

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

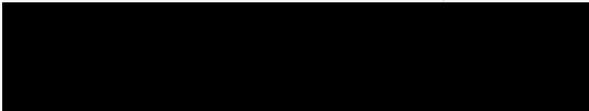
U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

MI

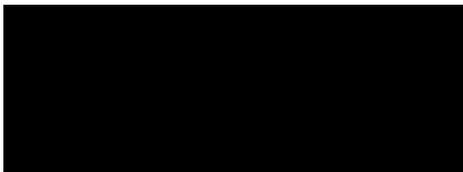


FILE: WAC 02 224 50366 Office: CALIFORNIA SERVICE CENTER Date: JUN 28 2005

IN RE: Applicant: 

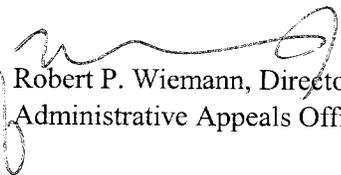
APPLICATION: Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



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 nonimmigrant visa petition was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

According to the documentary evidence contained in the record, the petitioner was established in 2001 and claims to be a Chinese restaurant. The petitioner claims to be an affiliate of [REDACTED], located in Richmond, British Columbia. The petitioner claims 55 employees. It seeks to temporarily employ the beneficiary in the United States as its Head Chef for a period of two years, at an annual salary of \$30,000.00. The petitioner seeks to classify the beneficiary as a nonimmigrant intracompany transferee with specialized knowledge in abalone cooking. The director determined that the petitioner had failed to submit sufficient evidence to establish that the beneficiary's experience as a chef has been or would constitute specialized knowledge.

Counsel disagrees with the director's decision and asserts that the beneficiary possesses specialized knowledge in abalone cooking and that the proposed position at the U.S. entity requires specialized knowledge.

To establish L-1 eligibility under section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L), the petitioner must demonstrate that the beneficiary, within three years preceding the beneficiary's application for admission into the United States, has been employed abroad in a qualifying managerial or executive capacity, or in a capacity involving specialized knowledge, for one continuous year by a qualifying organization, and seeks to enter the United States temporarily in order to continue to render his or her services to the same employer or a subsidiary or affiliate thereof, in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(1)(ii) states, in part:

Intracompany transferee means an alien who, within three years preceding the time of his or her application for admission into the United States, has been employed abroad continuously for one year by a firm or corporation or other legal entity or parent, branch, affiliate, or subsidiary thereof, and who seeks to enter the United States temporarily in order to render his or her services to a branch of the same employer or a parent, affiliate, or subsidiary thereof in a capacity that is managerial, executive, or involves specialized knowledge.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.

- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The issue in this proceeding is whether the petitioner has established that the beneficiary possesses specialized knowledge, and has been and will be employed in a specialized knowledge capacity.

Section 214(c)(2)(B) of the Act, 8 U.S.C. § 1184(c)(2)(B), provides the following:

For purposes of section 101(a)(15)(L), an alien is considered to be serving in a capacity involving specialized knowledge with respect to a company if the alien has a special knowledge of the company product and its application in international markets or has an advanced level of knowledge of processes and procedures of the company.

Furthermore, the regulation at 8 C.F.R. § 214.2(l)(1)(ii)(D) defines "specialized knowledge" as:

[S]pecial knowledge possessed by an individual of the petitioning organization's product, service, research, equipment, techniques, management, or other interests and its application in international markets, or an advanced level of knowledge or expertise in the organization's processes and procedures.

The petitioner stated in the petition that the beneficiary has been a Chief Chef for the Dimsum department at the foreign entity. The petitioner also stated that the beneficiary would be an Executive Chef in charge of menu selection, supervision of kitchen staff, and quality control for the U.S. entity.

In response to the director's request for additional evidence to demonstrate how the beneficiary qualifies as a specialized knowledge candidate, the petitioner stated in part:

... [T]he beneficiary is uniquely qualified for the job offered. [The beneficiary] is one of the few chefs while working for the petitioner's China affiliate who have gained extensive and proprietary abalone cooking knowledge under the tutelage of the great Hong Kong abalone master [REDACTED]. In fact, the whole premise of the petitioner's business model is dependent upon the prestige and notoriety of the [REDACTED] brand of abalone delicacies. . . . Because [REDACTED] only trained 7 students in the art of [REDACTED] style cooking, [the beneficiary] being one of the students and now a master in his own right, is therefore uniquely qualified to fill the key position of Head Chef for the petitioner. [The beneficiary] has knowledge and skill gained from extensive working experience with the foreign entity to provide valuable services to the US petitioner.

...

The beneficiary was trained as a chef and certified as such by the Guangdong Province Department of Labor. He had extensive training and experience while employed by the [REDACTED] restaurant in China since 1996, the foreign affiliate, where he studied under master [REDACTED] and learned the unique and critical skill of abalone preparation

in the style of Yang. [The beneficiary] also worked at the [REDACTED] where he mastered his skills and knowledge of various types of Dimsum preparation.

[The beneficiary] has extensive kitchen staff supervisory experience during his tenure as chef at the [REDACTED]. Therefore, he has the specialized knowledge, training and expertise in the petitioner's products to be classified as a L-1B special knowledge employee.

