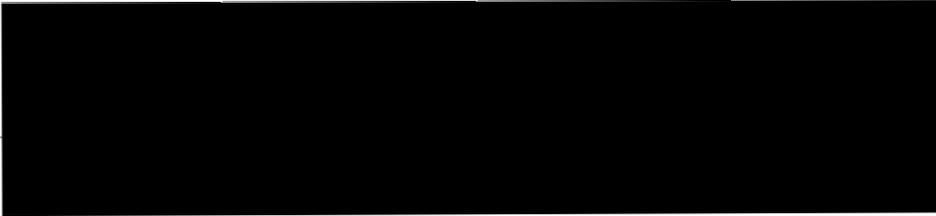


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FILE: SRC 04 230 51838 Office: TEXAS SERVICE CENTER Date: **MAR 28 2006**

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 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 Thai restaurant that 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 on the basis that the proffered position did not meet the definition of a specialty occupation.

Counsel submitted a timely Form I-290B on October 12, 2004 and indicated that a brief and/or additional evidence would be submitted to the AAO within 30 days. As of this date, however, the AAO has not received any additional evidence into the record. Therefore, the record is complete.

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) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the 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 Form I-129; the attachments accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary would perform duties that entail controlling costs and providing management experience as well as sole responsibility over kitchen activities and cooking dishes and all types of Thai specialty foods; making decisions about food items, personnel, operation costs, and food service decisions; supervising and training kitchen personnel in the proper methods of preparing authentic Thai cuisine; maintaining sanitary conditions in the kitchen and dining room areas; and devising special dishes and developing recipes. The International Education Council states that the beneficiary holds the equivalent of a bachelor of arts degree in hotel and restaurant management with a concentration in culinary arts.

The director stated that the proposed position resembles an executive chef as that occupation is described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree. The director found that the beneficiary's work experience, which the educational evaluation is based on, is not the educational equivalent of a bachelor's degree.

On appeal, counsel states that the proposed position, which is dissimilar from an executive chef, resembles a food service manager. Counsel references the *Handbook's* information about food service managers and states that it shows that this occupation requires a bachelor's degree in restaurant and food service management. Counsel refers to the *Occupational Information Network (O*NET OnLine)*, stating that it conveys that most food service managers require a bachelor's degree. Counsel asserts that the *Handbook* and *O*NET Online* indicate that most high-end jobs in the field of food service management require a bachelor's degree in the field or equivalent education, training, and experience.

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.

Counsel asserts that the proposed position is a specialty occupation because it is analogous to a food service manager, and that high-end jobs in the field of food service management require a bachelor's degree in the field or equivalent education, training, and experience. The educational evaluation in the record states:

[I]t is my experience and understanding that the education prerequisite to most managerial-level positions in specialized, high-standard hotel and restaurant corporations in the United States is almost always a four-year college degree in a related field, and in many cases a master's degree.

The *Handbook's* information does not support counsel's assertion or the above statement in the educational evaluation. With regard to the training and qualifications required of a food service manager, the *Handbook* conveys that employers do not require food service managers to have a baccalaureate degree in a specific specialty. The *Handbook* also does not report that high-end jobs in food service management require a bachelor's degree in a specific specialty; it states:

Experience in the food services industry, whether as a full-time waiter or waitress or as a part-time or seasonal counter attendant, is essential training for a food services manager. Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs which require internships and real-life experience to graduate. Some 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 experience, interest and aptitude. Many 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. Executive chefs need extensive experience working as chefs, and general 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. Almost 1,000 colleges and universities offer 4-year programs in restaurant and hospitality management or institutional food service management; a growing number of university programs offer graduate degrees in hospitality management or similar fields. For those not interested in pursuing a 4-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. Both 2- and 4-year programs provide instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science. . . .

To establish that a position qualifies as a specialty occupation, the petitioner must do more than demonstrate that a baccalaureate degree is required for the proposed position. The petitioner must show that a baccalaureate degree in a specific academic field that is directly related to the proffered position is required for the position. Here, the *Handbook* conveys that employers do not require food service managers to have a baccalaureate degree in a specific specialty. Furthermore, although colleges and universities offer a baccalaureate degree in a hospitality management program and in restaurant and food service management, this does not mean that employers require a food service manager to hold such a degree. Thus, 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 submitted no evidence to satisfy the first alternative prong of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2): that a degree requirement is common to the industry in parallel positions among similar organizations.

To establish the second alternative prong of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner must show that the proposed position is so complex or unique that it can be performed only by an individual with a bachelor's degree in a specific specialty. As discussed earlier, the *Handbook* reveals that the proposed position resembles a food service manager, which is an occupation that does not require a baccalaureate degree in a specific specialty. Consequently, the petitioner fails to establish the second alternative prong of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) requires that the petitioner establish a past practice of normally requiring a degree or its equivalent for the position. The petitioner submitted no evidence to establish this criterion.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires the petitioner to 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* discloses that the proposed position is similar to that of a food service manager, which is an occupation that does not require a baccalaureate degree in a specific specialty. As such, the petitioner fails to establish this last 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 on this ground.

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.

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