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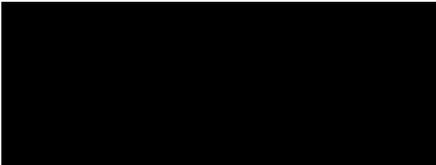


FILE: LIN 04 019 54151 Office: NEBRASKA SERVICE CENTER Date: **SEP 02 2005**

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 Japanese restaurant that seeks to employ the beneficiary as a Japanese 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 on the ground that the proffered position is not a specialty occupation, and the beneficiary is not qualified to perform a specialty occupation. On appeal, counsel submits 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) 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 Japanese chef. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's support letter; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail preparing, preserving, and marinating sushi as well as other dishes; ensuring quality control; and purchasing fish. The petitioner's advertisement stated that the proposed position requires three years of work experience in a Japanese restaurant.

The director stated that the submitted evidence did not show that the petitioner requires a bachelor's degree for the proposed position. The director found that the proposed position resembles a chef as described in the Department of Labor's *Occupational Outlook Handbook* (the *Handbook*), and that the *Handbook* discloses that this occupation does not require a bachelor's degree. According to the director, the beneficiary lacks the qualifications to perform a specialty occupation.

On appeal, counsel states that the proposed position qualifies as a specialty occupation, and refers to a brochure from Sushi Hut to show that chefs have a rigorous training program. Counsel asserts that a chef must have proper training and work experience. Counsel discusses the preparation of sushi, the proposed position, the *Handbook's* information about chefs, the four job advertisements, and the beneficiary's qualifications. Counsel contends that two to three years of work experience is the normal minimum requirement for entry into a position as a Japanese chef in a sushi restaurant, and is preferred over a degree. Counsel also states that the training of an assistant chef or an apprentice chef is regarded as the equivalent of a bachelor's degree. According to counsel, a bachelor's degree in a relevant field does not exist for this position as the skills required for a Japanese chef are acquired through practice. Counsel emphasizes that work experience is the most important credential that a sushi chef must have in order to apply for a sushi chef position, and that the petitioner has always required work experience as a prerequisite for the proposed position.

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 petitioner's requirement of three years of work experience does not qualify the proposed position as a specialty occupation under the Act. The Act defines the term "specialty occupation" as an occupation that requires theoretical and practical application of a body of highly specialized knowledge, and the 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. The phrase "or its equivalent" is considered by CIS only when a specific degree does not exist in an occupational field. *Tapis Int'l vs. INS*, 94 F.Supp. 2d 172 (D. Mass. 2000). While counsel states that there is no degree program in the United States specifically designed to train chefs, the *Handbook* contradicts this. According to the *Handbook*, there are 4-year degree programs specifically related to the culinary arts. The *Handbook* states that some executive chefs receive formal training through

independent cooking schools, professional culinary institutes, or 2- or 4-year college degree programs in hospitality or culinary arts.

Since the petitioner does not require a bachelor's degree for the proposed position, the petitioner fails to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A): a baccalaureate or higher degree or its equivalent 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; the position is so complex or unique that it can be performed only by an individual with a degree; the position normally requires a degree or its equivalent; or 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.

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.

Because the proposed position does not qualify as a specialty occupation, whether or not the beneficiary qualifies to perform the proposed position is inconsequential in this proceeding.

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.