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



FILE: EAC 03 110 52106 Office: VERMONT SERVICE CENTER Date: 06/11/12

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. 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 company that offers catering services and that seeks presently to open an Indian restaurant. The company 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 it is not a specialty occupation. Counsel states that it is a specialty occupation and submits further documentation.

Section 214(i)(1) of 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 petitioner's letter of support; (3) the director's request for additional evidence, dated March 3, 2003; (4) the petitioner's letter that responds to the director's request; (5) the director's denial letter; and (6) 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 letter of support; and counsel's letter in response to the director's request for further evidence. According to the job description submitted by the petitioner, the beneficiary would direct the preparation, seasoning, and cooking of salads, soups, fish, meats, vegetables, desserts, and other foods. The beneficiary also would plan and price menu items, order supplies, keep records and accounts. In a letter of support, the petitioner elaborated on these duties in the context of preparing Indian food, and stated that some dishes, such as samosas, are labor intensive. The petitioner added that the beneficiary would also be responsible for ordering the cleaning supplies, for supervising other cooks, servers, and cleaning personnel, for making sure the money received during the day corresponded with the amount and types of food sold, and for closing the doors at night. The petitioner appeared to indicate that the position would require an individual with a bachelor's degree in hospitality management with an emphasis in culinary arts and with work experience.

The director denied the petition and referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classifications of chef and restaurant manager. The director stated that neither classification required a baccalaureate degree in a specific specialty for entry into the position. 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 petitioner needs a reliable chef who possesses the necessary skills to prepare Indian food, and that there is no pool of qualified applicants in the geographic area in which the petitioner plans to establish its restaurant. Counsel states that CIS should have focused more on the qualifications of the beneficiary when it reviewed the petition. Counsel states that the proffered position is complex and requires a high degree of skill. Counsel submits the petitioner's business plan for the proposed Indian restaurant, 27 additional job vacancy announcements, an article on culinary arts programs in the United States, and other documentation of the petitioner's finances.

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 turns first to 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)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The proffered position appears to be that of a chef for one restaurant with restaurant management responsibilities. As correctly noted by the director, the *Handbook* does not establish

that employers of either restaurant managers or chefs require a minimum of a bachelor's degree in a specific specialty in order to enter a position. Some employers hire individuals with two-year associate degrees, or promote from within the ranks of their employees based on work experience. Thus, the *Handbook* does not establish that the proffered position requires a baccalaureate degree in a specific specialty for entry into the position.

With regard to parallel positions in similar businesses, counsel provided 13 job vacancy announcements in its response to the director's request for further evidence. On appeal, counsel submits an additional 27 job vacancy announcements. When he submitted the initial group of job vacancy announcements, counsel stated that he had not come across any chef vacancy announcements for a restaurant similar to the petitioner's planned restaurant. On appeal, counsel still does not submit any job vacancy announcements for food establishments that would be similar in business focus or volume to the proffered position. The vacancy announcements submitted on appeal include the Waldorf Astoria hotel in New York City, large resorts in other parts of the country, and food management services companies that place chefs in large hotel and institutional settings. None of these vacancy announcements are analogous to the proffered position.

On appeal, counsel submits an article entitled "Cooking Up A Storm: Culinary Arts in the U.S.," from a website entitled "Studyoverseas.com/America." This article states that the American Culinary Federation (ACF) has accredited approximately 97 U.S. culinary arts programs in the United States. The article further states that these programs offer two to three years of classes, associate's degrees and various certificates, and that many programs are affiliated with local colleges so that a student could transfer credits. The article does not support an industry standard of a baccalaureate degree in a specific specialty for chef positions, but rather suggests that an associate's degree in culinary arts is more the norm. The petitioner also did not provide sufficient documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its petition that it plans to open an Indian restaurant, and that it had no other employees. The proffered position would be a new one in the petitioner's restaurant. Therefore the petitioner cannot meet this criterion.

Finally, 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. To the extent that they are depicted in the record, the majority of duties of the position appear routine to the operations of any restaurant. The petitioner provided no further detail as to any specialized or complex duties that the beneficiary would perform as a chef in an Indian restaurant, other than naming Indian dishes, and stating that some dishes are labor-intensive. The fact that some Indian dishes may be labor-intensive does not necessarily make them specialized or unique. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if it had been determined to be a specialty occupation. The beneficiary's

first diploma is for a two-year program in English, English literature, sociology, and economics at Kaumoni University. Her studies in the four subjects appear to be for two years. The beneficiary's second diploma in hotel management and catering technology was awarded by the Board of Technical Education of Uttar Pradesh Lucknow. The beneficiary appears to have attended this program for three years. Nevertheless, the educational equivalency document submitted by the petitioner is not very clear as to whether the Uttar Pradesh program in hotel management and catering technology is equivalent to university-level education. Without more persuasive evidence as to the actual level of instruction provided in the beneficiary's programs of studies, the petitioner has not met the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(C). For this additional reason, the petition may not be approved.

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.