

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



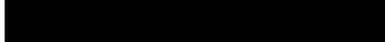
U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



*D2*

FILE: EAC 06 180 51659 Office: VERMONT SERVICE CENTER Date: **NOV 28 2007**

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 claims ownership of three restaurants in the Miami, Florida area. It seeks to employ the beneficiary as an operations manager. Accordingly, the petitioner 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).

On January 16, 2007, the director denied the petition determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts the director's decision is in error.

The record includes: (1) the Form I-129 filed May 25, 2006 and supporting documentation; (2) the director's September 11, 2006 request for evidence (RFE); (3) counsel for the petitioner's December 7, 2006 response to the director's RFE and supporting documentation; (4) the director's January 16, 2007 denial decision; and, (5) the Form I-290B and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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.

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 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 above criteria to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The petitioner seeks the beneficiary's services as an operations manager. On the Form I-129, the petitioner claimed to employ five personnel and to have \$1,123,007 in gross annual income and to have \$747,591 in net annual income. In a May 23, 2006 letter appended to the Form I-129 petition, the petitioner indicated that it owned three restaurants, one a well-known Italian restaurant in Miami Beach, Florida identified as Escopazzo and two located on the third and fourth floors of the Four Seasons Hotel identified as Café Elixir and Escopazzo Express. The petitioner noted that it was considering the possibilities of expanding into the catering business. The petitioner explained that it was in need of an operations manager for its "Four Seasons outposts" and that the beneficiary would be "responsible for developing the new services that [it was] offering at the Four Seasons mega-complex." The petitioner stated that the beneficiary in the proffered position would have the following duties:

- Overseeing activities directly related to the restaurant and catering services featured at our two locations within the Four Seasons Tower & Hotel.
- Directing and coordinating activities of our catering and restaurant/café business concerned with the production, pricing, sales, and/or distribution of products.
- Determining staffing requirements, and interviewing, hiring and training new employees, or overseeing those personnel processes.
- Monitoring business to ensure that they [sic] efficiently and effectively provide needed services while staying within budgetary limits.
- Managing staff, preparing work schedules and assigning specific duties.
- Reviewing financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement.
- Managing the movement of goods into and out of our facilities.
- Establishing and implement[ing] departmental policies, goals, objectives, and procedures, conferring with board members, organization officials, and staff members as necessary.
- Directing and coordinating organization's financial and budget activities to fund operations, maximize investments, and increase efficiency.
- Determining goods and services to be sold, and setting prices and credit terms, based on forecasts of customer demand.

The petitioner also included a copy of an Internal Revenue Service (IRS) Form 1120S filed by 1311 INC. D/B/A Escopazzo Restaurant for the 2005 year. The IRS Form 1120S listed \$1,123,007 in gross sales and receipts and \$50,507 in ordinary business income.

In a December 7, 2006 response to the director's RFE, counsel for the petitioner submitted: (1) an October 6, 2006 position evaluation authored by [REDACTED] at The Center for Food & Beverage Management, Hospitality College, Johnson & Wales University; (2) a December 8, 2006 letter written by [REDACTED] owner and founder of Tango Grill, a Key Biscayne, Florida based Argentine-Italian restaurant; (3) a November 16, 2006 letter prepared by the petitioner's owner and executive chef; and (4) nine job advertisements for positions of operations manager. [REDACTED] asserted that the evidence submitted established a minimum requirement for entry into an operations manager position, that a degree requirement was common to the industry in parallel positions among similar organizations, and that the nature of the duties is so complex and specialized that knowledge required to perform them is usually associated with attainment of a baccalaureate or higher degree.

[REDACTED] the author of the October 6, 2006 position evaluation, opined: "the position of operations manager is an occupation for which a Bachelor degree in Hospitality/Food Service Management or related would generally be required." [REDACTED] repeated the petitioner's description of the duties of the proffered position and concluded, without analysis, that the "position of Operations Manager would require a Bachelor's Degree in the specific field. A Bachelor degree in Hospitality/Food Service Management or related would generally prepare a student for an entry-level management position." [REDACTED] without providing his source(s): "major food service chains are now requiring a Bachelor degree for management positions, such as Operations Manager, due to the nature of the specialized duties, responsibilities and complex knowledge required to perform the position."

The owner and founder of Tango Grill, in his December 8, 2006 letter, stated: "[t]hroughout my career, one of my many responsibilities was to build management teams for the different operations that we started. I have hired several Operations Managers; I have always required that they have a bachelor's degree." [REDACTED] noted that Tango Grill's current operations manager had a business law degree from a university in Buenos Aires, Argentina. [REDACTED] further opined: that a restaurant manager could be employed without a bachelor's degree; but that an operations manager, who supervised restaurant managers, would require a bachelor's degree and that if the company was planning to expand into different operations, the operations manager is needed to control each individual operations manager.

