

identifying information to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



D2

FILE: EAC 04 047 53417 Office: VERMONT SERVICE CENTER

Date: OCT 26 2005

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 materials 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 on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an Indian restaurant. It seeks to employ the beneficiary as an executive chef and to classify him 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 on the ground that the record did not establish that the proffered position qualifies as a specialty occupation.

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.

As provided in 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 evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner describes itself as an Indian restaurant, established in 1990, with two branch locations in and around New York City, over 100 employees, and gross annual income in excess of \$6 million. The petitioner states that it proposes to hire the beneficiary as an executive chef, the duties of which are listed in a letter accompanying the petition as follows: supervise and coordinate activities with relation to the preparation and cooking of Indian foods; estimate food consumption and oversee the purchase of essential ingredients; inspect each shipment from suppliers and ensure that quality and quantity of ingredients meet established standards and specifications; manage and oversee the preparation of all dishes; provide training to junior chef[s] and oversee that they prepare the food according to recipes; manage the portioning of foods that the cooks are using and give instructions to workers as to size and presentation of dishes and methods of garnishing; responsible for menu design, selecting and developing recipes; supervise other personnel engaged in preparing, cooking and serving fish, meats, sauces, vegetables, rice, soups, and other food and ensure that all employees are in compliance with safety and sanitary regulations. The beneficiary is qualified for the position, the petitioner indicates, by virtue of his eighteen years of work in the restaurant field. According to a report from an academic and employment credentials evaluation service, the beneficiary's work experience is equivalent to a bachelor's degree in culinary arts from a U.S. college or university.

In response to the RFE the petitioner provided a more detailed description of the job duties and the estimated percentage of time required for each duty:

- 20% Direct, supervise, and coordinate the activities of the restaurant's food service facility and estimate food consumption and portioning; give instructions to workers as to the size and presentation of dishes and methods of garnishing, and review the daily management of the food and beverage kitchen department in order to determine ongoing standards of the foods prepared and ensure that sufficient items are ordered as per daily requirements.
- 20% Forecast operational budgets based on daily sales of foods and catering orders; and monitor the food and beverage costs and help write an annual plan to analyze the financial performance of the restaurant thus ensuring financial success of the department and implement appropriate procedures of cost reductions wherever required.
- 12.5% Liaise with the hotel staff, including the banquet and catering department, and chefs to ensure coordination of catering orders and appropriate presentation of food to maintain specific standards.
- 7.5% Develop and maintain safe culture with the department and ensure departmental adherence to awareness of health and safety standards.
- 20% Oversee the preparation of catered and concession functions to avoid any discrepancies in the menu order placed, and provide utmost customer service and quality assurance by having personal interaction with the guests on an ongoing basis.
- 12.5% Assist the president of the company to recruit, interview and hire chefs, stewards, and managerial positions as per the business operations.
- 7.5% Manage high end/volume dining room and banquet services.

In his decision the director determined that the proffered position is not a specialty occupation. The director referred to information in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)* about executive chefs indicating that a baccalaureate level of education in a specific specialty is not the normal minimum requirement for entry into such a position. The director also referred to the *Handbook's* information about food service managers – another occupational category which the petitioner asserted, in response to the RFE, is applicable to the proffered position – which likewise indicates that a baccalaureate degree in a specific specialty is not the normal minimum requirement for entry into that type of position. The record did not demonstrate that the proffered position involves senior management functions with high-level duties and responsibilities beyond those of a first line supervisor, which the director indicated is the only type of executive chef position that could qualify as a specialty occupation. The evidence of record did not establish that there is an industry-wide requirement of a bachelor's degree in a specific specialty for executive chef positions among companies similar to the petitioner, the director determined, or that an executive chef employed in one of the petitioner's other restaurants had a bachelor's degree in a specific specialty. Nor did the petitioner show that the duties and responsibilities of the proffered position are more specialized and complex than those of a typical executive chef in the industry. The director concluded that the position did not qualify as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal counsel asserts that the duties of the executive chef position fits the DOL *Handbook's* description of a food service manager, and that a bachelor's degree in restaurant and food service management is required for such a position, thus making it a specialty occupation. It is the industry norm, according to counsel, for restaurants of similar size and operations to the petitioner to require their executive chefs to have a baccalaureate degree in culinary arts, restaurant management, or a related discipline. Such a degree, or equivalent experience, counsel maintains, enables an executive chef to manage diverse kitchen personnel, to apply a bachelor's level understanding of cost control, quality assurance, operational budgets, and culinary processes to kitchen management, and to create innovative dish arrangements – *i.e.*, to perform the duties of the proffered position. Counsel contends that the executive chef position qualifies as a specialty occupation under all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A).

In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, CIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F.Supp. 1095, 1102 (S.D.N.Y. 1989)). CIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno, id.*, at 1165-66.

