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FILE: EAC 06 150 51568 Office: VERMONT SERVICE CENTER Date: **DEC 31 2007**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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.

for

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The director denied the nonimmigrant visa petition and dismissed a subsequent motion. 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 a wholesale bakery that seeks to employ the beneficiary as a food and beverage manager. 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 on two grounds: (1) his determination that the petitioner had failed to establish that the proposed position qualifies for classification as a specialty occupation; and (2) his determination that the petitioner had failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. On appeal, counsel contends that the director erred in denying the petition.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's denial letter; (3) the director's request for additional evidence; (4) the petitioner's response to the director's request; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

Section 214(i)(1) of the Immigration and Nationality Act (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:

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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualification for classification as a specialty occupation, the proposed 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 proposed position.

The petitioner, a wholesale bakery established in 2002, has six full-time and nine part-time employees. It proposes to hire the beneficiary as a food and beverage manager. In its March 21, 2006 letter of support, the petitioner stated the following:

While [the petitioner] will continue to grow its current wholesale bakery operations and in-house baking facility, the business has plans to expand its' [sic] Catering Division and Retail Bakery Division to the point that they represent 25% of the annual income of the company . . . [E]xpansion plans include future franchises for some of [the petitioner's] lines of business. . . .

* * *

In light of the company's goal to further expand our catering and retail lines of business to be full-service endeavors and financially solvent, we could face formidable business obstacles in all aspects of our corporate management if long range planning goals and objectives were not thoroughly strategized and executed meticulously and in a timely, fiscally appropriate manner. . . .

The petitioner stated that the duties of the proposed position would include supervising, managing, and overseeing the petitioner's food and beverage service in order to maintain established operational standards and maximize profits; conferring with the petitioner's food preparation staff and managing its lunch service, bakery, and catering operations; overseeing the development of creative, innovative, and cost effective lunch and catering menus; estimating food and beverage costs; requisitioning and purchasing supplies; overseeing the operation of all food and beverage services; reviewing food and beverage lists submitted by each of the petitioner's business lines in order to ensure that sufficient items are ordered each week, and that they are being ordered from reputable and reliable vendors with whom the petitioner has established relationships; inspecting food service facilities in order to ensure that the equipment and facilities are in compliance with all health and other state or federal laws, and that food is prepared and stored in a manner suitable to the petitioner's high standards; conferring with the petitioner's management regarding the hiring and assignment of personnel; working with the petitioner's management to develop and implement training standards; investigating and resolving food quality and service complaints; inspecting and tasting prepared food in order to instruct the food preparation staff, as well as other personnel, on company standards and maintenance of each of the petitioner's six lines of business's quality standards; overseeing menu planning; investigating any shortages, food quality issues, or customer complaints; preparing budgets; reviewing financial transactions; maintaining cost control; ensuring efficiency of operations; and ensuring that expenditures stay within budget limitations.

On appeal, counsel contends that the director erred in denying the petition, and that the proposed position qualifies for classification as a specialty occupation.

In determining whether a proposed position qualifies for classification 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 Department of Labor's *Occupational Outlook Handbook* (the *Handbook*) for its information about the duties and educational requirements of particular occupations.

The AAO finds that the duties of the proposed position are closely aligned to those of food service managers,¹ as that occupational grouping is described in the *Handbook*. In its discussion of the duties of food service managers, the 2006-2007 edition of the *Handbook* states the following:

Food service managers are responsible for the daily operations of restaurants and other establishments that prepare and serve meals and beverages to customers. Besides coordinating activities among various departments, such as kitchen, dining room, and banquet operations, food service managers ensure that customers are satisfied with their dining experience. In addition, they oversee the inventory and ordering of food, equipment, and supplies and arrange for the routine maintenance and upkeep of the restaurant, its equipment, and facilities. Managers generally are responsible for all of the administrative and human-resource functions of running the business, including recruiting new employees and monitoring employee performance and training.

