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U.S. Department of Justice

Immigration and Naturalization Service

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: EAC-01-240-51266 Office: Vermont Service Center Date: JAN 24 2003

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a restaurant and catering business specializing in kosher foods with seven employees and a stated gross annual income of $415,737. It seeks to employ the beneficiary as a "chef cook" for a period of three years. The director determined the petitioner had not established that the proffered position is a specialty occupation.

On appeal, counsel submits a brief and documentation.

8 C.F.R. 214.2(h)(4)(ii) defines the term "specialty occupation" as:

> an 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.

The director denied the petition because the petitioner had not shown that the performance of the duties of the proffered position required a baccalaureate or higher degree in a specific specialty.

On appeal, counsel asserts that the duties of the proffered position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty of food processing.

Counsel's assertion on appeal is not persuasive. The Service does not use a title, by itself, when determining whether a particular job qualifies as a specialty occupation. The specific duties of the offered position combined with the nature of the petitioning entity's business operations are factors that the Service considers. In a letter which accompanied the initial I-129 petition, the petitioner described the duties of the offered position as follows:

1) Plans, directs, and coordinates activities in selecting and purchasing food ingredients and

other supplies under strictly Glatt Kosher standards;

2) Plans, directs, and coordinates preparation of Bukharian Jewish meals in accordance with Glatt Kosher standards as well as with Central Asian and Mediterranean cultural and ethnic customs and traditions;

3) Plans and prices menu items;

4) Distributes work assignments and supervises employees engaged in preparation and cooking of salads, soups, fish, meats, vegetables, desserts, and other food in accordance with Glatt Kosher standards;

5) Directs the purchase of the company's cooking equipment;

6) Keeps records of prepared meal and food supplies;

7) Trains subordinate employees;

8) Attends staff meetings regarding the company's operating activities.

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.

The petitioner has not met any of the above requirements to classify the offered position as a specialty occupation.

The Service does not agree with counsel's argument that the position of "chef cook" would normally require a baccalaureate degree in a specific specialty. The position parallels that of an executive chef as that job is described by the Department of Labor (DOL) in its Occupational Outlook Handbook (Handbook), 2002-2003 edition. A review of the Handbook at pages 56-57 finds no requirement of a baccalaureate degree in a specific specialty for employment as a chef. Some chefs learn their trade through on-the-job training or through apprenticeship. Others hold certificates, associate degrees, and baccalaureate degrees from senior colleges and universities, junior and community colleges, or culinary institutes. Additionally, the Handbook does not state that a baccalaureate or higher degree in a specific specialty is required for employment as an executive chef. Executive chefs need extensive experience working as chefs. Some restaurant and food service managers are promoted from the ranks of restaurant workers. Others hold baccalaureate and associate (two-year) degrees in restaurant management and other fields of study.

Counsel further asserts that the DOL has determined that the proffered position is a specialty occupation. However, a reference in the Department of Labor's Dictionary of Occupational Titles (DOT), standing alone, is not enough to establish that an occupation is a specialty occupation. The DOT classification system and its categorization of an occupation as "professional and kindred" are not directly related to membership in a profession or specialty occupation as defined in immigration law. In the DOT listing of occupations, any given subject area within the professions contains nonprofessional work, as well as work within the professions.

The latest edition of the DOT does not give information about the educational and other requirements for the different occupations. This type of information is currently furnished by the Department of Labor in the various editions of the Handbook. The latter publication is given considerable weight (certainly much more than the DOT) in determining whether an occupation is within the professions. This is because it provides specific and detailed information regarding the educational and other requirements for occupations. Thus, the petitioner has not shown that a bachelor's degree in a specific academic specialty or its equivalent is required for the position being offered to the beneficiary.

The petitioner has not shown that it has, in the past, required the services of individuals with baccalaureate or higher degrees in a specialized area such as restaurant management or food service management for the offered position.

Counsel argues on appeal that a bachelor's degree in food processing is a standard requirement for executive chefs in restaurants and catering establishments specializing in Glatt Kosher cuisine. In an attempt to provide evidence of an industry standard, the petitioner has submitted letters from a rabbi and from a representative of another Jewish kosher restaurant and catering business. [redacted] Vice President of Jewish Cuisine Restaurant in Forest Hills, New York, states that his restaurant also provides Glatt Kosher Bukharian Jewish cuisine to customers from Central Asia and the Middle East. [redacted] states that his "chef cook", [redacted] was awarded the qualification of "Engineer-Technologist in Food Preparation" from an institution in Samarkand. In support of this statement, [redacted] provided a photocopy of [redacted] diploma with English translation. [redacted] has not, however, provided any evidence to show that Mr. [redacted] foreign education is equivalent to a bachelor's degree in a specific specialty such as restaurant management or food service management awarded by a regionally accredited college or university in the United States.

Both [redacted] assert that, according to Bukharian Jewish traditions, a chef cook in charge of the preparation of a Glatt Kosher meal for parties of 300 or more people must have a formal bachelor's degree in food processing as well as specialized training in the preparation of food according to Glatt Kosher standards. Two letters are insufficient proof of an industry standard as neither of the writers has provided any independent evidence which would tend to support the claims and opinions put forth in these letters. The record does not contain any additional documentation which would tend to establish the existence of an industry standard requiring a bachelor's degree in a specific specialty for employment as a "chef cook." Accordingly, it cannot be concluded that the petitioner has demonstrated that the degree requirement is common to the industry in parallel positions among similar organizations.

Finally, the petitioner has not submitted sufficient evidence to show that the nature of the beneficiary's proposed 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 petitioner has failed to establish that any of the four factors enumerated above are present in this proceeding. Accordingly, it is concluded that the petitioner has not demonstrated that the offered position is a specialty occupation within the meaning of the regulations.

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.