

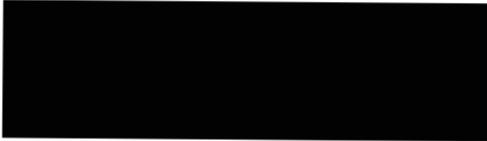


U.S. Department of Justice

Immigration and Naturalization Service

D7

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 99 142 54097 Office: CALIFORNIA SERVICE CENTER Date:

JAN 18 2001

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant. It seeks to employ the beneficiary temporarily in the United States, in a capacity involving specialized knowledge, as a specialty cook for its new business. The director determined that the petitioner had not established that the beneficiary has been or will be employed in a capacity involving specialized knowledge.

On appeal, counsel argues that the beneficiary does have specialized knowledge.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization.

8 C.F.R. 214.2 (1)(3)(vi) states that if the petition indicates that the beneficiary is coming to the United States in a specialized knowledge capacity to open or to be employed in a new office, the petitioner shall submit evidence that:

- A) Sufficient physical premises to house the new office have been secured;
- B) The business entity in the United States is or will be a qualifying organization as defined in paragraph (1)(1)(ii)(G) of this section; and
- C) The petitioner has the financial ability to remunerate the beneficiary and commence doing business in the United States.

The U.S. petitioner states that it was established in 1999 and that it is a joint venture between the petitioner and [REDACTED] located in India. The petitioner seeks authorization to employ the beneficiary for three years at an annual salary of \$25,000.

At issue in this proceeding is whether the beneficiary has been and will be employed in a capacity involving specialized knowledge.

Section 214(c)(2)(B) of the Act, 8 U.S.C. 1184(c)(2)(B), provides:

(A)n alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

In a letter dated April 15, 1999, the petitioner describes the beneficiary's duties in the proposed position in the U.S. as follows:

The transferee will hold a specialized knowledge position in the U.S. restaurant. [The beneficiary] will be responsible for cooking, food preparation, storage and serving according to the South Indian tradition. [The beneficiary's] duties will also include selecting the right ingredients, timely preparation of the various specialty dishes, menu planning, purchasing exotic ingredients, preparation of unique recipes, development of a master recipe reference book and handling large outside catering orders. In addition, [the beneficiary] will oversee and manage the other specialty cooks as well as train other cooks in the preparation of the specialty dishes so once the transferee has to return to India, there will be individuals sufficiently trained to prepare and cook the novel and specialty dishes of South Indian Vegetarian cuisine.

In the same letter, the petitioner describes the beneficiary's duties in the foreign position as follows:

[The beneficiary] has been an employee of our organization as a specialty cook and manager since 1992. Currently, [the beneficiary's] duties are managerial and specialized knowledge, including handling the day to day management of one of [REDACTED] catering staffs, procurement of food and beverages for the restaurant, and personnel management and training in the preparation of specialty dishes, with emphasis on the group of specialty chefs in the restaurant. He is also responsible for public relations, customer service, safety and cleanliness of the [REDACTED] restaurants.

On appeal, counsel argues that:

The beneficiary is a specialty cook that clearly has special knowledge of the petitioner's restaurant's product (South Indian Udipi-style vegetarian cuisine), service (serving South Indian Udipi-style vegetarian cuisine prepared in a certain way), and techniques (Purchasing exotic ingredients, menu planning,

preparation of unique recipes, selecting ingredients for different dishes, preparation of the various specialty dishes and cooking South Indian Udipi-style vegetarian cuisine). The beneficiary currently works in a South Indian Udipi-style vegetarian restaurant owned by [REDACTED] Restaurants in Chennai, India where he does all of the above.

Upon review, the record is not persuasive that the beneficiary's knowledge of the preparation of the petitioner's cuisine constitutes specialized knowledge as that term is used in the Act. The petitioner has not demonstrated that the beneficiary's cooking techniques are so distinctive and out of the ordinary that its implementation requires specialized knowledge. The petitioner has not demonstrated that its food preparation techniques are not a task that any restaurant worker from South India without specialized knowledge of the petitioning entity's product, processes, or procedures could be trained to perform as competently as the beneficiary.

The evidence contained in the record is not sufficient in demonstrating that the beneficiary has specialized knowledge or has been and will be employed in a capacity involving specialized knowledge. The record contains no comprehensive description of the beneficiary's duties that would demonstrate that he has unusual, advanced, or special knowledge of the petitioning organization. The record merely suggests that the knowledge possessed by the beneficiary is a skill in ethnic food preparation, not a special knowledge of the petitioner's product, processes, or procedures. The record merely suggests that the beneficiary is an excellent specialty cook. This is not sufficient evidence of special or advanced knowledge. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proof remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.