* * *

Managers or executive chefs estimate food needs, place orders with distributors, and schedule the delivery of fresh food and supplies. They plan for routine services or deliveries, such as linen services or the heavy cleaning of dining rooms or kitchen equipment, to occur during slow times or when the dining room is closed. Managers also arrange for equipment maintenance and repairs, and coordinate a variety of services such as waste removal and pest control. Managers or executive chefs receive deliveries and check the contents against order records. They inspect the quality of fresh meats, poultry, fish, fruits, vegetables, and baked goods to ensure that expectations are met. They meet with representatives from restaurant supply companies and place orders to replenish stocks of tableware, linens, paper products, cleaning supplies, cooking utensils, and furniture and fixtures.

Managers must be good communicators. They need to speak well, often in several languages, with a diverse clientele and staff. They must motivate employees to work as a team, to ensure that food and service meet appropriate standards. Managers also must ensure that written supply orders are clear and unambiguous.

Managers interview, hire, train, and, when necessary, fire employees. Retaining good employees is a major challenge facing food service managers. . . .

¹ Counsel draws the same parallel.

Food service managers ensure that diners are served properly and in a timely manner. They investigate and resolve customers' complaints about food quality or service . . . They make sure that health and safety standards and local liquor regulations are obeyed. . . .

In addition to their regular duties, food service managers perform a variety of administrative assignments, such as keeping employee work records, preparing the payroll, and completing paperwork to comply with licensing laws and reporting requirements of tax, wage and hour, unemployment compensation, and Social Security laws. Some of this work may be delegated to an assistant manager or bookkeeper, or it may be contracted out, but most general managers retain responsibility for the accuracy of business records. Managers also maintain records of supply and equipment purchases and ensure that accounts with suppliers are paid.

In that the duties of a food service manager as discussed in the *Handbook* are closely aligned to those of the proposed position as set forth in the petition, the AAO next turns to the *Handbook's* discussion of the educational qualifications required for entry into the field.

In its discussion of the educational requirements for food service managers, the *Handbook* offers the following information:

Experience in the food services industry, whether as a full-time waiter or waitress or as a part-time or seasonal counter attendant, is essential training for a food services manager. Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality management programs which require internships and real-life experience to graduate. Some restaurant chains prefer to hire people with degrees in restaurant and institutional food service management, but they often hire graduates with degrees in other fields who have demonstrated interest and aptitude. Some restaurant and food service manager positions—particularly self-service and fast-food—are filled by promoting experienced food and beverage preparation and service workers. Waiters, waitresses, chefs, and fast-food workers demonstrating potential for handling increased responsibility sometimes advance to assistant manager or management trainee jobs. Executive chefs need extensive experience working as chefs, and general managers need prior restaurant experience, usually as assistant managers.

A bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation. A number of colleges and universities offer 4-year programs in restaurant and hospitality management or institutional food service management; a growing number of university programs offer graduate degrees in hospitality management or similar fields. For those not interested in pursuing a 4-year degree, community and junior colleges, technical institutes, and other institutions offer programs in the field leading to an associate degree or other formal certification. Both 2- and 4-year programs provide instruction in subjects such as nutrition, sanitation, and food planning and preparation, as well as accounting, business law and management, and computer science. Some programs combine classroom and laboratory study with internships providing on-the-job experience. In addition, many educational institutions

offer culinary programs in food preparation. Such training can lead to a career as a cook or chef and provide a foundation for advancement to an executive chef position. . . .

Thus, the *Handbook* explains unequivocally that a bachelor's degree is not the normal minimum requirement for entry into the proposed position, and its findings do not support the assertion that a bachelor's degree is required for entry. The statement that a bachelor's degree provides "particularly strong preparation" for a position or that employers "prefer" to hire candidates with such a degree is not synonymous with the "normally required" standard imposed by the regulation.

