotional materials fail to establish the first criterion.

The submitted evidence fails to establish the second criterion - that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

No evidence establishes that the petitioner normally requires a degree or its equivalent in a specific specialty for the position. 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. As previously discussed, the *Handbook* reveals that the beneficiary's duties mirror those of an executive chef, a position that does not require a bachelor's degree. Second, the submitted menus and promotional materials fail to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific

specialty. The meals described in the menus are no different from those prepared by an executive chef employed at a specialty restaurant. Consequently, the petitioner fails to establish the fourth criterion.

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.