

“Immigration is Hard Out Here for a Chef” by Adam Edward Rothwell, Esq.

Beyond a doubt substantial need exists for foreign chefs in the United States. The US hospitality industry, ethnic restaurants and other private employers all have strong need for skilled foreign chefs, and this need exists on an ongoing basis throughout the United States. However, for the most part sponsorship of foreign chefs in the US for work is usually very difficult. Skilled foreign chefs have relatively some of the least options of any job category for sponsorship under US immigration laws.

US immigration law is made in response to considerations over policy, and policy rationale for increasing sponsorship of foreign workers depends on perceived need for filling specific positions. In other words, sponsorship of foreign workers is supposed to be most readily available to industries and positions where available US workers are few in number or just don't exist. Conversely, potential sponsorship options for foreign workers is generally much more limited for positions where at least a perception exists that US workers are more available. And this is where sponsorship of foreign chefs runs into difficulty, because in theory at least there are always available chefs with the legal right to work in the US.

A foreign chef may theoretically be sponsored for short period of time, usually less than a year, on a H-2B seasonal work visa. Yet, sponsoring a foreign chef under this category requires substantial time and expense for an employer, especially in relation to the amount of time authorized for employment. Also the H-2B Visa category is used by many industries, and the total number of H-2B Visas each year for all industries is limited by a total cap number, so this visa category is not always even available. For these reasons, the H-2B Visa category is seldom utilized by US employers to sponsor foreign chefs.

A US employer may theoretically sponsor a foreign chef on a J-1 work exchange visa. However, J-1 Visas are trainee visas for early stage workers and are seldom granted for more than one year. Also J-1 Visas may not be extended by an employer, which means a US employer hoping to sponsor a foreign chef on a J-1 Visa would incur substantial sponsorship costs for a limited employment period. Understandably very few US employers consider this route a viable option for sponsorship of foreign chefs.

Another theoretical route for sponsorship of foreign chefs by US employers (which used to have more potential) is through a Q-1 cultural exchange work visa. Yet, recent published adjudication decisions have resulted in a trend of making sponsorship of chefs under this category extraordinary difficult for almost all potential US based employers. Disney World is a US employer that has often successfully utilized the Q-1 Visa category to bring in foreign chefs on a cultural exchange, because ethnic restaurants at Disney World are as much in the business of showing culture as serving food. Yet, other ethnic restaurants now practically have to also build their businesses around a cultural exchange for a chance of approval under this category, which has greatly lowered the Q-1 Visa as a potential option.

Practically the only way a US employer currently has a strong chance of sponsoring a foreign chef for at least a couple years is if the employer has a need for an extraordinary foreign chef with international acclaim. The O-1 non-immigrant visa for extraordinary workers may be applied by US employers for foreign chefs who have reached the level extraordinary. Yet, proving extraordinary ability is usually difficult and subjective. Also a major factor showing extraordinary ability is often the offered salary, which precludes most potential employers from sponsorship under this category. For example, a locally-acclaimed, ethnic Indian restaurant in Cincinnati, Ohio that offers a chef from Mumbai \$50,000 a year may be making a very strong offer in its market. However, the immigration service is less likely to believe a chef with extraordinary ability would ever work for \$50,000 a year, especially since an acclaimed chef at a large casino-hotel in Vegas may make several times that salary.

Adam Edward Rothwell is a US Immigration lawyer based in Baltimore, Maryland. He may be followed on Twitter at: USAImmigration