

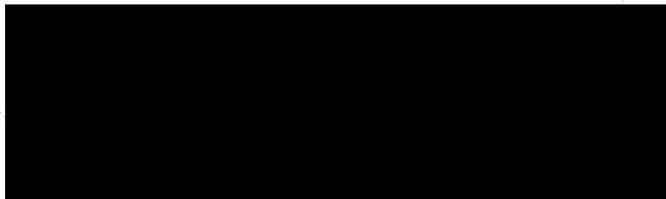


U.S. Citizenship
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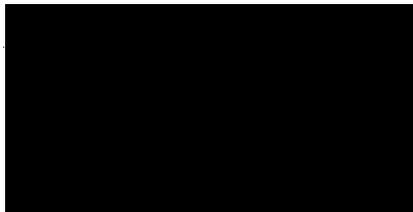
FILE: EAC 03 219 52594 Office: VERMONT SERVICE CENTER

Date: NOV 23 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 provides ethnic food consulting and upscale dining. It seeks to employ the beneficiary as a food and beverage director/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 the proffered position is not a specialty occupation. On appeal, counsel states that the proposed position is a specialty occupation and submits additional and previously submitted 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 a food and beverage director/executive chef. 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 overseeing, directing, and managing personnel, quality control, food and beverages, purchasing, marketing, and finance; reviewing and analyzing current performance and identifying operational and procedural problems; suggesting, developing, and implementing revenue and performance systems and policies; interfacing with the company's owners and participating in executive meetings; developing and directing day-to-day policies; developing, analyzing, and implementing budgetary goals; allocating funds, authorizing expenditures, and assisting in planning departmental budgets; analyzing neighborhood and target audiences for new operations; training, supervising, and coordinating cooks and workers; estimating amounts and costs and requisitioning supplies and equipment; determining production schedules and worker-time requirements; collaborating with personnel and planning and developing recipes and menus based on the number of anticipated guests, nutritional value, palatability, popularity, and costs; inspecting supplies, equipment, and work areas; recording production and operations data; reviewing menus and analyzing recipes to determine labor and overhead costs, and assigning prices to menu items; establishing and enforcing nutritional standards; monitoring compliance with health and fire regulations; resolving personnel problems; hiring staff; evaluating employee performance; estimating food, liquor, and wine consumption; monitoring food preparation and methods, sizes of portions, and food garnishments and presentation; monitoring budget, payroll records, and reviewing financial transactions to ensure expenditures are authorized and budgeted; investigating and resolving complaints about food quality, service, or accommodations. The petitioner endeavors to employ the beneficiary who holds the equivalent of a bachelor's degree in restaurant and hotel management from an accredited university in the United States.

The director found that the information from the *DOT*, the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), and the letters from New York restaurants failed to establish that the proposed position requires a baccalaureate degree in a specific specialty.

On appeal, to show that the proposed position is a specific specialty, counsel refers to the *DOT*, and to previous AAO decisions involving a food service manager and an executive chef. Citing to *Hong Kong T.V. Video Program, Inc. v. Ilchert*, 685 F. Supp. 712 (N.D. Cal. 1987), counsel states that the decision indicates that specific vocational preparation (SVP) factors should be given substantial weight. Counsel asserts that 160 colleges and universities in the United States offering a bachelor's or higher degree program in hotel and/or restaurant management evinces a growing norm to employ individuals with at least a bachelor's degree in hotel or restaurant management. To establish that a bachelor's degree in restaurant and hotel management is required for an executive chef/food and beverage director, counsel references letters from high-end restaurants that are similar to the petitioner. Counsel states that the petitioner's head office, where the beneficiary will be employed, provides its other establishments with ingredients for specialty foods.

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)).

Counsel's reference to and assertions about the relevance of information from the *DOT* is not persuasive. Neither an SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

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.

Based on the petitioner's job description, the submitted evidence, and the *Handbook's* information, the proffered position resembles that of an executive chef who coordinates the work of the kitchen staff and directs the preparation of meals. An executive chef determines serving sizes, plans menus, orders food supplies, and oversees kitchen operations to ensure uniform quality and presentation of meals. The *Handbook* also conveys that an executive chef may be "in charge of all food service operations and also may supervise the many kitchens of a hotel, restaurant group, or corporate dining operation."

An executive chef does not require a baccalaureate 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; some large hotels and restaurants operate their own training and job-placement programs.

Counsel's assertion that 160 colleges and universities offer a bachelor's or higher degree program in hotel and/or restaurant management is not persuasive in establishing the petitioner's educational requirement as college degree programs do not dictate the hiring requirements of employers.