The petitioner submitted as evidence a partial translation of the Guangdong Province Department of Labor Chef Certificate bestowed upon the beneficiary in 1995. The petitioner also submitted a translated copy of an employment certification letter, dated December 21, 2001, from [REDACTED] certifying that the beneficiary had been employed as the head chef with the restaurant since 1996. The petitioner submitted a letter, dated May 11, 2002, certifying that the beneficiary had been employed by the [REDACTED] since March 1, 2000, as a Chief Chef of the [REDACTED]. The petitioner also submitted an organizational chart for the [REDACTED] that listed the beneficiary as "Chief Chef, [REDACTED] kitchen department."

The director determined that there was insufficient evidence to show that the beneficiary's experience as a chef constitutes specialized knowledge. The director also stated that in general, cooks and chefs are not regarded by CIS as possessing specialized knowledge. The director noted that the beneficiary's experience with the foreign entity had not been shown to involve specialized knowledge. The director concluded by stating that the petitioner had failed to establish that the beneficiary would be performing services for the U.S. entity involving specialized knowledge.

On appeal, counsel contends that the director erred in stating that cooks and chefs were generally not considered to possess specialized knowledge. Counsel asserts that a case-by-case analysis is required when evaluating specialized knowledge eligibilities. Counsel further asserts that the beneficiary possesses specialized knowledge in that he specialized in abalone cooking, knowledge he acquired under the tutelage of the great Hong Kong abalone master [REDACTED]. Counsel contends that the beneficiary has acquired knowledge of abalone cooking techniques, abalone dishes, and abalone cooking knowledge, which is different and unique to [REDACTED]. Counsel further contends that even where abalone-cooking techniques are taught in other cooking schools, they are different from the unique and traditional methods of the [REDACTED]. The petitioner does not submit any additional evidence on appeal.

The record does not establish that the beneficiary has advanced or special knowledge of the petitioning organization's products or their application in the United States and international markets as claimed. The beneficiary's preparation of [REDACTED] and abalone dishes, his menu selection, his supervising and training of the production staff, and his quality control practices are culinary skills, not specialized knowledge. As held in *Matter of Penner*, 18 I&N Dec. 49, 54 (Comm. 1982), "petitions may be approved for persons with specialized knowledge, *not for skilled workers*."

The beneficiary's knowledge of abalone preparation does not constitute special or advanced knowledge. Counsel argues that the beneficiary's training and experience have given him knowledge that is specialized because it is specific to the petitioning entity. However, job training at any restaurant teaches the procedures of that establishment. In the instant case, the Guangdong Department of Labor Certificate does not indicate that the beneficiary specialized in any type of specialty cuisine in order to obtain certification as a chef. The employment certification letter, dated December 21, 2001, from [REDACTED] does not indicate that the beneficiary possessed specialized knowledge of its cuisine. Rather, it states in part: "[The beneficiary's] main duties are to supervise the kitchen staff and assist in cooking using various methods of stir-

frying, deep-frying, steaming, and stewing.” In the certification letter, dated May 11, 2001, the foreign entity’s representative certifies that the beneficiary has been employed since March 1, 2000, for its restaurant as a chief chef of the dimsum department. There is no indication from the evidence that the beneficiary possessed specialized knowledge or that the positions required specialized knowledge.

Counsel also contends that the beneficiary possesses specialized knowledge in that he possesses knowledge that is valuable to the employer’s competitive position in the market place; or can normally be gained only through prior experience with that employer. A restaurant may benefit from the employment of a skilled chef, but that does not make a skilled worker eligible for classification as an individual employed in a specialized knowledge capacity.

In accordance with the statutory definition of specialized knowledge, a beneficiary must possess "special" knowledge of the petitioner's product and its application in international markets, or an "advanced level" of knowledge of the petitioner's processes and procedures. Here, the beneficiary possesses the skill required to work as a supervisory chef, not specialized knowledge of the petitioner’s processes and procedures. Accordingly, the petitioner has not established that the beneficiary has been employed in a specialized knowledge position or that the beneficiary would be employed in a position involving specialized knowledge.

In addition, counsel’s assertions that the CIS has misinterpreted the definitions of specialized knowledge are not persuasive. The courts have previously held that the legislative history for the term “specialized knowledge” provides ample support for a restrictive interpretation of the term. In *1756, Inc. v. Attorney General*, the court stated that “[i]n light of Congress’ intent that the L-1 category should be limited, it was reasonable for the INS to conclude that specialized knowledge capacity should not extend to all employees with specialized knowledge. On this score, the legislative history provides some guidance: Congress referred to “key personnel” and executives.” 745 F.Supp.9, 16 (D.D.C. 1990). The record does not support a finding that the beneficiary in this case has specialized knowledge, but rather that he is skilled in the preparation of dimsum and abalone dishes.

Furthermore, the evidence submitted by the petitioner fails to establish that the beneficiary will be employed by the U.S. entity in a specialized knowledge capacity. Evidence submitted demonstrates that the beneficiary will be active in performing the day-to-day services and providing a variety of culinary products for the U.S. entity. Responsibilities described as menu selection, preparing Chinese dishes, supervising kitchen staff, training personnel, and maintaining quality control are without any context in which to conclude that such duties require specialized knowledge of the U.S. entity's product and its application in international markets. Neither does this evidence show that the beneficiary has an advanced level of knowledge of processes and procedures of the U.S. entity sufficient to warrant classification as one who possesses specialized knowledge.

In conclusion, the record does not establish that the beneficiary has been or will be employed in a specialized knowledge capacity. The record is not persuasive in showing that the beneficiary’s knowledge of the preparation of dimsum or abalone constitutes specialized knowledge as that term is used in the Act. The knowledge possessed by the beneficiary is a skill in specialty food preparation, not a special knowledge of the petitioner’s product, processes, or procedures.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.