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**U.S. Citizenship
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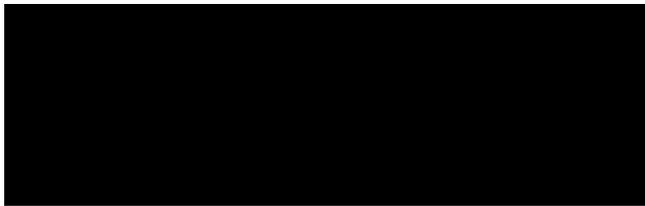
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FILE: SRC 03 072 50571 Office: TEXAS SERVICE CENTER Date JUN 30 2004

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:



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 an India specialty restaurant that seeks to employ the beneficiary as an 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: (1) the proffered position is not a specialty occupation; and (2) if the position had qualified as a specialty occupation, the beneficiary is not qualified to perform its duties. On appeal, counsel submits a brief.

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 an executive chef. Evidence of the beneficiary's duties includes: the Form I-129; the January 2, 2003 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 perform duties that entail, in part: coordinating and overseeing the activities and training of chefs, cooks, and other kitchen workers; planning menus and estimating food consumption; purchasing foodstuffs and kitchen supplies; and determining food, labor, and overhead costs to assign prices to menu items. The petitioner stated that the beneficiary was qualified for the proffered position: he earned a bachelor of commerce degree and a three-year diploma in hotel management, catering, and applied nutrition, and has 14 years of progressively responsible experience.

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). The director mentioned that the "Department of Transportation's" guidelines are not relied upon in determining whether a position qualifies as a specialty occupation; however, the director stated that the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*) is routinely consulted. According to the director, the *Handbook* reports that the proffered position does not require a bachelor's degree or its equivalent, and furthermore, that the industry does not require a bachelor's degree or its equivalent for an executive chef position. The director pointed out that although the proffered position was titled "executive chef," the petitioner never established that the position was actually that of an executive chef. Finally, the director also found that the beneficiary never had been employed as an executive chef and was not qualified for this occupation.

On appeal, counsel states that the proffered position is a specialty occupation. Referring to the evidence in the record, counsel states that it establishes an executive chef position does require at least a bachelor's degree or its equivalent. Counsel contends that the director misinterpreted the information in the *Handbook* and that the petitioner never cited to the Department of Transportation's guidelines; it had referred to the DOL's *Dictionary of Occupational Titles* (*DOT*) and its SVP rank of eight for an executive chef position. According to counsel, an executive chef position requires more than a high school diploma or a post-high school vocational class. The *DOT*, counsel maintains, delineates a clearer description than the *Handbook* of the position's requirements. Counsel refers to an alleged expert opinion letter from Hospitality Human Resources Consulting, Inc. to state that the industry requires a bachelor's degree or its equivalent or experience or both in the appropriate field of study. Counsel moreover states that the letter states that the complexity of the petitioner's menu and its target market necessitate the expertise of an executive chef. Counsel stresses the position is needed because of the petitioner's increased gross income and expansion plans. Last, counsel contends that the beneficiary's education, training, and experience qualify him for an executive chef position.

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.

First, the AAO 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 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)).

Counsel claims that the petitioner satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). According to counsel, the proffered position is a specialty occupation because it has been assigned a specific SVP rating in the *DOT* (4th Ed., Rev. 1991). However, 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. The DOL has replaced the *DOT* with the *Occupational Information Network (O*Net)*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. The DOL's *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training, and experience normally required to enter into and advance within an occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation simply because the DOL has assigned it a specific SVP rating in the *DOT*.

The AAO does not concur with the director's finding that the duties of the proffered position differ from those of an executive chef. According to the *Handbook*, the proffered position's duties mirror those of an executive chef; the *Handbook* moreover states that this occupation does not require a bachelor's degree. The *Handbook* reports that 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 required for an executive chef position. For this reason, a bachelor's degree or its equivalent is not the normal minimum requirement for entry into the proffered position.

To establish the second criterion - that a degree requirement is common to the industry in parallel positions among similar organizations - counsel refers to the letter from [REDACTED]. This letter states that the industry standard has evolved to require a bachelor's degree or its equivalent in a

relevant field. The letter moreover states that the educational requirement for certification as an executive chef must total 20 points, 15 of which are granted for a bachelor's degree or its equivalent.

Although pertinent, the letter fails to establish the second criterion. In the first place, the letter writer does not submit independent corroborating evidence to substantiate his claims. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Thus, the claims carry diminished weight. The *Handbook* mentions that chefs also may compete and test for certification as master chefs. Although certification is not required to enter the field, it can be a measure of accomplishment and lead to further advancement and higher-paying positions. The American Culinary Federation also certifies pastry professionals and culinary educators in addition to various levels of chefs. Certification standards are based primarily on experience and formal training. The *Handbook* reveals that certification does require a bachelor's degree; it is based on experience and formal training such as through independent cooking schools, professional culinary institutes, or 2- or 4-year college degree program.

No evidence is in the record that would show the proffered position is so complex or unique that it can be performed only by an individual with a degree.