The AAO will accord no weight to the information counsel submits from the Department of Labor's *Dictionary of Occupational Titles (DOT)*. The *DOT* is not a persuasive source of information regarding whether a particular job requires the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, as a minimum for entry into the occupation. The *DOT*'s assessment (the SVP rating) is meant only to indicate the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience, and does not specify the particular type of degree, if any, that a position would require. Again, 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 proposed position.

For all of these reasons, the proposed position does not qualify for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations. The AAO has reviewed the three job postings submitted by counsel in response to the director's request for additional evidence. Counsel, however, has failed to consider the specific requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) for establishing a baccalaureate or higher degree as an industry norm. To meet the burden of proof imposed by the regulatory language, a petitioner must establish that its degree requirement exists in parallel positions among similar organizations.

The petitioner has not submitted any evidence to demonstrate that any of these job postings are from companies "similar" to the petitioner, a wholesale bakery with nine full-time and six part-time employees. There is no evidence that the advertisers are similar to the petitioner in size, scope, and scale of operations, business efforts, or expenditures. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec.

190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The Boulder Community Foothills Hospital is a 60-bed acute hospital located in Boulder, Colorado. Aramark provides food, facility, and other support services to more than 500 clients, at more than 1,200 locations across the United States. According to its advertisement, Aramark offers its clients a single-source provider for employee cafeterias, executive dining rooms, catering, convenience stores, conference center management, and facility management. Chartwells operates the dining services department for a K-12 education program.

Nor do these job postings establish that a four-year degree is required for the position. The posting of Aramark specifically states that the company would find acceptable a culinary degree with five years of experience in lieu of a bachelor's degree.² Similarly, Chartwells would find acceptable a 2-year degree with five years of work experience. These postings do not establish that the petitioner's degree requirement is common in parallel positions at similar organizations.

Therefore, the proposed position does not qualify as a specialty occupation under the criteria set forth at the first prong of the second criterion.

The AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a showing that the position is so complex or unique that it can only be performed by an individual with a degree. It finds no evidence that would support such a finding, as the position proposed in the petition is very similar to the food service manager occupation described in the *Handbook* – an occupation which the *Handbook* indicates can be performed without a baccalaureate degree or its equivalent. Although the petitioner has stated that it has plans to expand, it has not submitted documentary evidence, such as a business plan, to document this assertion. The petitioner has not established its proposed position as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner's ability to meet the third criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

However, no such evidence has been presented, nor has counsel contended that the proposed position qualifies under this criterion. Therefore, the position does not qualify as a specialty occupation under the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

² The *Handbook* discusses culinary training in its discussion of the duties educational requirements for chefs, cooks, and food preparation workers. A culinary degree is not necessarily synonymous with a bachelor's degree: the *Handbook* states that such programs may lead to a certificate, or a 2- or 4-year degree.

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of the proposed position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty occupation.

Although the petitioner asserts that the duties of its proposed position involve specialized duties that cannot be performed without the attainment of a bachelor's degree, or its equivalent, the evidence of record establishes that they are similar to those outlined in the *Handbook*. To the extent that they are depicted in the record, the duties do not appear more specialized or complex than those associated with other food service manager positions, for which the *Handbook* indicates neither a requirement for nor usual association with at least a baccalaureate degree in a specific specialty. The evidence does not establish that this particular position requires the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The petitioner has not established its proposed position as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Counsel cites to *Matter of Sun*, 12 I&N Dec. 535 (BIA 1966); *Matter of Shin*, 11 I&N Dec. 686 (DD 1966); and *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). However, these cases do not establish the proposed position as a specialty occupation. In *Matter of Sun*, the BIA found that some hotel managers, under certain circumstances, qualify for professional status. The BIA did not find that all hotel managers are members of the professions. The AAO notes that the petitioner in *Matter of Sun* was a hotel, and the proposed position was for a hotel manager; neither of which are the case in this petition. Moreover, the AAO notes that *Matter of Sun* did not involve an H-1B visa; it involved an immigrant visa. Counsel also cites *Matter of Sun*, *Matter of Shin*, and *Matter of Caron International* for the proposition that the vocations included in the term "professional" are constantly in flux, and that fields that were once not professional can become professional over time. The AAO agrees. However, in this case the petitioner has failed to establish that its proposed position qualifies for classification as a specialty occupation under any of the regulatory criteria set forth above.

