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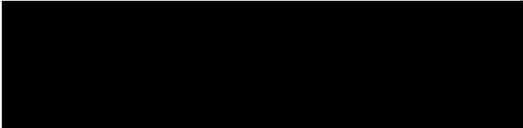
NOV 21 2002

IN RE: Petitioner:
Beneficiary:



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:



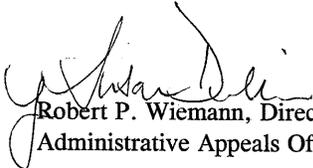
INSTRUCTIONS:

This is the decision 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.

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 that 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 Citizenship and Immigration Services (CIS) 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a vegetarian restaurant specializing in traditional Indian curry cuisine. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely as an executive chef. The director determined that the petitioner had not established that the beneficiary had been employed or would be employed in a capacity that involves specialized knowledge.

On appeal, counsel for the petitioner submits a brief and additional evidence. Counsel asserts that the position offered is a specialized knowledge position.

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 and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulations at 8 C.F.R. § 214.2(1)(3) state that an individual petition filed on Form I-129 shall be accompanied by:

(i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (1)(1)(ii)(G) of this section.

(ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

(iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization with the three years preceding the filing of the petition.

According to the evidence submitted, the petitioner is a branch of Hotel Saravana Bhavan, Inc., located in India. The petitioner was incorporated in 2001 and claims to be a restaurant chain offering

traditional curry cuisine from North and South India. The petitioner declared one employee and an estimated \$1,000,000 in gross annual income. The petitioner seeks the beneficiary's services as an executive chef for a period of three years, at an annual salary of \$30,000.¹

At issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge, and has been and will be employed in a specialized knowledge capacity.

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

For purposes of section 101(a)(15)(L) [of the Act, 8 U.S.C. § 1101 (a)(15)(L)], an 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.

The regulation at 8 C.F.R. § 214.2(1)(1)(ii)(D) defines "specialized knowledge" as:

Specialized knowledge means special knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

When examining the specialized knowledge capacity of the beneficiary, Citizenship and Immigration Services (CIS) will look first to the petitioner's description of the job duties. See 8 C.F.R. § 214.2(1)(3)(ii).

The petitioner's Form I-129 described the beneficiary's job duties during the past three years as:

Provide high quality vegetarian food and service to customers in all in-door and out-door catering services, requiring the peculiar preparations involved in South Indian food preparation as follows: Preparation of all South Indian snacks and masalas; Preparation of dough overnight for certain varieties of snacks; Grinding and

¹ The AAO notes that, when filing the petition, the petitioner listed the beneficiary's job title as "Executive Chef, South Indian Curries" in the I-140 petition. Later, the petitioner changed the title to "production manager."

powdering of masalas for preparation of other dishes; Preparation of all varieties of chutneys (curry's) for dishes and snacks; Deciding on the different combination of snacks for the day; Preparing flour, batter, stuffing ready for the preparation of dishes/snacks; Preparation of custom snacks per guest order; Prepare snacks either fried or steamed as tawa; Ensure proper planning per the day-to-day sales; Participate in planning menus; Mentor junior staff (chefs) for effective food preparation habits; Observe disciplines and oversee food service with special attention given to the presentation, service, production and merchandising of food prepared; Maintain inventory for food, ingredients, supplies and equipment; Take responsibility for food, equipment and supply ordering, using seasoning products, new food trends and incorporating them into menu concept development; Interact with customers and managers on special event planning and developing custom menus as required; Explore ways to lower cost of ingredients and thus food costs, inventory control and work within financial budgets as specified by the management; Responsible for the hands-on production work as needed, staff training and development, assisting in hiring and supervising production staff; interact with service managers on buffet set-ups and displays, ensuring the highest quality of food production, standards, presentation and techniques; Deliver food in a timely manner; Maintain the highest levels of sanitation and cleanliness in all production areas; Maintain food quality and food presentation in banquets, as well the productivity; man control; Maintain effective communication with the kitchen, steward and service staff; Maintain proper storage, packing and rotation in food store and refrigerators; Catering work at client/customer's premises according to client/customer's requirements; Guard company proprietary and standardized recipes.

