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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE: EAC 02 127 51009 Office: VERMONT SERVICE CENTER

Date: OCT 22 2004

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

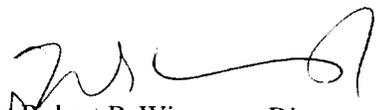
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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

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prevent [Redacted] [Redacted]
invasion of [Redacted] privacy

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. ¹

The petitioner is a restaurant specializing in traditional Thai cuisine. It seeks authorization to employ the beneficiary temporarily in the United States in a capacity involving specialized knowledge, namely as a Thai 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, the petitioner disagrees with the director's decision and submits a brief in support of the petition. The petitioner asserts that the position offered is a specialized knowledge position and that the beneficiary possesses the requisite specialized knowledge in compliance with the intercompany transferee regulations.

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 regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) states 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.

¹ Although the petitioner filed this petition for two beneficiaries, an I-129 petition may only be filed for a single beneficiary. See generally 8 C.F.R. § 214.2(l); instructions to form I-129 L. Accordingly, this decision will address the first beneficiary listed on the form.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended serves in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The petitioner was incorporated in 2002 and claims to be a subsidiary of Kee Racha, Co., Ltd., located in Thailand. The petitioner declared a projected seven employees. The petitioner seeks the beneficiary's services in a specialized knowledge capacity, namely Thai executive chef for a period of one year.

The 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(l)(1)(ii)(D) defines "specialized knowledge":

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.

The petitioner stated in the petition that the beneficiary had been employed by the foreign entity from October 1996 to the present as a Thai chef. The petitioner described the beneficiary's past job titles as Sous Chef, Chef, and Executive Chef. The petitioner further stated that the beneficiary will manage all aspects of the food service of the Thai restaurant in the United States, including staff training and menu planning. The petitioner also stated that the beneficiary has received university certificates from Dusit Thani College and Chandrakasem State College, and has almost six years of on-the-job training with the foreign entity.

In a letter written in support of the initial petition, dated February 22, 2002, the petitioner described the beneficiary's current and proposed duties as follows:

- Coordinating activities of and directing indoctrination and training of chefs and other kitchen workers engaged in preparing and cooking foods to ensure an efficient and profitable food service and to ensure that the standards of the Racha restaurants for authenticity, quality, and presentation are met.
- Planning or participating in planning menus and utilization of food surpluses and leftovers, taking into account probable number of guests, marketing conditions, popularity of various dishes, and novelty of menu.

- Estimating food consumption, and purchasing or ordering foodstuffs and kitchen supplies, all in accordance with company guidelines.
- Reviewing menus, analyzing recipes (in the original Thai), determining food, labor, and overhead costs, and assigning or consulting on the assignment of prices to menu items.
- Directing food apportionment policy to control costs.
- Supervising cooking and other kitchen personnel and coordinating their assignments to ensure economical and timely food production.
- Observing methods of food preparation and cooking, sizes of portions, and garnishing of foods to ensure food is prepared in a manner consistent with the traditional preparation and presentation of authentic Thai cuisine.
- Testing cooked foods by tasting and smelling them.
- Devising special dishes and developing and on the recipes [sic].
- Hiring and discharging kitchen employees.
- Familiarizing newly hired chefs and cooks with company practices, techniques, and procedures in the restaurant kitchen and overseeing training of cooks' apprentices.
- Instructing and demonstrating to newly hired cooks and chefs, as necessary, such traditional Thai culinary arts as *Kasarugpakpulamai*, traditional fruit and vegetable carving in the style of the Royal Thai Court and the correct preparation of Thai regional cuisine.
- Maintaining time and payroll records in accordance with company systems and procedures.
- Establishing and enforcing nutrition and sanitation standards for restaurant.
- Supervising or cooperating with cooks, bus people and waiters/waitresses in matters pertaining to kitchen, pantry and storeroom and assuring that prescribed company records and systems are in use.
- Consulting with management on the preparation and standardization of operations and training manuals.

The petitioner further stated that the beneficiary received company training as follows:

1. Six months of supervised and regularly evaluated orientation and prep. Chef training in the specific systems, procedures, and operations of the Racha Company under a qualified company sous chef.
2. One year of supervised and regularly evaluated primary sous chef training in the specific systems, procedures, and operations of the Racha Company under a qualified company chef and executive chef.
3. One year of supervised and regularly evaluated secondary sous chef training in the specific systems, procedures, and operations of the Racha Company under qualified company chef and executive chef.
4. Two years of supervised and regularly evaluated chef training in the specific systems, procedures, and operations of the Racha Company under a qualified company executive chef.

