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

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 03 255 50308 Office: CALIFORNIA SERVICE CENTER Date: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The director of the 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 is a corporation that operates a restaurant that the petitioner described as a five-star luxury Chinese cuisine and beverage restaurant. In order to employ the beneficiary as a chef, 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).

The director denied the petition on the basis that the petitioner had failed to establish that the beneficiary was qualified to serve in a specialty occupation position, specifically a position that, according to the petitioner, requires at least a U.S. baccalaureate degree, or its equivalent, in culinary arts.

On appeal, counsel asserts that the evidence of record establishes that, despite the director's contrary finding, the years of work experience accumulated by the beneficiary are the equivalent of at least a U.S. baccalaureate degree in culinary arts. Counsel focuses especially on the two evaluations of the beneficiary's experience that appear in the record, both of which conclude that the beneficiary's work experience is equivalent to at least a U.S. bachelor's degree in culinary arts.

The director was correct in denying the petition on the basis that the petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

> (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
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> (B) completion of the degree described in paragraph (1)(B) for the occupation, or
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> (C) (i) experience in the specialty equivalent to the completion of such degree, and
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> (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The degree referenced by section 214(i)(l)(B) of the Act means one in a specific specialty that is characterized by a body of highly specialized knowledge that must be theoretically and practically applied in performing the duties of the proffered position.

In implementing 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must meet one of the following criteria in order to qualify to perform services in a specialty occupation:

(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.

Only the fourth criterion is relevant to this appeal. The record does not indicate that the beneficiary possesses a U.S. baccalaureate or higher degree, or a foreign degree that is the equivalent of such a U.S. degree; and the licensure criterion is not asserted.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating the beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(*4*) would require 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; [1]

(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

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[1] The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

> 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. . .

Only criteria *1*, *3*, and *5* are relevant to this appeal, and the petitioner has satisfied none of them.

Counsel relies primarily upon the two work experience evaluations in the record. The first was rendered in August 2003 by the Foundation for International Services (FIS). The director was correct to disregard this evaluation, as 8 C.F.R. § 214.2(h)(4)(iii)(D)(*3*) recognizes credentials evaluation services' evaluations only to the extent that they are based upon a beneficiary's education. The AAO also discounts the second evaluation of work experience, which was rendered in September 2003 by an associate professor of restaurant and hotel management at the Rochester Institute of Technology. Neither this evaluation, the accompanying resume, or any other evidence in the record establishes that the associate professor qualifies for recognition under 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*) as an official with "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." Citizenship and Immigration Services (CIS) will not accept a faculty member's opinion as to the college credit equivalence of a particular person's work experience or training, unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes *both* that the college or university has a program for granting college credit in the pertinent specialty *and* that the official is authorized to grant such academic credit for that institution. In this regard, it is noted that the associate professor does not state that he has authority to "grant" college-level credit, that he has authority to grant such credit in culinary arts, or that he is an official at a college or university that has a degree program in culinary arts. The AAO notes that the skeletal documentation about the beneficiary's work experience upon which the associate professor's opinion is based does not provide an adequate factual basis upon which college credit equivalency may be rendered.

The AAO discounts counsel's assertion, which is unsubstantiated by any independent evidence, that the associate professor "is a recognized authority and expert in the restaurant business."[2] 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 petitioner also failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) for a CIS determination that the beneficiary has accumulated three years of specialized training and/or work experience for each year

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[2] *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).

of college-level training the alien lacks. This provision establishes a multi-faceted burden of proof, which the petitioner has not met:

> [I]t must be *clearly demonstrated* [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] 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 [3] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:
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> *(i)* Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation[3];
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> *(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.
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> [Italics added.]

The documentation about the beneficiary's experience is skeletal. It does not clearly demonstrate that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by a specialty occupation. It provides no information about the degree or degree-equivalency status of the peers, supervisors, and subordinates with whom the beneficiary worked. It does not merit weight under any criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D). Furthermore, the record contains no evidence of the recognition of expertise required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*).

In short, the record provides no basis for disturbing the director's decision. The petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation according to the standards of 8 C.F.R. §§ 214.2(h)(4)(iii)(C) and (D).

Beyond the decision of the director, the AAO also finds that the evidence of record does not establish that the proffered position meets any specialty occupation criterion of 8 C.F.R. §§ 214.2(h)(4)(iii)(A). For this reason also, the petition must be denied.

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[3] See footnote 2 for the definition of "recognized authority" within the context of this regulation.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.