

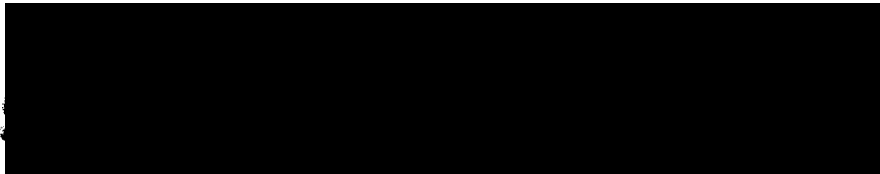
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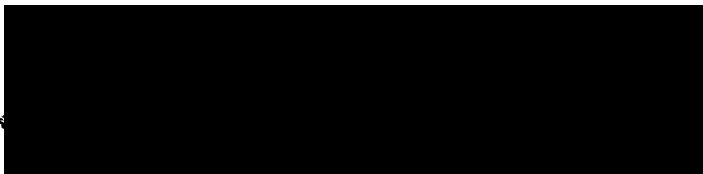
FILE: EAC 04 137 54374 Office: VERMONT SERVICE CENTER

Date: **AUG 29 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, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter was appealed to the Administrative Appeals Office (AAO). The appeal will be sustained. The petition will be approved.

The petitioner is a gourmet restaurant that seeks to employ the beneficiary as a senior pastry sous chef. The petitioner 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 petitioner did not establish that the proffered position is a specialty occupation. On appeal, counsel submits a brief and additional evidence.

Section 214(i)(1) of the Immigration and Nationality Act (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 request for additional evidence; (3) counsel's response to the director's request; (4) the director's denial letter; (5) 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 senior pastry sous chef. Evidence of the beneficiary's duties includes: the I-129 petition; the March 16, 2004, letter in support of the petition; and counsel's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail, in part:

- (1) Human resource management: assisting in managing and training up to 20 full-time employees in the kitchen; responsible for hiring, firing, training, promotion, and day-to-day supervision; creating work schedules; establishing performance standards in keeping with quality assurance for an award-winning property;
- (2) Kitchen management: ensuring kitchen is prepared for all scheduled meals and special events including coordination of staff, physical facilities, and foodservices; reviewing menus and wine lists; coordinating with restaurant manager regarding food service operational questions and coordinating with general manager and assistant general manager regarding the hotel's food and beverage needs;
- (3) Culinary management: responsible for directing and managing meal preparation, quality assurance and cooking on a large scale; devising creative menus and recipes; overseeing kitchen during meal service including management of sous chefs and cooks; ensuring kitchen operates in keeping with principles of sanitation and quality control for the award winning property;
- (4) Financial management/budgeting: developing budgetary accounting and cost control system for all cooking related functions; preparing financial plan, budget and revenue goals for kitchen operations; updating same on weekly and monthly basis and devising operational plan to meet budget revenue goals; authorizing kitchen expenditures and preparing budget reports to submit to general manager;
- (5) Inventory control: developing and implementing inventory control system for supplies for food stuffs and organizing food procurement and purchasing of kitchen supplies; reviewing and authorizing supply purchases and ensuring that inventory is maintained in keeping with principles of sanitation and inventory control.

The petitioner stated that the proffered position requires a minimum of a bachelor's degree in culinary science or a related discipline.

The director found that the proffered position was not a specialty occupation because the Department of Labor's *Occupational Outlook Handbook (Handbook)* does not indicate that a degree in a specific specialty is required for the position. The director found that the positions of executive chef and sous chef usually do not qualify as a specialty occupation because the duties and responsibilities are not so complex as to require a four-year baccalaureate degree in a specific field of study. The director found that the petitioner failed to provide sufficient evidence concerning the management-level duties of the job or evidence of responsibilities beyond those of a first-line supervisor.

On appeal, counsel states that the proffered position is a specialty occupation and that the petitioner submitted adequate evidence to establish the complexity of the job duties. On appeal, the petitioner submits additional evidence including a letter from the former White House Pastry Chef and a statement from the executive chef at the White House.

The AAO agrees with counsel that the proffered position of senior pastry sous chef is a specialty occupation in this case.

Upon review of the record, the petitioner has established one of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is a specialty occupation.

The evidence establishes that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) in that 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.

The petitioner is an award winning restaurant with 133 employees and a gross annual income of \$15 million. The beneficiary will coordinate directly with the following managerial staff: Chef de Cuisine, Banquet Chef Manager, Catering Chef Manager; manage pastry decisions including budgeting, menu development, staffing and training for the banquet and catering departments. The beneficiary will also coordinate with other senior managers, including the operations director, banquet director and general manager. The beneficiary will supervise all menu development, inventory, staff training and scheduling, financial management, budgeting, inventory control for all dessert and pastry related activities of three other professional degreed staff. The beneficiary will perform all day-to-day financial management and budgeting for the pastry department. The petitioner is a four-star award-winning restaurant, the recipient of the AAA five diamond ranking (one of 51 selected), has the Relais & Chateaux Membership (one of 45 properties), and has been awarded a four-star rating by the New York Times. The petitioner establishes that the functions referenced in the job description requires a complexity and level of knowledge and experience, that are the product of a bachelor's degree or higher level of education, as supported by a letter from [REDACTED] the former Pastry Chef at the White House, for 25 years. The author reviews the duties of the position and states that the position requires a set of professional skills that is well-recognized in the culinary industry as requiring a degreed professional and noted that the degree should be in the area of culinary arts, hospitality management or restaurant management. The author noted that he is familiar with the beneficiary, the executive chef of the petitioner and the operations of the petitioner.

The petitioner also submits a letter from [REDACTED] former White House Executive [REDACTED] states that he reviewed the description of the proffered position and that the beneficiary must reference a broad-based professional knowledge of operations, menu development and management to perform the duties of the proffered position. The author asserts that this is the type of advanced knowledge and skill typically obtained only through the completion of a university degree in the culinary arts, hospitality management or restaurant management.

The petitioner has provided sufficient evidence that the management-level duties of the position and the responsibilities of the position are more than those of a first-line supervisor and that 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.

The director noted that the beneficiary has the equivalent of a degree by completing a two-year program plus related work experience. The record supports the director's finding that the beneficiary is qualified to perform services in the specialty occupation.

The record establishes that the position is a specialty occupation and that the beneficiary is qualified to perform the services of the specialty occupation.

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 sustained that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained. The director's order is withdrawn and the petition is approved.