5. Six months plus as an executive chef under the supervision of the General Manager and with advanced training at the State College and culinary arts college level.

The petitioner also provided a detailed listing of topics covered during each training session.

The petitioner submitted a copy of the beneficiary's resume, which indicated that the beneficiary received a Certificate of Achievement in Thai Culinary Arts from the Dusit Thani College, and a Diploma in Thai Food Preparation from the Chandrakasem State College. The beneficiary stated in his resume that he had received First Prize Thai Food Category from International Food Festival in 1999, and Employee of the Year Award, from Racha Restaurant in 1996, 1998, and 2001. The beneficiary further stated in his resume that he had been trained by the foreign entity in all levels of food preparation from preparation chef through executive chef, 1996 to the present. The resume further demonstrated the beneficiary's work history to include, in part, Preparation Chef, 1996, Sous Chef 2, 1997, Sous Chef 1, 1998, Chef, 1999, and Executive Chef, 2001 to the present.

The petitioner submitted as evidence a copy of the beneficiary's Diploma from the Culinary Arts Program in recognition of the completion of the course in Authentic Thai Food Preparation, dated January 8, 2002. The petitioner also submitted a copy of a Letter of Certification from Dusit Thani College in recognition of passing the occupational testing in cooking theory, practical skills, and fruit and vegetable carving, dated 2002. The petitioner submitted copies of certificates received by the beneficiary for Employee of the Year for 1996, 1998, and 2001, and for First Prize of Authentic Thai Food Award in 1999.

In a letter of recommendation and support, dated January 29, 2002, an assistant professor from the Rehabhat Institute Chandrakasem stated that he was familiar with the training received by the beneficiary and that in his opinion the beneficiary is a "well qualified expert in the field of Thai culinary arts."

In a letter of support written by a Thai restaurant owner in the United States, he states that he has known the beneficiary's work since 1996 and is acquainted with his expertise in preparing authentic Thai cuisine. He further states that the beneficiary is an excellent chef.

In response to the director's request for additional evidence, the petitioner stated that the beneficiary's knowledge is uncommon, noteworthy, or distinguished by some unusual quality and is not generally known by practitioners in the beneficiary's field of endeavor. The evidence includes:

1. The beneficiary's resume
2. The beneficiary's six year training record
3. The beneficiary's job description
4. A citation from "It Rains Fish" which discusses how Thai cooks learn by experience rather than from attending culinary schools
5. Copies of the beneficiary's diplomas and certificates of achievement
6. Letters of support and recommendation from professor and restrateur, [REDACTED]
7. The beneficiary's award certificates [REDACTED]
8. A letter of support and recommendation from [REDACTED] owner of a U.S. Thai restaurant
9. Comments made by [REDACTED] an expert on Thai cooking
10. Excerpts from the new venture's business plan of the White Jasmine Restaurant
11. Documentation from the National Restaurant Association's *Ethnic Cuisines II*
12. A letter of support and recommendation from [REDACTED] a partner and major investor in the U.S. entity

The petitioner resubmits copies of the beneficiary's resume, the Chef's training program outline, Executive Chefs' duties description, the Culinary Arts Program Certificate, the Letter of Certification from Dusit Thani College, letters of recommendation, Employee of the Year Awards, and Authentic Thai Food Award. The petitioner also submitted copies of a letter of recommendation from a restaurant professional, dated May 10, 2002, portions of a new venture's business plan, and statistical data in relation to the use of ethnic cuisines and ingredients.

The director denied the petition after determining that the petitioner had not established that the beneficiary would be employed in a specialized knowledge position.

On appeal, the petitioner disagrees with the director's decision and asserts that the beneficiary's position of Thai Executive Chef is a specialized knowledge position. The petitioner further contends that the position offered in the United States is a specialized knowledge position and that the evidence submitted substantiates its claims.

The petitioner's assertions are not persuasive. The record does not establish that the beneficiary has advanced or special knowledge of the petitioner's product, services or its application in the United States and international markets as claimed. The beneficiary's origins in Thailand and his employment experience with the foreign entity may have given him knowledge that is useful in performing his duties as a chef, but it cannot be said that these skills constitute special or advanced knowledge. The beneficiary's native knowledge of a culture and culinary history is not, by itself, specialized knowledge. Nor does training as a chef necessitate specialized knowledge. In fact, the beneficiary's knowledge of the restaurant's products, or of the processes and procedures of the foreign entity, has not been shown to be substantially different from, or advanced in relation to, that of any Thai chef of any restaurant that provides Thai cuisine to customers throughout the world.

