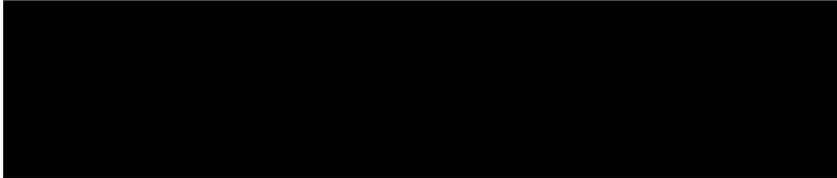




U.S. Citizenship  
and Immigration  
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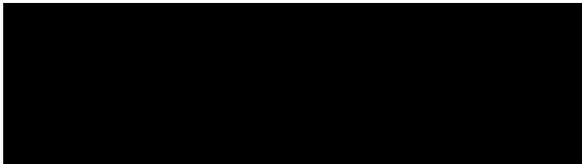
FILE: SRC 04 236 50127 Office: TEXAS SERVICE CENTER Date: **AUG 18 2006**

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*

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 an Indian restaurant with 2 employees, gross income of \$190,000, was established in 2003, and seeks to employ the beneficiary as a 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 the proffered position is not a specialty occupation. On appeal, counsel submits a brief and additional evidence.

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 (RFE); (3) the petitioner's response to the RFE; (4) the director's

denial letter; (5) the petitioner's appeal and counsel's appeal brief with new 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 chef. Evidence of the beneficiary's duties includes: the Form I-129; the attachments accompanying the Form I-129; the petitioner's appeal brief and new and additional documents. According to this evidence, the beneficiary's duties would be as follows:

- Supervise kitchen staff, plan meals, and purchase food ingredients for Indian cuisine;
- Estimate food consumption, and requisition food ingredients;
- Receive and examine food ingredients and supplies to ensure that they meet established standards and specifications in quality and quantity;
- Select and develop recipes of Indian cuisine based on type of food to be prepared applying personal knowledge and experience; and
- Manage and supervise personnel engaged in preparing, cooking, and serving meats, sauces, vegetables, soups, and other foods of Indian cuisine.

The petitioner stated that a candidate for the proffered position must possess a bachelor's degree or its equivalent.

The director determined that the proffered position was not a specialty occupation. Referring to the Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*), the director stated that generally restaurant chefs gain their knowledge through experience and training which may be acquired through a variety of ways, including vocational programs. The director found that the proffered position would not require a person with a bachelor's degree.

On appeal, counsel states that the proffered position is a specialty occupation. Counsel narrates the duties of the proffered position, stating they require the level of skill and experience equivalent to a baccalaureate degree. Counsel contends that the duties required by the petitioner, as a growing company, include managerial responsibility.

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) that is, whether the evidence of record establishes that: a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

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. In its adjudication of this appeal the AAO consulted the 2006-2007 edition of the *Handbook*. The *Handbook* discloses that the duties of the proffered position are performed by an executive chef, an occupation that does not normally require a bachelor's degree in a specific specialty. The *Handbook* reports:

Chefs, cooks, and food preparation workers prepare, season, and cook a wide range of foods—from soups, snacks, and salads to entrees, side dishes, and desserts—in a variety of restaurants and other food services establishments. Chefs and cooks create recipes and prepare meals, while food preparation workers peel and cut vegetables, trim meat, prepare poultry, and perform other duties such as keeping work areas clean and monitoring temperatures of ovens and stovetops.

In general, *chefs* and *cooks* measure, mix, and cook ingredients according to recipes, using a variety of pots, pans, cutlery, and other equipment, including ovens, broilers, grills, slicers, grinders, and blenders. Chefs and head cooks also are responsible for directing the work of other kitchen workers, estimating food requirements, and ordering food supplies.

...

*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. ...

With respect to training and qualifications for executive chefs, the *Handbook* states:

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.

