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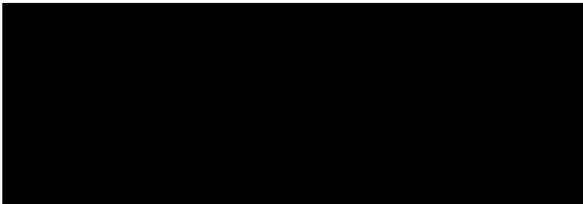
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FILE: WAC 04 013 53727 Office: CALIFORNIA SERVICE CENTER Date: JUN 09 2005

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 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 winery and real estate company that seeks to employ the beneficiary as an executive Italian chef and wine consultant. 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 states that the proposed position is a specialty occupation and submits additional evidence.

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 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 Italian chef and wine consultant. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing, seasoning, and cooking soups, fish, meat, vegetables, desserts, and salads; planning and pricing menu items; purchasing supplies and maintaining records; participating in cooking; supervising and coordinating activities of cooks and staff in preparing food; observing workers and work procedures to ensure compliance with preparation orders; training and assisting cooks; estimating food amounts and costs, and requisitioning supplies and equipment; determining proper procedures; collaborating with staff to prepare recipes and menus; inspecting supplies, equipment, and work areas to ensure they are satisfactory; marketing the operation; and evaluating and solving procedural problems to ensure a safe and efficient environment. The petitioner states that the beneficiary qualifies for the proposed position based on his training, certification, and experience.

The director determined that the proffered position is not a specialty occupation. According to the director, counsel concedes that wine tasting is gained from experience, not from a bachelor's degree. The director discussed the regulatory guidelines regarding a response to a request for evidence. Referring to the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), the director stated that it reveals that the proposed position is that of a chef, which is an occupation that does not require a bachelor's degree. The director stated that the duties and stated level of responsibility of the proposed position do not indicate complexity or authority that is beyond what is normally encountered in the occupational field, and that the record is not persuasive in showing that the job could not be performed by an experienced person whose educational training falls short of a baccalaureate degree.

On appeal, counsel states that the proposed position is a specialty occupation, requiring knowledge of wine and food. Counsel asserts that schools offer four-year culinary programs; that wine and food pairing cannot be accomplished by a high school graduate; and that the industry requires formal education from a culinary school. Counsel states that the beneficiary has the equivalent to a bachelor's degree in restaurant and food management and years of experience in wine and food pairing. Counsel submits an educational evaluation and a job advertisement.

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 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.Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

In determining whether a position qualifies as a specialty occupation, CIS looks beyond the title of the position and determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate degree in a specific specialty as the minimum for entry into the occupation as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

The *Handbook* reveals that the duties of proffered position are indeed performed by executive chefs who 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.

An executive chef position, however, is one that normally does not require a bachelor's degree or its equivalent in a specific specialty. 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. Some large hotels and restaurants operate their own training and job-placement programs. Furthermore, the director correctly observed counsel's concession that a bachelor's degree is not required for the wine tasting aspect of the position.

Because the evidence of record does not establish that the proffered position is one for which the normal minimum entry requirement is at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The submitted job advertisement fails to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations. Although the job advertisement states that formal education (culinary school) is required for the in-house chef, this does not mean that a candidate must hold a four-year degree from a culinary school. Culinary schools offer formal educational programs that do not lead to a bachelor's degree. Moreover, one advertisement is not sufficient to establish a common industry standard.

No evidence shows 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. 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). As already discussed in this decision, the *Handbook* shows that the proposed position resembles an executive chef, which is an occupation that does not require a bachelor's degree.

Counsel's January 21, 2004 letter states that this is the first time that the petitioner seeks to hire a chef with additional duties as a wine taster. Thus, the petitioner does not have a past practice of normally requiring 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 them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. Again, the *Handbook* reveals that the beneficiary's duties are performed by an executive chef, an occupation that does not require a bachelor's degree. Consequently, the petitioner also fails to establish this 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.