Nor do the advisory opinions submitted by counsel establish the proposed position as a specialty occupation.

In his January 6, 2000 letter, [REDACTED] Ph.D., states that he was an instructor and visiting assistant professor of hotel, restaurant, and institutional management at a large university (he does not name the university, however). Dr. [REDACTED] states the following:

Throughout my career, I have personally observed that the expansion of the hospitality industry over the past 20 years and increased responsibility involved in managing operations within a large hotel has resulted in a change in the educational requirements for an individual to assume a management-level position with a major hotel corporation. The minimum level of education now required for a management-level position with a major hotel corporation in the United States is at least a bachelor's degree in hotel management or a related discipline and, in some cases, a master's degree.

Twenty years ago, it was common for hotels, particularly smaller hotel and restaurant establishments, to promote managers from the ranks of employees, regardless of their education. This is no longer the case. Today, major hotel corporations recruit almost exclusively from colleges and universities which offer hotel management programs, or from foreign hotel management schools with comparable hospitality management educational programs. . . .

Today, it is the industry standard of hotel chains and large hotel corporations, which often employ hundreds of individuals and have gross operating budgets of millions of dollars, to require a bachelor's degree in Hotel and Restaurant Management or the equivalent for management positions.

The relevance of Dr. [REDACTED] letter is unclear. The petitioner is not a hotel chain or a large hotel corporation. In fact, it is not a hotel. Nor does the beneficiary have a background in hotel management. This is not a petition for a hotel management position. That hotel chains and large hotel corporations require candidates for management positions to possess a bachelor's degree is not relevant here. The types of positions he discusses, and the types of business that would hire to fill such positions, are not similar to those of the instant petition. Dr. [REDACTED] letter does not establish the petitioner's eligibility under any of the regulatory criteria discussed previously.

Counsel also submits an undated letter from [REDACTED], general manager of the Peninsula Beverly Hills Hotel, a five-star restaurant located in Beverly Hills, California. Mr. [REDACTED] states the following:-

Based upon my qualifications and my familiarity with the industry, I can attest to the fact that it is standard practice in the restaurant industry, as well as in the hotel and restaurant business to require the individuals who operate as Food and Beverage Managers in restaurants with multiple locations or associated with hotels or who operate world class restaurants, to have obtained at least a Bachelor of Arts degree in Hotel and Restaurant Management or its equivalent in course work and experience . . . Most hotels and restaurants engaged in either quality 4 or 5 star or diamond operations or which have multiple locations, recruit food service management from such hospitality management programs.

* * *

In our business we never hire any individual as [a] Food and Beverage Manager without such a degree or its equivalent. In fact as a result of my work in the field, I can attest to the fact that this policy is standard in the field.

This letter contains the same deficiencies as those contained in Dr. [REDACTED] letter. The petitioner is a wholesale bakery. That "restaurants with multiple locations or associated with hotels or who operate world class restaurants" or that "[m]ost hotels and restaurants engaged in either quality 4 or 5 star or diamond operations" is not relevant to this petition. That such establishments require a bachelor's or higher degree does not aid the petitioner's case.

Counsel also submits an April 16, 1999 letter from Marjorie Ferree Jones, a lecturer at the California State Polytechnic University—Pomona School of Hotel and Restaurant Management and manager of the Restaurant at Kellogg Ranch. Ms. J. [REDACTED] states the following:

It is my opinion, that it is standard in the restaurant business, as well as, in the industry to require individuals who are hired for the position of Food and Beverage Manager to have completed either a degree in Hotel and Restaurant Management, Culinary Arts[,] or other related restaurant or hotel management field, or the equivalent in coursework and experience.

