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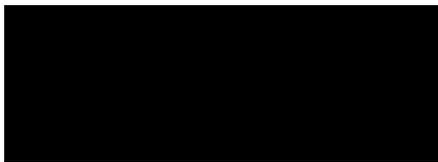


U.S. Citizenship  
and Immigration  
Services

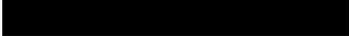
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MAR 21 2005



FILE: LIN 03 225 51102 Office: NEBRASKA SERVICE CENTER Date:

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*

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 Korean restaurant that seeks to employ the beneficiary as a Korean cuisine 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: (1) the proffered position is not a specialty occupation; and (2) the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits a brief.

The AAO will first discuss whether the proffered position is a specialty occupation.

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 request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; and (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 Korean cuisine chef. Evidence of the beneficiary's duties includes: the Form I-129; the July 15, 2003 letter accompanying the Form I-129; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail developing recipes and planning menu items; estimating food consumption; ordering supplies; coordinating staff and resources; and directing and supervising the preparation of dishes by measuring, mixing, and cooking ingredients. The petitioner stated that the beneficiary was qualified for the proffered position based on her work experience, which is equivalent to a U.S. bachelor of science in hospitality management.

The director stated that the *Occupational Information Network (O\*Net)* and the *Dictionary of Occupational Titles (DOT)* were not persuasive in establishing that the proffered position is a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that it shows that employers do not require a chef or a food service manager to possess a specific baccalaureate degree. According to the director, the educational evaluation and employment letters failed to establish that the beneficiary's education, specialized training, and/or experience are equivalent to the attainment of a U.S. baccalaureate or higher degree.

On appeal, counsel states that the proffered position requires a baccalaureate degree in restaurant and food service management, and that the beneficiary possesses the equivalent to a baccalaureate degree. Counsel asserts that the *O\*Net*, *DOT*, and *Handbook* are appropriate resources to determine whether an occupation qualifies as a specialty occupation. The director, counsel states, misinterprets the *Handbook* and overlooks relevant passages that demonstrate an executive chef requires a baccalaureate degree. Counsel maintains that the director erroneously disregarded the educational evaluation, which establishes that the beneficiary holds the equivalent to a baccalaureate degree.

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.

Counsel asserts that the proffered position is a specialty occupation based on information in the *DOT*, the *O\*Net*, and the *Handbook*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. 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, and experience required to perform the duties of that occupation. 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 the occupation. For this reason, CIS is not persuaded by a claim that the proffered position is a specialty occupation because of information in the *DOT* and *O\*Net*.

The *Handbook* reveals that the proffered position is analogous to a chef, an occupation that does not require a bachelor's degree. The *Handbook* states that chefs are responsible for directing the work of kitchen workers, estimating food requirements, ordering food supplies, creating recipes, and preparing meals. Executive chefs who work in fine restaurants, the *Handbook* reports, 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. Accordingly, a bachelor's degree or its equivalent in a specific specialty is not the normal minimum requirement for entry into the particular position, Korean cuisine chef.

No evidence establishes 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (3): that a specific degree requirement is common to the industry in parallel positions among similar organizations; that the proffered position is so complex or unique that it can be performed only by an individual with a degree; or that the petitioner normally requires a degree or its equivalent for the position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) 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. Because the *Handbook* shows that the beneficiary's duties mirror those of a chef, an occupation that does not require a bachelor's degree, the petitioner fails to establish 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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 AAO now considers the director's determination that the beneficiary is not qualified to perform a specialty occupation. Because we have concluded that the proffered position does not require a specific baccalaureate degree, the beneficiary is qualified to perform its duties.

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.