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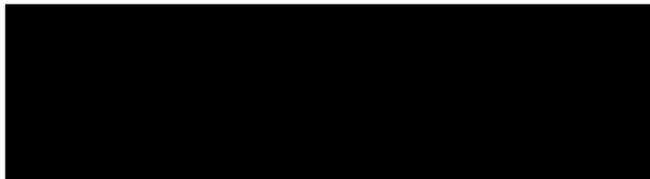


FILE: EAC 04 263 53536 Office: VERMONT SERVICE CENTER Date: MAY 26 2006

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

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.

for *Michael T. Kelly*
Robert P. Wiemann, Chief
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 U.S. citizen who seeks to employ the beneficiary as general manager and executive chef of his three houses. 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 a brief and documents.

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) Form I-129 and supporting documentation; (2) the director's denial letter; and (3) 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 a general manager and executive chef. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; and the petitioner's letter. According to this evidence, the beneficiary would perform duties that entail preparing

budgets for each of the beneficiary's three homes; procurement of necessary goods, and performing stock control, as needed for each household; preparing daily menus and meals; directing and coordinating catering for planned events, business meetings, and social entertainments; and using his expertise in buffet design, menu development and execution to ensure successful events. The petitioner stated that the position required a bachelor's degree in culinary arts or its equivalent.

The petitioner's submissions into the record also include the following information. The beneficiary would be responsible for "overseeing management of three houses (two permanent, and a holiday home which changes each holiday) and respective staff." As of September 2004, the principle residence is on [REDACTED] in Manhattan. The petitioner and his wife also reside in Westchester County, New York. The third home appears to be a temporary residence for the holidays that changes each holiday season.

The record includes photographs of the beneficiary's culinary works. The AAO notes that the record of proceeding does not contain documentary evidence of specific matters that would engage the beneficiary in the non-culinary aspects of his management responsibility, and that the petitioner does not describe either the chef or manager dimensions of the proffered position in terms of specific tasks or concrete work that the proffered position would include.

The director found that the proffered position was not a specialty occupation. The director referred to the Department Of Labor's *Occupational Outlook Handbook (Handbook)* and noted that it does not indicate that a baccalaureate degree in a specific field of study is required for entry into the occupation. The director found that the petitioner was not a business entity that has sufficient work and resources available to establish that the beneficiary would be performing services in a specialty occupation.

On appeal, counsel refers to the *Handbook's* section on food service managers as supporting his assertion that a bachelor's degree in restaurant and food service management provides a particularly strong preparation for a career in this occupation. Counsel asserts that there is no requirement in the law that a specialty occupation unequivocally requires the attainment of a bachelor's degree. Counsel also refers to the *Handbook's* section on executive chef to support his assertion that a normal requirement for an executive chef is a bachelor's degree. Counsel refers to the director decision which cited the Department of Labor's (DOL) *Dictionary of Occupational Titles (DOT)* as assigning an SVP of 7 to the position of executive chef. As rebuttal evidence that the proffered position is a specialty occupation and requires a baccalaureate degree, counsel refers to the DOL's *Occupational Outlook Network (O*Net)* detail report for Food Service Managers which states an SVP of at least 7 and up to 8.

The AAO notes that the DOL has replaced the *DOT* with the *O*Net*. Both the *DOT* and *O*Net* provide only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training education and experience required to perform the duties of that occupation. The *O*NET* database referred to by the author is a comprehensive source of descriptors, with ratings of importance, level, frequency or extent, for occupations that are key to the economy. *O*NET* descriptors include: skills, abilities, knowledge, tasks, work activities, work context, experience levels required, job interests, and work values/needs. Neither the *DOT* nor the *O*Net* SVP ratings measure whether a particular occupation requires at least a bachelor's degree in a specific specialty. The *Handbook* provides a more comprehensive description of the nature of a particular occupation and the education, training and experience normally required to enter into and advance within an occupation. For this reason, the AAO is not persuaded by a claim that the offered position is a specialty occupation simply because DOL has assigned it a specific SPV rating in the *DOT* or *O*Net*.

The AAO agrees with counsel that the petitioner's status as a private person as opposed to a business entity is not relevant to the adjudication of the petition. The petitioner is a U.S. employer pursuant to the regulations pursuant to 8 C.F.R. § 214.2(h)(4)(ii). However, the petition still may not be approved, as 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 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 in a specific specialty is the normal minimum requirement for entry into the particular position; a specific 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. 872, 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. The *Handbook* indicates that, to the extent that they are described in the record, the majority of the beneficiary's duties are most similar to those of a chef, an occupation that is not a specialty occupation. The AAO also finds that the evidence of record about the manager aspect of the position lacks any details that would elevate the educational requirements of the position above that of an executive chef. The AAO also finds that the petitioner has not established that the proffered position qualifies for consideration as a food service manager as described in the *Handbook*, which indicates that the occupation belongs to food service industry establishments such as restaurants, restaurant chains, and institutions such as schools and healthcare facilities. In any event, the *Handbook* indicates that a bachelor's degree in a specific specialty is not a normal requirement for entry into the food services manager occupation.