In a letter of support, dated July 27, 2001, the petitioner lists the beneficiary's proposed job duties as:

1. Provide high quality vegetarian food and service to customers in all in-door and out-door catering services, requiring the peculiar preparation involved in South Indian food preparation as follows:
2. Preparation of all South Indian snacks and masalas
3. Preparation of dough overnight for certain varieties of snacks
4. Grinding and powdering of masalas for preparation of other dishes
5. Preparation of all varieties of chutneys (curry's) for dishes and snacks

6. Deciding on the different combination of snacks for the day
7. Preparing flour, batter, stuffing ready for the preparation of dishes/snacks
8. Preparation of custom snacks per guest order
9. Prepare snacks either fried or steamed as tawa
10. Ensure proper planning per the day-to-day sales
11. Participate in planning menus
12. Mentor junior staff (chefs) for effective food preparation habits
13. Observe discipline and oversee food service with special attention given to the presentation, service, production and merchandising of food prepared
14. Maintain inventory for food, ingredients, supplies and equipment
15. Take responsibility for food, equipment and supply ordering, using seasoning products, new food trends and incorporating them into menu concept development
16. Interact with customers and managers on special event planning and developing custom menus as required
17. Explore ways to lower cost of ingredients and thus food costs, inventory control and work within financial budgets as specified by the management
18. Responsible for the hands-on production work as needed, staff training and development, assisting in hiring and supervising production staff
19. Interact with service managers on buffet set-ups and displays, ensuring the highest quality of food production, standards, presentation and techniques
20. Deliver food in a timely manner
21. Maintain the highest levels of sanitation and cleanliness in all production areas
22. Maintain food quality and food presentation in banquets, as well the productivity; man control.
23. Maintain effective communication with the kitchen, steward and service staff
24. Maintain proper storage, packing and rotation in food store and refrigerators
25. Catering work at client/customer's premises according to client/customer's requirements.
26. Guard company proprietary and standardized recipes

In an undated service certificate, the beneficiary's acknowledged area of specialization includes: "An experienced hand (Over 18 years) in the preparation of all varieties of South Indian Cuisine, innovative in cooking out [sic] new dishes for changes in menus every week. Experienced as a kitchen manager, can handle the entire kitchen right from purchasing to food production."

An organizational chart of the foreign entity depicts the production managers as being superior to the South Indian production center staff and subordinate to the kitchen managers who

are subordinate to the chief managers.

In a letter dated December 29, 1997, the managing partner of the foreign entity expresses the restaurant's gratitude towards the beneficiary by stating that the entity is pleased that the beneficiary has expanded its menu of spicy curries to include the bitter gourd fry, panner pasands, and sabzi. He goes on to say that customers have expressed delight in the additions and that the restaurant exists to serve the customer.

In response to the director's request for additional evidence counsel asserted that the beneficiary has undergone rigorous training in the preparation of numerous dishes and has become a specialist in curries and spices. He continued by stating that the beneficiary has created, innovated and diversified various curries. Counsel also stated that the beneficiary has created specialty curry dishes that have been added to all branch restaurant menus.

The director determined that the type of knowledge and skills that the beneficiary had was typical of the knowledge that all employees who work in similar restaurants must have to perform their duties. The director concluded that the duties described by the petitioner did not constitute "specialized knowledge" as the term is defined in the regulations. The director went on to say that the record contained no comprehensive description of the beneficiary's duties indicating that they are so unique and out of the ordinary that their implementation required specialized knowledge. The director further maintained that the record was not persuasive that the beneficiary's familiarity with the company's operating standards, policies and unique recipes was so distinctive and uncommon that it could only be achieved by someone possessing an advanced level of knowledge of the processes and procedures of the petitioning organization. He concluded by stating that the petitioner had not demonstrated that the beneficiary's methods of preparing and cooking South Indian vegetarian food, pastries and breads were not a task that any worker without specialized knowledge could be trained to perform as competently as the beneficiary.

On appeal, counsel contends that the director's decision was erroneous and submits a brief and evidence in support of his contention. Counsel further asserts that the beneficiary possesses specialized knowledge as a production manager. See Note 1. Counsel, in reference to the beneficiary's job duties, states that "[W]hat appeared as the main job duties of the job position upon which the denial is now predicated is actually a list of some of the programs on which training will be conducted." Counsel continues by stating that the beneficiary, as a production manager, will establish a new branch of the Indian restaurant, train personnel, order needed equipment, explore new food trends and incorporate them into a menu concept development. Counsel goes on to say that the beneficiary will also be responsible for controlling cost, planning special events, managing inventory,

carrying out staff training and development, hiring and supervising production staff, and guarding the company's proprietary recipes. There has been no documentary evidence submitted to substantiate the newly described job duties and responsibilities stated by counsel. On appeal the petitioner also submits an organizational chart for the U.S. entity that depicts the production managers as superior to the production center staff and subordinate to the restaurant manager. The petitioner furthers submits letters addressed to the beneficiary in regards to accommodation, recognition, instruction, and appointment to a production manager's position in the United States.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary has been employed in a specialized knowledge capacity or that the beneficiary is to perform duties involving specialized knowledge in the proffered position pursuant to 8 C.F.R. § 214.2(1)(1)(ii)(D). The value of the beneficiary's skills is not in question. The petitioner has documented that the beneficiary is a highly trained chef that specializes in traditional South Indian cooking techniques. On appeal, however, the petition must be examined to determine if the beneficiary's duties involve specialized knowledge, defined as an advanced level of knowledge of the processes and procedures of the petitioning company. The plain meaning of the term specialized knowledge implies that which is a significantly beyond the average in a given field or occupation. A scarce skill, such as preparing traditional south Indian specialties, does not necessarily establish that the skill originates from specialized knowledge.