In a November 16, 2006 letter, the petitioner's owner and chef stressed the petitioner's desire to grow and stated that an operations manager would be a key element in the petitioner's development. The petitioner, through its owner and chef indicated that the operations manager would coordinate the different restaurants, and the individual restaurant managers would deliver reports to the beneficiary that he would then deliver to her. The petitioner emphasized that the operations manager position was related to the corporation and not to a particular restaurant operation. The petitioner re-stated the duties of the position as:

[The beneficiary] will support our operating restaurants with the management of programs that reduce operating costs and protect assets evaluating each restaurant needs. He will motivate and recognize the Restaurants Managers, assistant managers and restaurants teams.

[The beneficiary] will direct restaurants growth, developing staff, maintaining operational standards, sales and profitability as well as implementing operational growth strategies.

Additionally [the beneficiary] will visit my company restaurants in order to oversee daily food and beverage operations for each unit on a profitable basis. He will directly manage the activities of associates coordinating recommendations and establishment of prices and portions for products and services within approved profit plan guidelines. He will also control the proper implementation of sanitation procedures and high sanitation standards.

The petitioner stated further, through its owner and chef, that the petitioner had hired three different operations managers during the last 13 years and it had been her experience that the minimum requirement for this position is a baccalaureate degree in business, food service management or its equivalent. The owner/chef claimed that she had never hired an operations manager without a bachelor's degree because she understood that the complexity of managing profit goals, budgets and expenses; overseeing human resources; and planning strategies applying critical thinking required such a level of education.

The nine Internet job announcements submitted by counsel included solicitations for positions including: (1) an operations manager III for a food/beverage company operating in four terminals at a Florida airport that listed a four-year degree in an unspecified discipline; (2) a director of restaurants operations to manage 11 restaurant units that listed a four-year degree in an unspecified discipline; (3) a general manager for an unidentified company that indicated a bachelor's degree in an unspecified discipline was required; (4) a restaurant general manager for a Wendy's restaurant that indicated the ideal candidate would have a college degree or equivalent experience in operations; (5) a restaurant district manager to be assigned multi-unit restaurants that required a bachelor's degree and preferred hotel/restaurant management or a similar discipline; (6) a restaurant shift manager for a restaurant in a casino that listed a four-year degree in an unspecified discipline; (7) a general manager for a food and facilities management services company that required a bachelor's degree in an unspecified discipline; (8) a management position in food services that listed a four-year degree in an unspecified discipline as required in the education field; and (9) a manager to operate a restaurant/lounge that listed a four-year degree in an unspecified discipline as the required education.

On January 16, 2007 the director denied the petition. The director noted that the advertisements submitted did not require a bachelor's degree in a specific academic concentration. The director acknowledged the position evaluation authored by [REDACTED], the letter submitted by the president of Tango Grill, and the letter submitted by the petitioner's owner/chef, but did not find the information provided in the letters or evaluation probative. The director referenced the Department of Labor's *Occupational Outlook Handbook's (Handbook)* report on top executives and noted that the *Handbook* did not report that a bachelor's degree in a specific discipline was required for entry into the position of operations manager. The director concluded: that the evidence submitted did not establish that a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry into the position of operations manager; that the petitioner had not established that a bachelor's degree is common to the industry in parallel positions among similar organizations; or that the petitioner has showed that the particular position is so complex or unique that only an individual with a degree could perform the duties of the position.

On appeal counsel for the petitioner asserts that the director ignored the submitted evidence, improperly based her decision on a small segment of the *Handbook*, and failed to recognize the uniqueness and complexity of the proffered position. Counsel contends that the proffered position in this matter will coordinate and oversee three different restaurants and a catering service, duties that require specialized knowledge and experience. Counsel references the position evaluation authored by [REDACTED] and claims that the position evaluation should have been considered without further corroboration. Counsel cites unpublished decisions wherein the AAO took into account the complexity of business operations as well as the duties of the proffered position and sustained the appeals and asserts the director failed to consider the petitioner's complex and award-winning operation.

Counsel's assertions are not persuasive. The petitioner has not provided sufficient evidence to establish that the proffered position is a specialty occupation. To determine whether a particular job qualifies as a specialty occupation, CIS does not rely on a position's title. The AAO agrees that the specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered when determining whether a position is a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384 (5<sup>th</sup> Cir. 2000).