The duties of the proffered position, as listed in the petitioner's initial letter accompanying Form I-129, reflect the duties of an executive chef, as described in the *Handbook's* occupational sub-category of executive chefs and head cooks:

Executive chefs and *head cooks* 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. The terms chef and cook often are used interchangeably, but generally reflect the different types of chefs and the organizational structure of the kitchen staff Chefs tend to be more highly skilled and better trained than cooks.

Handbook, 2004-05 edition, at 365. As for the educational and training requirements of executive chefs and head cooks, the *Handbook* states that:

Executive chefs and head cooks who work in fine restaurants require many years of training and experience Some chefs and cooks may start their training in high school or post-high school vocational programs. Others may receive formal training through independent cooking schools, professional culinary institutes, or two- or four-year college degree programs in hospitality or culinary arts Many chefs are trained on the job, receiving real work experience and training from chef mentors in the restaurants where they work.

It is clear from the *Handbook* that there are many paths of education, training, and experience that can lead to an executive chef position, many of which do not include a four-year baccalaureate degree in a specific specialty. Since there is ample opportunity to enter the occupation with credentials short of a four-year degree in culinary arts or a related specialty, an executive chef does not meet the first alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

In the more detailed job description submitted in response to the RFE, the proffered position appears to reflect more the duties of a food service manager. That occupation, closely linked to that of an executive chef, is explained as follows in the *Handbook, id.*, at 42:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of the restaurant, its equipment, and facilities. Managers generally are responsible for all of the administrative and human-resource functions of running the business, including recruiting new employees and monitoring employee performance and training.

As for the educational requirements of food service managers, the *Handbook* states as follows:

Most food service management companies and national or regional restaurant chains recruit management trainees from two- and four-year college hospitality management programs. Restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude. Some restaurant and food service manager positions – particularly self-service and fast-food – are filled by promoting

experienced food and beverage preparation and service workers. Waiters, waitresses, chefs, and fast-food workers demonstrating potential for handling increased responsibility sometimes advance to assistant manager or management trainee jobs [G]eneral managers need prior restaurant experience, usually as assistant managers.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. A number of colleges and universities offer four-year programs in restaurant and hotel management or institutional food service management. For those not interested in pursuing a four-year degree, community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification.

Handbook, 2004-05 edition, at 44. What the *Handbook* makes clear is that, even if many food service managers have baccalaureate degrees in restaurant or food service management, there is ample opportunity to enter the occupation with credentials short of a four-year baccalaureate degree in a specific specialty. Accordingly, a food service manager does not meet the first alternative criterion of a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Regardless of whether the proffered position is viewed as an executive chef or a food service manager, therefore, it does not qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

As for the second alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record includes two internet job postings for executive chef positions – one by the Pfister Hotel, a 307-room establishment with three restaurants in downtown Milwaukee, and the other by Aramark, a company providing food, facility, and other management support services. The Pfister Hotel requires applicants to have a bachelor's degree; Aramark also requires a bachelor's degree, and states that “ideal candidates will possess a bachelor's degree or related culinary degree (preferably a CEC).” Neither of the job advertisements states that a bachelor's degree in a specific specialty is required. Moreover, two job postings are an insufficient number to demonstrate an industry norm with respect to the educational requirements of executive chefs. Thus, the job postings do not establish that a bachelor's degree requirement in a specific specialty is common to the petitioner's industry in parallel positions among similar organizations, as required for the proffered position to qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nor does the record establish that the position is so complex or unique that it can only be performed by an individual with a bachelor's degree in culinary arts or a related specialty, as required for the position to qualify as a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As for the third alternative criterion of a specialty occupation, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), counsel asserts that the petitioner already employs an executive chef with a bachelor's degree in culinary arts at its Long Island restaurant. The record includes W-2 statements for an individual employed by the petitioner at one of its Manhattan restaurants, not at its Long Island restaurant. More importantly, there is no documentation showing that individual's job title or that he has a bachelor's degree in culinary arts, as alleged by counsel. Thus, the record does not establish that the petitioner normally requires a bachelor's degree in a specific specialty or its equivalent for the position of executive chef, as required for the position to qualify as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the evidence of record does not establish that the duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree, as required for the position to meet the fourth alternative criterion of a specialty occupation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). Though the petitioner states that it has over 100 employees at its three restaurants and gross revenues of over \$6 million, the documentation of record does not substantiate those claims. Nor is there any evidence as to how much revenue is generated by each restaurant and how the employees are distributed among the restaurants. Thus, the record does not show the size and scale of operations of the restaurant where the petitioner will be employed. Simply going on record without supporting documentation does not satisfy the petitioner's burden of proof. *See 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)).

For the reasons discussed above, the record does not establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated in 8 C.F.R. § 214.2(h)(4)(iii)(A). The record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

ORDER: The appeal is dismissed. The petition is denied.