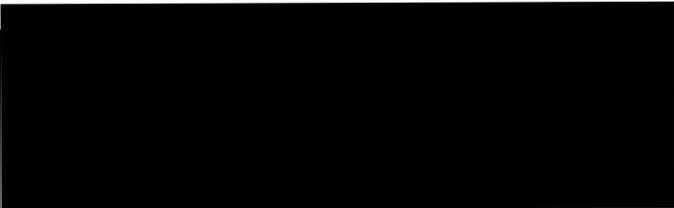




U.S. Citizenship  
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Services

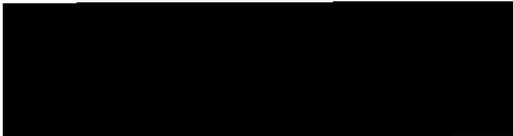
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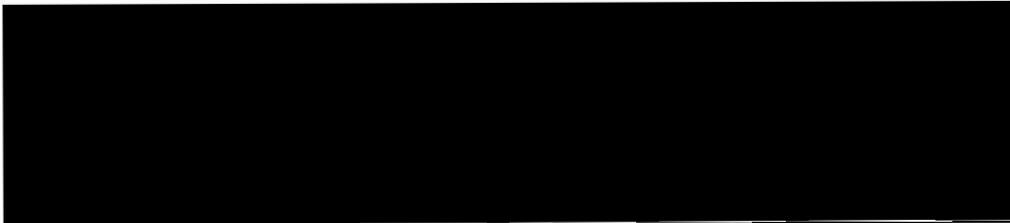
FILE: EAC 04 258 52822 Office: VERMONT SERVICE CENTER Date: **MAR 28 2006**

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 catering company providing specialty foods. It 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 because the proffered position is not a specialty occupation. On appeal, counsel submits additional evidence and a brief.

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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the

director's denial letter; and (7) the Form I-290 and the petitioner's letter. 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 documents accompanying the Form I-129; and the petitioner's support letter. According to this evidence, the beneficiary's duties entail: planning menus and the use of surplus food and leftovers while considering the number of guests, marketing conditions, and the dishes' popularity; estimating food consumption and purchasing the required food stuffs and kitchen supplies; determining food, labor, and overhead costs and pricing products; sizing portions and cooking and garnishing food, ensuring that it is prepared properly; devising special foods and recipes; testing cooked foods through taste and smell; overseeing employees and support staff; and coordinating operations to ensure an efficient and profitable food service. The petitioner contends that the proposed position requires a baccalaureate degree in culinary arts.

In her denial letter, the director referenced the Department of Labor's (DOL) *Occupational Outlook Handbook's* (the *Handbook*) description of an executive chef. The director stated that a petition is adjudicated based on the facts at the time the petition is filed. Thus, the director stated that the beneficiary, as the sole employee when the petition was filed, would be responsible for all aspects of on-site meal preparation. In light of this, the director determined that it is not accurate to consider the beneficiary as a head chef, as she will be the only person preparing and cooking meals. The director found that the *Handbook* does not convey that a bachelor's degree in culinary studies is a universal prerequisite for the proposed position. The nature and duties of the proposed position do not involve the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty, the director stated.

On appeal, the petitioner states that its business is more specialized than a restaurant or a catering company, as it requires the beneficiary to constantly change cooking styles, providing highly specialized and personalized meals. The petitioner states that the beneficiary will modify recipes and will scale service from one person to fifty. A bachelor's degree in culinary arts is required for this occupation, the petitioner asserts. Counsel states that the *Handbook* describes chef and cook positions in the context of a traditional restaurant and hotel, and the food service industry. According to counsel, the petitioner's specialty catering business differs from those business models and from the general catering model. However, counsel does state that the duties of an executive chef/head chef as depicted in the *Handbook* are similar to those of the beneficiary. Counsel asserts that the catering industry operates with lean staffing requirements, filling positions on a short-term, as-needed basis. According to counsel, because the personal chef and personal meal market tailors meals to the client's needs, these chefs require more knowledge and expertise than most chefs employed in restaurant and catering businesses. Switching to different cooking styles and substituting ingredients to meet the needs of clients requires knowledge attained through a bachelor's degree in culinary arts, counsel contends.

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 *Handbook* describes an executive chef as one who coordinates the work of the kitchen staff and directs the preparation of meals. An executive chef determines serving sizes, plans menus, orders food supplies, and oversees kitchen operations to ensure uniform quality and presentation of meals. The *Handbook* conveys that an executive chef may be "in charge of all food service operations and also may supervise the many kitchens of a hotel, restaurant group, or corporate dining operation." Counsel claims that the *Handbook's* information does not relate to a personal chef. Counsel's claim is undermined by the *Handbook*, which relays that "[s]ome chefs and cooks go into business as caterers or personal chefs or they open their own restaurant." Thus, the *Handbook's* information about executive chefs encompasses personal chefs and caterers.

An executive chef does not require a baccalaureate degree in a specific specialty. According to the *Handbook*, executive chefs who work in fine restaurants require many years of training and experience. Some chefs start their training in high school or post-high school vocational programs. Others receive formal training through independent cooking schools, professional culinary institutes, or 2- or 4-year college degree programs in hospitality or culinary arts; some large hotels and restaurants operate their own training and job-placement programs.

Based on the evidence in the record and the *Handbook's* information about executive chefs, including personal chefs and caterers, 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 establish the first alternative prong 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 organizations that are similar to the petitioner.

To establish the second alternative prong 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 baccalaureate degree in a specific specialty. As discussed earlier, the *Handbook* reveals that the proposed position resembles an executive chef (including a personal chef and a caterer), 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 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 mirrors that of an executive chef (such as a personal chef and a caterer), 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.

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