On review, the record as presently constituted is not persuasive in demonstrating that the beneficiary is to perform duties involving specialized knowledge in the proffered position. To the contrary, the record reflects that the beneficiary will perform duties related to the overall management, planning, and marketing of the restaurant in the United States, which does not entail the use of specialized knowledge skills. Based upon the evidence presented, the beneficiary will be in charge of operations of the restaurant, similar to that of any business operation in the United States. There has been no evidence presented that demonstrates that it will require unique talent or advanced skills or knowledge to start-up the restaurant business in the United States and to assure its continued operations. As is stated in the record, the beneficiary's job duties will entail coordinating activities, menu planning, estimating food consumption, hiring, training and supervising cooks, maintaining time and payroll records, consulting with management, and maintaining hygienic practices while preparing Thai food. The letters of recommendation and acknowledgement reflect personal experiences the authors have had with the beneficiary, and do not distinguish the beneficiary from other Thai chefs that may be equally suited for this position. The beneficiary's duties, as explained, do not qualify under the statutory or regulatory definitions of specialized knowledge.

The petitioner asserts 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.

The petitioner further 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 conclusion, the record does not establish that the beneficiary has been employed in a specialized knowledge capacity or that the beneficiary is to perform duties primarily involving specialized knowledge skills for the U.S. entity. 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 failed to demonstrate that its preparation techniques of devising special dishes and preparing some 300 Thai menu items are so distinctive and uncommon that they can be achieved only by someone possessing an advanced level of knowledge of the processes and procedures of the petitioning restaurant. The record demonstrates that the majority of the beneficiary's duties will involve the management of the restaurant and its personnel, which does not require the use of specialized knowledge. Neither the culinary articles, business plans, statistical data, or other testimonials submitted directly address how the beneficiary's on the job experience and training received is so unusual and uncommon as to distinguish him from that of any other Thai chef. 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.

Based upon evidence contained in the record, the beneficiary does not possess the level of skill necessary to qualify him as possessing or utilizing specialized knowledge skills to perform his day-to-day job duties. In *Matter of Penner*, the Commissioner discussed the legislative intent behind the creation of the specialized knowledge category. 18 I&N Dec. 49 (Comm. 1982). The decision noted that the 1970 House Report, H.R. No. 91-851, stated that the number of admissions under the L-1 classification "will not be large" and that "[t]he class of persons eligible for such nonimmigrant visas is narrowly drawn and will be carefully regulated by the Immigration and Naturalization Service." *Id.* at 51. The decision further noted that the House Report was silent on the subject of specialized knowledge, but that during the course of the sub-committee hearings on the bill, the Chairman specifically questioned witnesses on the level of skill necessary to qualify under the proposed "L" category. In response to the Chairman's questions, various witnesses responded that they understood the legislation would allow "high-level people," "experts," individuals with "unique" skills, and that it would not include "lower categories" of workers or "skilled craft workers." *Matter of Penner, id.* at 50 (citing H.R. Subcomm. No. 1 of the Jud. Comm., Immigration Act of 1970: Hearings on H.R. 445, 91st Cong. 210, 218, 223, 240, 248 (November 12, 1969)).

Reviewing the Congressional record, the Commissioner concluded in *Matter of Penner* that an expansive reading of the specialized knowledge provision, such that it would include skilled workers and technicians, is not warranted. The Commissioner emphasized that that the specialized knowledge worker classification was not intended for "all employees with any level of specialized knowledge." *Matter of Penner*, 18 I&N Dec. at 53. Or, as noted in *Matter of Colley*, "[m]ost employees today are specialists and have been trained and given specialized knowledge. However, in view of the House Report, it can not be concluded that all employees with specialized knowledge or performing highly technical duties are eligible for classification as intracompany transferees." 18 I&N Dec. 117, 119 (Comm. 1981). According to *Matter of Penner*, "[s]uch a conclusion would permit extremely large numbers of persons to qualify for the 'L-1' visa" rather than the "key personnel" that Congress specifically intended. 18 I&N Dec. at 53; see also, *1756, Inc.*, 745 F. Supp. at 15 (concluding that Congress did not intend for the specialized knowledge capacity to extend all employees with specialized knowledge, but rather to "key personnel" and "executives.") Based upon a review of the record, it does not appear that the beneficiary can be classified as "key personnel" for purposes of intracompany transferee classification.

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 chef, not an advanced level of expertise that demonstrates special knowledge of the petitioner's processes and procedures. Accordingly, the petitioner has not established that the beneficiary would be employed in a position requiring specialized knowledge.

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.