The AAO turns first to the description of the duties of the proffered position. Preliminarily, the AAO observes an apparent inconsistency between the petitioner's initial description of the position's duties and responsibilities added when the petitioner responded to the director's RFE. The petitioner initially stated that the individual in the proffered position would oversee "activities directly related to the restaurant and catering services featured at [the petitioner's] two locations within the Four Seasons Tower & Hotel," and that the petitioner needed an operations manager for its "Four Seasons outposts." In response to the RFE, the petitioner indicated that the operations manager would coordinate the three different restaurants and individual restaurant managers as the position was related to the corporation and not to a particular restaurant operation. Thus, the response to the director's RFE suggests that the petitioner is adding responsibility for its main restaurant, the restaurant that generates its most sales/receipts according to the IRS Form 1120S, to the proffered position. The initial description appeared to limit the beneficiary's responsibility to Café Elixir and Escopazzo Express and the potential of a catering service; while the response to the RFE expanded the beneficiary's responsibility to the established restaurant and an existing catering service. When responding to a request for evidence, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification as a managerial or executive position. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978). The AAO will consider the job duties submitted with the initial filing.

The AAO finds that the petitioner has not established that the proffered position incorporates the duties of a specialty occupation as defined at 8 C.F.R. § 214.2(h)(4)(ii) and further that the duties of the position as the duties relate to the petitioner's business fail to meet any of the criteria set out at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations in an effort to understand the normal minimum requirements for entry into a particular position. The AAO has reviewed the *Handbook's* report of a general and operations manager as listed under

the heading "Top Executives;" and of a food service manager listed under the heading "Food Service Managers." The *Handbook* reports:

*General and operations managers* plan, direct, or coordinate the operations of companies or public and private sector organizations. Their duties include formulating policies, managing daily operations, and planning the use of materials and human resources, but are too diverse and general in nature to be classified in any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the duties of general and operations managers may overlap the duties of chief executive officers.

Regarding, food service managers the *Handbook* reports:

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.

\* \* \*

One of the most important tasks of food service managers is assisting executive chefs as they select successful menu items. . . . Managers or executive chefs select menu items, taking into account the likely number of customers and the past popularity of dishes. . . . Managers or executive chefs analyze the recipes of the dishes to determine food, labor, and overhead costs and to assign prices to various dishes.

\* \* \*

Managers or executive chefs estimate food needs, place orders with distributors, and schedule the delivery of fresh food and supplies.

The AAO finds that the petitioner's initial description of the duties of the proffered position incorporates many of the duties of an operations manager and a food services manager. The petitioner's indication that the beneficiary will: oversee activities at the petitioner's two restaurant locations at the Four Seasons Hotel; direct and coordinate the catering and restaurant/café business concerned with production, pricing, sales, and/or distribution of products; determine staffing requirements and interview, hire, and train new employees or oversee these processes; manage staff, prepare work schedules, and assign duties; manage the movement of goods into and out of the restaurant(s) facility; and determine goods and services to be sold, set prices and credit terms based on forecasts of customer demand are elements that correspond to the *Handbook's* report regarding food service managers.

The petitioner's general description of the beneficiary's duties including: monitoring the business to ensure the restaurant(s) provide services within budgetary limits; reviewing financial statements, sales, activity reports, and other performance data to determine productivity, cost reduction, and program improvement; establishing and implementing departmental policies, goals, objectives and procedures; and directing and coordinating the organization's financial and budget activities; are duties that correspond to the duties of an operations or general manager as described in the *Handbook*.

Turning to the *Handbook's* discussion of the educational requirements for general managers, the educational requirements for these positions vary widely. The *Handbook* notes that many top executives have a bachelor's or higher degree in business administration or liberal arts while many top executives positions are filled from within the organization by promoting experienced, lower-level managers. As the director pointed out, the *Handbook* reports that in retail trade or transportation industries it is possible for individuals without a college degree to work their way up within the company and become managers.

Likewise the *Handbook's* discussion of the educational requirements for food services managers indicates that the educational requirements vary. The *Handbook* indicates:

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 experience, interest, and aptitude. Many restaurant and food service manager positions – particularly self-service and fast-food - are filled by promoting experienced food and beverage preparation and services workers.

The *Handbook* also recognizes: "[a] bachelor's degree in restaurant and food service management provides particularly strong preparation for a career in this occupation," and "[f]or 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."

