



U.S. Citizenship
and Immigration
Services

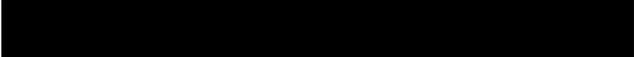
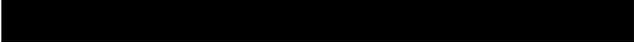
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DA

FILE: EAC 04 012 52734 Office: VERMONT SERVICE CENTER Date: **SEP 06 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, Director
Administrative Appeals Office

DISCUSSION: The service center director 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 an inn and restaurant that seeks to employ the beneficiary as an executive 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 proffered position does not qualify as a specialty occupation, and because the beneficiary is not qualified to perform the duties of a specialty occupation. On appeal, counsel submits a brief stating that the offered position qualifies as a specialty occupation, and that the beneficiary is qualified to perform the duties of a specialty occupation.

The first issue to be discussed in this proceeding is whether the proffered position qualifies as a specialty occupation.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides, in part, for the classification of qualified nonimmigrant aliens who are coming temporarily to the United States to perform services in 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.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

[A]n occupation which requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires the attainment of a bachelor's degree or higher in a 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 are 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 evidence; (3) the petitioner’s response to the director’s request for evidence; (4) the director’s denial letter; and (5) the Form I-290B with supporting documentation. 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 was set forth in the Form I-129 petition with attachments, and in response to the director’s request for evidence. According to this evidence the beneficiary would:

- Oversee the hiring, training, supervision, evaluation and termination of all kitchen staff;
- Evaluate current products vs. competitors and determine competitive advantages, or formulate products to provide a competitive edge;
- Develop new products and coordinate projects from conceptualization through production;
- Establish product specifications for production;
- Develop and maintain programs and monitor controls to satisfactorily meet all governmental regulations and guidelines pertaining to nutrition and sanitation;
- Supervise effective and efficient food service management (quantity food production, quality food production, cost analysis/marginal analysis);
- Order and oversee installation and operation of special kitchen ovens and related equipment;
- Confer with management to collectively determine appropriate items to accompany and compliment menus for the restaurant; maintain inventory control of foodstuffs and equipment; and
- Attend regular meetings with management to plan improvements in the quality of service, developing marketing strategies to increase revenues, and human resource development strategies to enhance productivity and service.

The petitioner requires a minimum of a degree in culinary arts or its equivalent for entry into the proffered position.

Upon review of the record, the petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the offered position, or that a degree requirement is common to the industry in parallel positions among similar organizations, as asserted by the petitioner. Factors often considered by CIS when determining these criteria include: whether the Department of Labor's *Occupational Outlook Handbook (Handbook)* reports that the industry requires a degree; whether an industry 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)).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations. The duties of the proffered position are essentially those noted for chefs. In the *Occupational Outlook Handbook*, 2004-05 edition, the Department of Labor describes, in part, the duties of an Executive Chef as follows:

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 duties associated with the proffered position are similar to those listed above. The *Handbook* further notes that to achieve the level of skill required of an executive chef, many years of training and experience are necessary. Though many chefs learn their craft through on-the-job training, formal training is becoming increasingly popular. Employers usually prefer training given by trade schools, vocational centers, colleges, professional associations, or trade unions. Postsecondary courses range from a few months to 4 years or more. It is, therefore, apparent that a baccalaureate degree or its equivalent is not the minimum requirement for entry into the proffered position. The petitioner has failed to establish the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has also failed to establish that a degree requirement is common to the industry in parallel positions among similar organizations. In support of that assertion the petitioner submits an opinion from Dr. [REDACTED] a professor of finance at California State University. Dr. [REDACTED] opines that the position of executive chef at a hospitality corporation, such as the petitioner, is a position which requires at least a

bachelor's degree in hotel and restaurant management with a concentration in culinary arts, or its equivalent, in order to attain the level of skills and competencies necessary to function effectively in the position. Dr. [REDACTED] bases his opinion on his past education and experience. He does not, however, make reference to any industry study, labor survey or other corroborating evidence to support his conclusion. As such, his opinion is of little evidentiary value and it is contrary to the findings noted in the *Handbook* for the educational requirements of the position. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The petitioner also listed the educational backgrounds of chefs with other AAA four diamond rated properties in Vermont (no documentation of the degrees of these chefs was presented). The listings provided by the petitioner, however, do not establish that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations. According to the documentation presented by the petitioner; three of the chefs hold bachelor's degrees in culinary arts; one holds a degree in literature; one holds a degree in history; and two hold associate's degrees in culinary arts. All of the chefs listed apparently have substantial experience in the field, but evaluations were not presented to establish that the prior education and experience of four of the seven chefs listed is equivalent to a bachelor's degree in a related field. The petitioner has failed to establish the referenced criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2)

The petitioner has failed to establish that it normally requires a degree in a specific specialty for entry into the proffered position. The petitioner presented the resumes of two chefs it previously employed. One held a bachelor's degree in art history, and the second possessed an associate's degree from the New England Culinary Institute. Both had substantial experience in the field, but the record does not establish under applicable regulation, that their past education and experience is equivalent to a bachelor's degree in a related field. The petitioner has failed to establish the criterion at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(3).

The petitioner has not proven that the duties of the offered position are so complex or unique that they can only be performed by an individual with a degree in a specific specialty, or that the nature of the position's duties is so specialized or complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(2) and (4). The duties detailed appear to be routine for executive chefs in the industry, which as noted in the *Handbook* do not require a baccalaureate degree in a specific specialty.

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 in this regard.

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 and the appeal shall accordingly be dismissed.

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