People who have had courses in commercial food preparation may start in a cook or chef job without spending a lot of time in lower-skilled kitchen jobs. Their education may give them an advantage when looking for jobs in better restaurants. ...

The AAO concurs with the director's determination that as reported in the *Handbook* chef positions do not require a bachelor's degree in a specific specialty. Accordingly, the petitioner has not established that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position, as required to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO now turns to a consideration of whether the proffered position may qualify as a specialty occupation under either of the prongs of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Under the second alternative criterion, the petitioner must establish either that a degree requirement is common to the industry in parallel positions among similar organizations, or that the proffered position is so complex or unique that it can be performed only by an individual with a degree.

The evidence of record does not establish the first prong of the second criterion - that a specific degree requirement is common to the industry in parallel positions among similar organizations. Factors often considered by CIS when determining the criterion 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)).

As already noted, the *Handbook* indicates that the proffered position is not one for which the normal minimum

hiring requirement is at least a baccalaureate degree in a specific specialty. There are no letters or affidavits from firms, individuals, or professional associations in the industry attesting to the specific minimum degree requirements for a position such as that proffered here.

Thus, the petitioner has not established that the degree requirement is common to the industry in parallel positions among similar organizations.

The record also does not include any evidence from firms, individuals, or professional associations regarding an industry standard. Therefore, the petitioner has failed to satisfy the first alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish that a specific degree requirement is common to the industry in parallel positions among similar organizations.

As noted above, the petitioner has described duties normally performed by chefs. In the response to the RFE, in addressing the first, second, and fourth criteria, counsel refers to the *Occupational Information Network (O\*NET)* to offer a further explanation of the proffered position's duties. The *O\*NET* is not persuasive; it does not assess or specify whether an occupation requires a degree in a specific specialty.

The AAO finds the petitioner to have provided no evidence that would support a finding that the job duties are so complex or unique that it can be performed only by an individual with a degree. Therefore, the record also fails to establish that the position qualifies as a specialty occupation under the second prong of the second criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) – the position is so complex or unique that it can be performed only by an individual with a degree. On appeal, counsel contends that the proffered position “demands academic and practical knowledge and skill” in certain “disciplines” that he lists. However, the evidence of record fails to establish that any of the listed disciplines manifest themselves in the proposed duties at so complex or unique a level that those duties can only be performed by a person with at least a baccalaureate degree in a specific specialty.

As the record does not convey specific tasks that the beneficiary would perform, it does not establish the level of complexity or uniqueness that such duties may involve, or distinguish the position as more complex than or unique from those chef positions for which the *Handbook* indicates that there is no requirement for at least a bachelor's degree in a specific specialty.

Counsel contends that because the petitioner is expanding, the duties of the proffered position satisfy the criterion's requirements. The AAO does not agree. The petitioner has not submitted the business development plans, or any other documentation as evidence to substantiate that expansion would require that the beneficiary possess at least a baccalaureate degree in a specific specialty.

Accordingly, the petitioner has not established its position as a specialty occupation under either prong of the second criterion.

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.

Therefore, the proffered position has not been established as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

No evidence in the record satisfies the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), namely, 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 record is limited to exclusively generalized duty descriptions that do not relate substantive dimensions of the work the beneficiary would actually perform.

As limited as it is to generalized, generic descriptions of the proffered duties, the record of proceeding does not distinguish those duties from those generally performed by chefs. The *Handbook* indicates that such duties are not usually associated with a degree in a specific specialty, and the record contains no evidence to establish that the *Handbook's* information does not apply to the proffered position.

Counsel asserts that chefs employed by large prestigious restaurants have been granted H-1B visas as evidence that the work of a chef qualifies as a specialty occupation. CIS's previous approval of petitions for what might appear to be similar positions cannot serve as a basis for approving the instant petition. Each petition filing is a separate proceeding with a separate record and CIS is limited to the information contained in that record in reaching its decision. 8 C.F.R. §§ 103.2(b)(16)(ii) and 103.8(d).

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.

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.