It is typically required in the restaurant industry because of the complexity of the duties that are involved in running a restaurant organization, particularly where the organization has a world-class rating or where a restaurant has multiple locations that are attended to by the management. Typically individuals that are hired into the position require substantial duties in directing and coordinating the daily operations of the restaurant. These duties include running of services, handling food and beverage preparation, menu planning, ordering[,] and working with vendors and outside sources to coordinate the production in house. The services also involve utilization of training in regulatory matters and business aspects of running an operation, particularly running in large operations or complex operations involving multiple sites, standardization criteria for ratings and other operations involving food inspection, storage[,] and preparation. The individuals in such positions are usually involved in restaurant management and oversee daily food sales, patron attendance, labor costs, are responsible for ensuring alcohol compliance and that liquor licenses are attended to, that banquet facilities are maintained and support the operations of the restaurant . . . Because the duties are complex and involve business management issues, restaurants in the industry require an individual with a degree or the equivalent of a degree to perform these duties. It would be impossible for an individual without proper training or background to attend to the complex business issues involved. The fact that the individual is running a restaurant rather than any other type of business makes no difference in the complexity of issues. . . .

Ms. [REDACTED] letter, which the AAO notes is nearly nine years old, suffers the same deficiencies of the letters discussed previously. Again, the AAO notes that the petitioner is a wholesale bakery, not a restaurant. It has not established that its business model is similar to that of a restaurant.

Finally, the AAO turns to the evaluation of the proposed position that the petitioner submits from Professor [REDACTED], an Associate Professor of Hotel Administration in the Department of Hotel Administration at Cornell University, dated March 26, 2006. Mr. [REDACTED] states the following:

I find that the job duties for the position are specialized in nature, requiring the ability to apply the knowledge associated with the attainment of a bachelor's-level degree in hotel and restaurant management, food and beverage management, culinary arts, or a closely related field. Furthermore, I find it is a matter of business necessity for a company of the nature of the employer, [name redacted]—a wholesale German bakery with expansion plans for business operations that include catering and retail sales—to hire a food and beverage manager, and to establish a specialty-level prerequisite for the position (given that the position will be instrumental in facilitating these expansion plans). . . .

* * *

I have reviewed an outline of the job duties. . . .

* * *

Based on my review of the aforesaid job duties, as well as my knowledge of the general function performed by food and beverage managers in the employer's operating sector, I believe that the position is a specialty occupation as defined at 8 C.F.R. 214.2, requiring bachelor's-level educational training in hotel and restaurant management, culinary arts, food

and beverage management, or a related area (or the equivalent in foreign academic study, professional experience, and/or an appropriate combination thereof). I believe that it is a general practice within the field of restaurant management to hire a food and beverage manager with such a bachelor's-level background, particularly when engaged in substantive expansion or diversification (as is the case for the employer).

However, Mr. [REDACTED] has not established an adequate foundation to support his opinion. He does not indicate the location of the petitioner, whether he reviewed company information about the petitioner, visited its site, or interviewed anyone affiliated with the petitioner. Nor does he supply any data to support his assertion, which conflicts not only with the information cited previously from the *Handbook*, but also conflicts with two of the three job postings submitted by counsel. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Mr. [REDACTED] evaluation does not satisfy any of the criteria cited above for establishing the position as a specialty occupation. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

For all of these reasons, the petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation.

The director also found that the petitioner had failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must meet one of the following criteria:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In making its determination as to whether the beneficiary qualifies to perform the duties of a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(C), as described above, which requires a demonstration that the beneficiary holds a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university.

The first criterion requires a showing that the beneficiary earned a baccalaureate or higher degree from a United States institution of higher education. The beneficiary did not earn a degree in the United States, so he does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1).

Nor does the beneficiary qualify under the second criterion, which requires a demonstration that the beneficiary's foreign degree has been determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university. No evidence has been submitted to indicate that the beneficiary's foreign degree is equivalent to a bachelor's degree, so he does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2).