The *Handbook* does not find a minimum educational requirement of a bachelor's or higher degree in a specific discipline for either of the above occupations; rather entry into either occupation may be gained through a variety of avenues. Stated a different way, there is nothing in the *Handbook* that identifies a bachelor's or higher degree as the minimum requirement for entry into the positions of either a food service manager or an operations manager.

The AAO has considered the position evaluation prepared by [REDACTED] and his opinion that : "the position of operations manager is an occupation for which a Bachelor degree in Hospitality/Food Service Management or related would generally be required." The AAO observes that [REDACTED] merely paraphrased the petitioner's description of the duties of the proffered position and then offered a conclusory statement. [REDACTED] does not discuss the petitioner's operations, the generality of many of the duties described, or how any of the described duties relate specifically to the petitioner's operations. The AAO acknowledges

██████████ position as a professor at the Hospitality College at Johnson & Wales University; however, broadly-stated conclusions are not supported by independent evidence. Professor Faria does not indicate he interviewed or otherwise reviewed objective surveys of the requirements of major food service chains for management positions; rather ██████████ offers an unsubstantiated opinion that the major food service chains now require a bachelor's degree for positions such as operations manager. 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)). 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). ██████████'s opinion is inadequate to substantiate that there is a minimum educational requirement for the position of an operations manager or a food service manager.

The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into an operations or food service manager position as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO next turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree. To determine whether the petitioner's degree requirement is shared within its industry, CIS often considers 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)).

In this matter as observed above, the *Handbook* does not report that an operations or food service manager normally requires a baccalaureate or higher degree. With regard to parallel positions in industries similar to the petitioner's restaurant business, the petitioner has submitted nine Internet job announcements and a letter from an owner/founder of a restaurant in the Florida area. A review of the job announcements submitted does not identify the size of the companies, the number of company employees, or provide a thorough description of the nature of the companies' business that are advertising. The AAO does not find that the petitioner has established that its organization is sufficiently similar to the organizations advertising. In addition, the nine job announcements do not describe positions that are parallel to the petitioner's generally described operations manager position. Although some of the job advertisements indicate the open position is for an operations manager, the job announcements either provide a lengthy detailed description, a lengthy general description, or very little description of the duties of the advertised position at all. The petitioner has not established that the positions advertised are parallel to its proffered position or that the companies advertising are similar to its organization.

Moreover, the advertisements confirm that the educational requirements for a managerial position in the restaurant business do not require a bachelor's degree in a specific discipline. Although the nine job advertisements each indicate in the educational requirements heading of the advertisement that a college

degree or a four-year degree is required, none identify a specific course of study at the university level. The AAO reiterates that 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. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with no further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The AAO finds that [REDACTED] a, the owner and founder of Tango Grill, in his December 8, 2006 letter, does not corroborate his statement that he has always required his operations managers to have a degree in a specific discipline. 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. at 165. [REDACTED] does not detail the duties of the operations managers he has hired over the years, does not substantiate the size or number of employees in his restaurant business when he hired operations managers, and does not provide the names or copies of the diplomas held by his restaurant business' operations managers. Moreover, the single opinion of a restaurant owner is insufficient to establish an industry standard. Thus, the record does not contain adequate evidence demonstrating that restaurant businesses "routinely employ and recruit only degreed individuals," in a specific discipline.

The petitioner has not satisfied the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The record in this matter contains only a general overview of the duties of the petition. The petitioner has not provided information regarding specific elements of the position that exceed the scope of an operations or food services manager who has a basic understanding of the restaurant business and who possesses supervisory skills. The AAO acknowledges that the petitioner expressed a desire to expand its business into catering and to perhaps franchise. However, the petitioner has not provided sufficient details regarding the complexity or the uniqueness of duties associated with these tasks or documentary evidence demonstrating that it is expanding its business. The petitioner has not provided substantive evidence that would distinguish the proffered position from that of a typical operations or food service manager, positions that do not normally require a degree in a specific discipline.

The AAO has again reviewed [REDACTED] opinion regarding the position of an operations manager to determine whether his opinion included discussion or substantive evidence of the complexity or uniqueness of the proffered position. Although [REDACTED] repeats the petitioner's description of the duties of the proffered position, [REDACTED] does not analyze or reference which particular duties or responsibilities require complex knowledge or otherwise discuss the duties or responsibilities that are complex or unique to the petitioner's business or the proffered position. Again, when 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.