The AAO acknowledges that the petitioner's December 29, 1997 letter asserts that the beneficiary has demonstrated specialized knowledge in creating specialty dishes. However, but for the reference to "bitter gourd fry, panner pasands, and sabzi," there is only vague mention of dishes created by the beneficiary and adopted by the restaurant as unique. In addition, the petitioner has failed to submit sufficient evidence to show how the dishes created by the beneficiary qualified as unique in relation to other South Indian foods. Furthermore, the evidence presented does not explain or document how the beneficiary's job as a chef and trainer is different from a first-line supervisor's job at any other chain of moderately priced restaurants. Going on record without supporting documentary evidence is insufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Additionally, counsel's assertions do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's products or their application in the United States and international markets as

claimed. The beneficiary's preparation of South Indian dishes and snacks, his planning daily menus, his supervising and training of the production staff, and his hygienic practices may require professional culinary skill, but not to the extent of meeting the definition of specialized knowledge. There is no evidence to show that the beneficiary's services are essential for the successful operation of the petitioner's business. As held in *Matter of Penner*, 18 I&N Dec.49, 54 (Comm. 1982), "petitions may be approved for persons with specialized knowledge, *not for skilled workers.*" The beneficiary's knowledge of the foreign entity's operations does not constitute special or advanced knowledge. Counsel argues that the beneficiary's training and experience have given him knowledge that is specialized because it is specific to the petitioning entity. However, job training at any restaurant teaches the procedures of that establishment.

Counsel also contends that the beneficiary possesses specialized knowledge in that he possesses knowledge that is valuable to the employer's competitive position in the market place; or can normally be gained only through prior experience with that employer. A restaurant may benefit from the employment of a skilled chef, but that does not make a skilled worker eligible for classification as an alien employed in a specialized knowledge capacity.

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the beneficiary possesses the skill required to work as a supervisory chef, not one whom possesses special knowledge of the petitioner's processes and procedures. Accordingly, the petitioner has not established that the beneficiary has been employed in a specialized knowledge position or that the beneficiary would be employed in a position involving specialized knowledge.

In addition, counsel's assertions that the CIS has misinterpreted the definitions of specialized knowledge are not persuasive. The courts have previously held that the legislative history for the term "specialized knowledge" provides ample support for a restrictive interpretation of the term. In *1756, Inc. v. Attorney General*, the court stated that, "[I]n light of Congress' intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to "key personnel" and executives." 745 F.Supp. 9,16 (D.D.C. 1990). The record does not support a finding that the beneficiary in this case has specialized knowledge and also should be considered "key personnel." The beneficiary in this case appears to be a skilled Indian chef and supervisor. The weight of the

record indicates that the beneficiary in this case is skilled in making the petitioner's Indian vegetarian curry dishes, pastries, breads, and snacks, but not to the extent of meeting the definition of specialized knowledge.

Furthermore, the evidence submitted by the petitioner fails to establish that the beneficiary will be employed by the U.S. entity in a specialized knowledge capacity. Evidence submitted demonstrates that the beneficiary will be active in performing the day-to-day services and providing culinary products for the U.S. entity. Responsibilities described as training personnel, controlling costs, planning special events, managing inventory, guarding company proprietary recipes, hiring and supervising production staff, providing vegetarian food and services to customers, preparing South Indian snacks and dough, and maintaining food quality are without any context in which to conclude that such duties require specialized knowledge of the U.S. entities product and its application in international markets. Neither does this evidence show that the beneficiary has an advanced level of knowledge of processes and procedures of the U.S. company sufficient to warrant classification as one who possesses specialized knowledge. To the contrary, the petitioner's evidence demonstrates that the beneficiary will be responsible for preparing menu items for the restaurant and supervising a subordinate staff. Such duties do not require an advanced level of knowledge or expertise in the organization's processes and procedures.

In conclusion, the record does not establish that the beneficiary has been or will be employed in a specialized knowledge capacity. The record is not persuasive in showing 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 failed to demonstrate that its preparation techniques are so distinctive and uncommon that only someone possessing an advanced level of knowledge of the processes and procedures of the petitioning restaurant can achieve them. The knowledge possessed by the beneficiary is a skill in specialty food preparation, not a special knowledge of the petitioner's product, processes, or procedures.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Republic of Transkei v. INS*, 923 F.2d 175,178 (D.C. Cir. 1991) (holding burden is on the petitioner to provide documentation); *Ikea US, Inc. v. US Dept of Justice, INS*, 48 F.Supp.2d 22, (D.D.C. 1999) 24-5 (requiring the petitioner to provide adequate documentation). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.