With regard to chefs, the *Handbook* states:

Executive chefs and *head cooks* coordinate the work of the kitchen staff and direct the preparation of meals. They determine serving sizes, plan menus, order food supplies, and oversee kitchen operations to ensure uniform quality and presentation of meals. The terms chef and cook often are used interchangeably, but generally reflect the different types of chefs and the organizational structure of the kitchen staff. For example, an *executive chef* is in charge of all food service operations and also may supervise the many kitchens of a hotel, restaurant group, or corporate dining operation. A *chef de cuisine* reports to an executive chef and is responsible for the daily operations of a single kitchen. A *sous chef*, or sub chef, is the second-in-command and runs the kitchen in the absence of the chef. Chefs tend to be more highly skilled and better trained than cooks. Many chefs earn fame both for themselves and for their kitchens because of the quality and distinctive nature of the food they serve.

The *Handbook* states the following about the training and educational requirements for executive chef positions:

Executive chefs and head cooks who work in fine-dining restaurants require many years of training and experience and an intense desire to cook. Some chefs and cooks may start their training in high school or post-high school vocational programs. Others may receive formal training through independent cooking schools, professional culinary institutes, or 2- or 4-year college degree programs in hospitality or culinary arts. In addition, some large hotels and restaurants operate their own training and job-placement programs for chefs and cooks. Most formal training programs require some form of apprenticeship, internship, or out-placement program jointly offered by the school and affiliated restaurants. Professional culinary institutes, industry associations, and trade unions also may sponsor formal apprenticeship programs in coordination with the U.S. Department of Labor. Many chefs are trained on the job, receiving real work experience and training from chef mentors in the restaurants where they work.

Based on the evidence in the record, the AAO cannot conclude that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position. The petitioner, then, has not satisfied the first criterion of 8 U.S.C. § 214.2(h)(4)(iii)(A).

There is no evidence in the record to establish the first alternative prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Next, as evident in the discussion of the first criterion, the petitioner has not established that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. The list of generic duties used to describe the position do not establish such complexity or uniqueness on their face, and the record lacks authoritative evidence that such general duties are so complex or unique. Thus, the petitioner fails to establish the second alternative prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3): that the petitioner normally requires a degree or its equivalent for the position.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The petitioner has not distinguished the duties of the proffered position from those normally required of an executive chef as described in the *Handbook*, and the *Handbook* indicates that the knowledge requirements usually associated with such a position is less than a bachelor's degree in a specific specialty. The petitioner has not shown, in relation to its management of two homes and a holiday retreat, operating with one full-time staff and three part-time staff, that the duties of the proffered position are so complex or unique that they can be performed only by an individual with a degree in a specific specialty. The AAO here incorporates its earlier discussion about the lack of evidence of specific tasks and concrete work that would engage the beneficiary.

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.

Beyond the decision of the director, the petitioner has not shown that the beneficiary is qualified to perform the services of a specialty occupation. The petitioner submitted an education and experience evaluation from a foreign education credentialing services indicating that the beneficiary has obtained the experiential equivalency of a U.S. Bachelor of Science in Culinary Arts. The credentialing service also indicated that the beneficiary has U.S. equivalency of a completion of a vocational–technical secondary program emphasizing culinary arts and a U.S. Bachelor of Science in Economics with emphasis on finance. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(3) limits credential evaluation service evaluations to the beneficiary’s education only; the regulation does not accept these services’ evaluations of experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) recognizes only an evaluation of work experience that is supported by adequate documentation from an accredited U.S. college or university that (1) the institution has a program for granting college-level credit for training and/or experience in the relevant specialty, and (2) the evaluator is an official authorized by that institution to grant such college-level credit as part of the program. CIS will not accept a faculty member’s opinion as to the college-credit equivalent of a particular person’s work experience or training, unless authoritative, independent evidence from the official’s college or university, such as a letter from the appropriate dean or provost, establishes that the official is authorized to grant academic credit for that institution, in the pertinent specialty, on the basis of training or work experience. The petitioner has not submitted an evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual’s training and/or work experience. Therefore, the petitioner has not established that the beneficiary has the equivalent of a U.S. baccalaureate degree in a specific specialty.

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.