A review of the evidence of record finds it insufficient to establish that the proposed duties of the position are identifiable with an industry-wide educational standard, or distinguishable, by their unique nature or complexity, from similar but non-degree-requiring positions. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas to assist in determining whether the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). In this matter, in the November 16, 2006 response to the director's RFE, the petitioner stated, through its owner and chef, that the petitioner had hired three different operations managers during the last 13 years and it had been her experience that the minimum requirement for this position is a baccalaureate degree in business, food service management, or its equivalent. However, the petitioner does not provide any documentary evidence of previous employees hired as operations manager, and does not provide any documentary evidence that past employees who held the proffered position had bachelor's degrees in food service management or any other specific discipline. Again, 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. at 165.

Moreover, the AAO finds that while a petitioner may believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were CIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. The petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) which requires that the petitioner establish that 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. In this matter, the petitioner has submitted a general description of the position without providing comprehensive details of the daily activities of the position. The AAO acknowledges that the petitioner in response to the director's RFE indicated that the beneficiary: would coordinate the different restaurants; would motivate the restaurants managers, assistant managers and restaurants teams; would visit the company restaurants in order to oversee daily food and beverage operations for each unit on a profitable basis; and would manage the activities of associates coordinating recommendations and establishment of prices and portions for products and services within approved profit plan guidelines. However, these duties appear to be the routine duties of a food services manager and do not reveal any specific duties that are specialized or complex. In addition, the petitioner initially indicated it employed only five personnel; thus it is unclear how many personnel the petitioner actually has in the positions of restaurant managers, assistant managers, teams or associates. A review of the totality of the record regarding the proffered position and the nature of the petitioner's restaurant business does not reveal that the duties of the proffered position would require the theoretical and practical application of a body of highly specialized knowledge attained through a four-year course of study in a specific specialty at the university level.

The AAO has again reviewed the position evaluation prepared by [REDACTED] to determine whether his review of the duties of the proffered position should be given probative value; the AAO relies upon its initial discussion of [REDACTED] opinion and incorporates the discussion of the deficiencies of [REDACTED] opinion as elaborated above. Further, the AAO observes that [REDACTED] does not indicate he interviewed individuals employed by the petitioner, visited the site(s) of the petitioner's business, or otherwise reviewed company information about the petitioner, its method of business, its net income, or its organizational structure. There is thus an inadequate factual foundation established to support his opinion.

The petitioner has not provided sufficient documentary evidence that the duties of the proffered position contain elements different from that of a generic operations or food services manager. Neither does the position, as described, represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a operations or food service manager. The petitioner has not described complex projects or specialized duties that incorporate knowledge that is gained only through coursework at the university level. Again, 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. at 165. The description of duties as depicted in the record does not demonstrate that the nature of the 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 in a specific discipline. Without such evidence, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO acknowledges counsel's reference to unpublished decisions in which the AAO sustained the appeals; however, counsel has not furnished evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Beyond the decision of the director, the petitioner has not established the beneficiary's eligibility to perform the duties of a specialty occupation. The AAO observes that the beneficiary does not hold a U.S. or foreign degree; rather, the beneficiary has lengthy work experience that has been evaluated to be the equivalent of a U.S. degree in business administration. However, when attempting to establish that a beneficiary has the equivalent of a degree based on his or her combined education and employment experience under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), a petitioner may not rely on a credentials evaluation service to evaluate a beneficiary's work experience. A credentials evaluation service may evaluate only a beneficiary's educational credentials. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). To establish an academic equivalency for a beneficiary's work experience, a petitioner must submit an evaluation of such experience from an official who has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university that has a program for granting such credit. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Moreover, the beneficiary's work experience, as provided by his former foreign employer, indicates the beneficiary's 19-year career begin with employment as an administrative employee with a promotion to an assistant cashier position, and then to a head cashier position, and then to a management position within the treasury and finance department at the foreign entity's headquarters.<sup>1</sup> Although the beneficiary's employment reflects advancement within the

---

<sup>1</sup> The AAO observes that [REDACTED] who provided a position evaluation in this matter indicated that the petitioner's operations manager would be required to have a bachelor's degree in food service management.

foreign organization, the foreign organization does not discuss the beneficiary's peers, supervisors, or subordinates or whether these individuals held degrees or specialized knowledge at a bachelor's or higher degree level associated with a specialty occupation in the business. The record also does not contain evidence that the beneficiary's work experience with his peers, supervisors, or subordinates comprised an atmosphere conducive to obtaining knowledge that consequentially progressed to the equivalent of a bachelor's degree or its equivalent in the field. The petitioner has not provided evidence that the beneficiary is eligible to perform the duties of a specialty occupation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

---

The petitioner has presented a position evaluation identifying the proffered position, as one that would require a bachelor's degree in food service management, but has presented a beneficiary who does not have an academic education or work experience within the food or restaurant industry.