The record does not demonstrate, nor has the petitioner contended, that the beneficiary holds an unrestricted state license, registration or certification to practice the specialty occupation, so he does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3).

The fourth criterion, set forth at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. When evaluating a beneficiary's qualifications under this criterion, CIS looks to the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(D). Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree is determined by one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). Although the evaluation from Professor ██████ that counsel submits on appeal is dated March 27, 2006, it appears identical to the March 26, 2006 evaluation submitted previously. Professor ██████ states the following:

[The beneficiary] has completed over fourteen years of work experience and training in positions of progressively increasing responsibility and sophistication, characterized by the theoretical and practical application of specialized knowledge under superiors, together with peers, with baccalaureate-level training in culinary arts, and related areas. At the equivalency ratio of three years of work experience for one year of college training . . . [the beneficiary] completed, in time equivalence, the years of study required in connection with the attainment of a bachelor's degree, in addition to his completion of a Final Examination Certificate. . . .

[I]t is my judgment that [the beneficiary] received the equivalent of a Bachelor of Arts Degree in Culinary Arts from an accredited institution of higher education in the United States.

The record also contains an October 22, 2003 letter from ██████, Director of Student Services at the Cornell University School of Hotel Administration. Ms. ██████ states that faculty members at Cornell University have the authority to grant college-level credit for training and experience, and that Cornell University has a program for granting college-level credit based on a candidate's foreign educational credentials, training, and/or employment experience. She states that Professor ██████ has the authority to make determinations concerning the granting of college-level credit for training and experience in hotel and restaurant management courses, and related disciplines, at Cornell University.

The AAO finds Professor ██████ evaluation deficient for purposes of establishing eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I) and, by extension, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). First, the AAO questions Professor ██████'s expertise regarding culinary arts. Professor ██████ states that he has authored over 75 papers in academic journals, practitioner journals, book chapters, and at conferences. The AAO has reviewed Professor ██████'s resume, and notes that none of his research publications involve culinary arts or culinary studies.

More importantly, however, it does not appear as though Professor ██████ has the authority to make a determination that the beneficiary possesses the equivalent of a bachelor's degree in culinary arts, as it does not appear as though his institution, Cornell University, offers such a degree. According to its website, the Cornell University School of Hotel Administration offers four academic programs: (1) a bachelor's degree in hotel administration; (2) a master's degree of management in hospitality; (3) master's and doctoral degrees in hotel administration; and (4) a summer program for high school students.³ Students may choose one of six optional concentrations: (1) education; (2) finance, accounting, and real estate; (3) hospitality facilities and operations; (4) information science; (5) marketing strategy and information systems; and (6) organizational management, communication, and law.⁴ This evaluation is deficient for purposes of establishing eligibility under this criterion. The beneficiary does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I).

³ See <http://www.hotelschool.cornell.edu/academics> (accessed December 5, 2007).

⁴ See <http://www.hotelschool.cornell.edu/academics/ugrad/concentrations/index.html> (accessed December 5, 2007).

No evidence has been submitted to establish, nor has the petitioner contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires that the beneficiary submit the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the beneficiary is unqualified under this criterion because the evaluation submitted by the petitioner is deficient.

No evidence has been submitted to establish, nor has the petitioner contended, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The AAO next turns to the fifth criterion. When CIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁵;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country;
or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While the record contains several letters of reference regarding the beneficiary's work history, they do not establish that this work experience included the theoretical and practical application of specialized

⁵ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

knowledge required by the specialty, that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field, and that he achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in sections (i), (ii), (iii), (iv), or (v) of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(1)(2)(3)(4), or (5), and therefore by extension does not qualify under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). The petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation.

The petitioner has failed to establish that the proposed position qualifies for classification as a specialty occupation. The petitioner has also failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation. Accordingly, the AAO will 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.