There is no evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position.

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. According to counsel, the letter from [REDACTED] states that the duties of the proffered position are complex, requiring a candidate holding a bachelor's degree in a relevant field.

Counsel's claim is weak. The *Handbook* reveals that the beneficiary's duties mirror those of an executive chef, a position that the *Handbook* plainly evinces does not require a bachelor's degree. 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.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. The AAO concurs with this finding.

Section 214(i)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess full state licensure to practice in the occupation, if such licensure is required to practice in the occupation, and completion of the degree in the specialty that the occupation requires. If the alien does not possess the required degree, the petitioner must

demonstrate that the alien has experience in the specialty equivalent to the completion of such degree, and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The record contains a letter from Hospitality [REDACTED]. This letter stated that the beneficiary has “the appropriate academic preparation” and that his work experience included significant direction and supervision of large quantity food production activities. The letter attested that the beneficiary’s current position has the same responsibilities as an executive chef in the United States. The record also contains two letters from [REDACTED] that states that the beneficiary has 13 years of experience in the field of kitchen management. Other documents in the record include the beneficiary’s resume, a credential’s evaluation from the Foundation for International Services (FIS), a diploma in hotel management, and a statement of marks from the University of Delhi

The director found that the beneficiary was not qualified for the proffered position because the beneficiary’s education, experience, and training were not equivalent to a baccalaureate degree in a specialty required by the occupation. On appeal, counsel contends that the beneficiary has been determined to possess the equivalent of a bachelor’s degree in hotel/motel/restaurant management from an accredited U.S. college or university.

Upon review of the record, the petitioner has failed to establish that the beneficiary is qualified to perform an occupation that requires a baccalaureate degree in hospitality or the culinary arts. The beneficiary does not hold a baccalaureate degree from an accredited U.S. college or university in any field of study. The beneficiary does hold a foreign degree determined to be equivalent to three years of university-level credit from an accredited U.S. college or university and a foreign diploma from the National Council for Hotel Management and Catering Technology determined to be the equivalent to “completion of three years of

professional training courses in the hotel management field that are equivalent to courses offered at private training centers in the United States.” Therefore, the petitioner must demonstrate that the beneficiary meets the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary’s credentials to a United States baccalaureate or higher degree shall be determined by one or more of the following:

- (1) 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation from FIS, a company that specializes in evaluating academic credentials. The evaluator concluded that the beneficiary possesses the equivalent of a bachelor’s degree in hotel/motel/restaurant management from an accredited U.S. college or university. However, the evaluation is based upon the beneficiary’s education, training, and work experience. A credentials evaluation service may not evaluate an alien’s work experience or training; it can only evaluate educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

When CIS determines an alien’s qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien’s training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien’s experience was gained while working with peers, supervisors, or subordinates who have a degree or its

equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation¹;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The AAO cannot determine whether the beneficiary's education in commerce is related to the field of hospitality or the culinary arts because the marksheet does not describe in any detail the beneficiary's coursework. The beneficiary's diploma in hotel management is relevant, although no evidence is submitted regarding the beneficiary's coursework. FIS determined that the diploma is equivalent to "completion of three years of professional training courses in the hotel management field that are equivalent to courses offered at private training centers in the United States."

The AAO finds that the beneficiary's prior work experience did not include the theoretical and practical application of specialized knowledge required by the specialty. The two letters from [REDACTED] are inconsistent regarding the dates of the beneficiary's employment and advancement in the company. For example, the May 27, 2002 letter stated "[t]his is to certify that [the beneficiary] is working [sic] in this organization since 6/1/1993." The letter mentions:

[T]he beneficiary had joined us as a Kitchen Trainee, on the completion of which he was absorbed in our organization at the post of Chef-De-Partie. His outstanding and dedicated performance & high caliber earned him the promotion of an Assistant Chef on 16/2/2000.

In contrast, the May 30, 2002 letter stated "[u]pon graduation, he was offered the position [REDACTED] [REDACTED]. Because of this inconsistency, the AAO cannot determine whether

¹ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

the beneficiary's duties involved the application of the theoretical and practical application of hospitality management or the culinary arts. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, there is insufficient evidence that the beneficiary has recognition of expertise. The AAO notes that the letter from ██████████ Hospitality Human Resources Consulting, Inc. stated that the beneficiary's bachelor's degree and diploma in hotel management provide full preparation for management responsibilities in a restaurant or hotel. The letter also stated that the beneficiary's experience is "the equivalent to an executive chef position." ██████████ resume depicts that he has sufficient recognition of expertise in the hospitality industry. However, ██████████ statements are not supported by independent corroborating evidence. Nor are the statements grounded in a thorough analysis of the beneficiary's formal education, training, and experience. Furthermore, ██████████ statement about the beneficiary's experience is based on inconsistent information provided by ██████████. Finally, the evaluator from FIS is not a "recognized expert" given that the evaluator is not in the hospitality industry.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. As previously discussed, the petitioner failed to establish that the proffered position qualifies as 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.