The AAO's conclusion, from the evidence to which it has referred, is that the petitioner fails to establish the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The petitioner submits letters from restaurants to establish the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) - that a specific degree requirement is common to the industry in parallel positions among similar organizations. The submitted letters, however, fail to establish this criterion. The October 14, 2003 letter from ██████████, the October 14, 2003 letter from ██████████, the October 17, 2003 letter from Pongal, and the October 14, 2003 letter from Dawat¹ state:

[T]he requirement of a bachelor's degree is consistent with our past and present hiring practices. All of its past and present Food and Beverage Directors possess an equivalent of a bachelor's degree in restaurant/hotel/hospitality management. This has been and still is the general hiring practice which is being based on actual business necessity.

The letters continue:

The job duties of a Food and Beverage Director are of a sophisticated nature. One without a college education and with the employment experience in Restaurant/Hospitality Management or the related field of Food Technology, would not be able to satisfactorily perform the duties of a Food and Beverage Director/Executive Chef. Hence, a bachelor's degree in Food technology/industry or Hotel/Hospitality Management is the minimum requirement for the position of a food and beverage director/Executive chef.

It is clear that job duties associated with the position of Food and Beverage Director/Executive Chef are professional in nature and only an individual holding at least a baccalaureate degree in [b]achelor's degree [sic] in [f]ood [i]ndustry/culinary [a]rts or [h]otel/[h]ospitality [m]anagement and progressive experience in the required field, or its equivalent would be qualified to perform the same. We ourselves hire individuals who possess these minimum requirements for the position of Food and Beverage Director/Executive Chef.

The letters from four different restaurants contain the identical language that is set forth above, and an identical description of the duties of a food and beverage director as depicted in the letters. Although the

¹ The August 1999 article from *Gourmet* indicates that Dawat is owned by the same parties as the petitioning entity.

AAO acknowledges that the authors of the letters have endorsed the petitioner's position regarding the requirement of a bachelor's degree, the passages appear to have been written by the same person. The evidentiary value of the letters is therefore diminished. The AAO observes that in the letters the restaurants provide the name and degree held by an employee that has in the past or currently occupies the position of food and beverage director. This listing follows a statement that the restaurant has consistently only hired individuals with degrees, or their equivalent in hotel or restaurant management, and remains the hiring practice of the restaurant. "For instance, the following past and present [f]ood and [b]everage [d]irectors who held bachelor's degrees or its equivalent . . ." Following the quote in each letter is not a list of names and the degrees held by each of the individuals each restaurant has hired in the position, but the name of one person and the degree held. None of these letters, thus, establish that the managers of the restaurants regularly hire degreed individuals in the position. 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

██████████ LLC. and Thali also submitted letters in August 2003. The August 20, 2003 letter from ██████████ stated:

[The beneficiary's] credentials are equivalent to those of employees that we have hired in our restaurant as we consistently only hire food and beverage managers with bachelor[']s degrees in management or business administration as does ██████████ dba ██████████ ██████████

The August 14, 2003 letter from Thali stated:

[The beneficiary's] credentials are equivalent to those of employees that we have hired in our restaurant as we consistently only hire food and beverage managers with bachelor[']s degrees in Food Industry or Restaurant and Hotel/Hospitality Management as does Thali.

The identical passages from the two letters also suggest that they are written by the same unidentified third party and not by the signatories of the letters. For instance, the letter from ██████████, states "employees that we have hired in our restaurant . . . as does ██████████". The evidentiary value of the letters, therefore, is diminished.

The August 14, 2003 letter from Tiffin Indian Vegetarian stated that a food and beverage director/executive chef is a professional position requiring a baccalaureate degree in food industry, culinary arts, or hotel/hospitality management. The letter does not indicate that Tiffin Indian Vegetarian has this educational requirement, however.

For the reasons set forth above, the AAO finds that the submitted letters from the restaurants fail to establish the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that a specific degree requirement is common to the industry in parallel positions among similar organizations.

The petitioner has not satisfied the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) as no evidence in the record shows the offered position as so complex or unique that it can be performed only by an individual with a degree. The evidence in the record of the proposed job description, the articles from various publications discussing the petitioning entity's cuisine and ambiance, and the *Handbook's* information reveal that the proposed position parallels an executive chef; and according to the *Handbook*, this occupation does not require a bachelor's degree in a specific specialty. The petitioner, therefore, fails to establish the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To satisfy the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), the petitioner must 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. The *Handbook* reveals that the proposed position corresponds to an executive chef, and that this occupation does not required a bachelor's degree in a specific specialty. None of the evidence in the record, which the AAO has discussed earlier in this decision, reflects that the nature of the proposed duties is specialized and complex, requiring knowledge that is associated with a baccalaureate or higher degree in restaurant and hotel management. As such, the petitioner fails to establish this last criterion at 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.

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.