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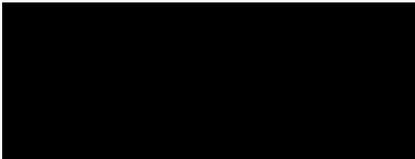
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

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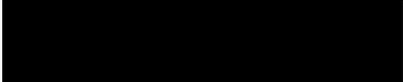
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**U.S. Citizenship
and Immigration
Services**



FILE: LIN 02 124 54995 Office: NEBRASKA SERVICE CENTER Date: **MAR 08 2004**

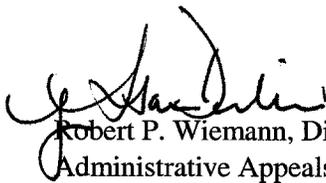
IN RE: Petitioner: 
Beneficiary:

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 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 restaurant management company that seeks to employ the beneficiary as an executive chef. The petitioner 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 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 I-129 petition; the petitioner's February 26, 2002 letter in support of the petition; and the

petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: managing kitchen staff of approximately 30 persons; supervising kitchen operations, including ordering, cost and quality control, procurement, budgeting, and revenue forecasting; training and supervising chefs and culinary staff; conducting training sessions and department meetings; and ensuring the petitioner's standard of quality and excellence. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in culinary arts or its equivalent.

The director found that the proffered position was not a specialty occupation because the job is primarily that of a restaurant manager, a position that does not normally require a baccalaureate degree. 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, counsel states that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 8, which according to counsel, requires a degree to enter into the position. Counsel further states that the petitioner has satisfied one criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel states that the proffered position is so complex that only a person with a baccalaureate degree in culinary management can perform the job duties. Accordingly, the AAO will address this one criterion only.

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.

In its *Occupational Outlook Handbook*, 2002-2003 edition, at pages 307-308, the Department of Labor (DOL) finds that, although a high school diploma is not required for beginning jobs, it is recommended for those planning a career as a cook or chef. An increasing number of chefs and cooks obtain their training through high school, post-high school vocational programs, or 2 or 4-year colleges. Chefs and cooks may also be trained in apprenticeship programs offered by culinary institutes, industry associations, and trade unions. Although the DOL additionally states that many years of training and experience are necessary for an executive chef or cook position in a fine restaurant, the DOL does not specifically state that a baccalaureate degree in restaurant management or an equivalent degree is necessary for such positions. Thus, the petitioner has not shown that a bachelor's degree or its equivalent is required for the position being offered to the beneficiary.

Furthermore, to the extent that they are depicted in the record, the proposed duties 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.