

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: **MAY 06 2014**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner is an Indian restaurant. It seeks to employ the beneficiary as an Executive Chef and to classify him 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 ground that the record failed to establish that the proffered position qualifies as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 petition and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's decision; and (5) Form I-290B, an appeal brief, and supporting materials.

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.

As provided in 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.

U.S. Citizenship and Immigration Services (USCIS) 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.

In the Form I-129 the petitioner described itself as a full service restaurant, established in 1999, with 23 employees and gross annual income of approximately \$900,000. The petitioner proposes to hire the beneficiary as an Executive Chef for three years, at an annual salary of \$27,000. In a letter accompanying the Form I-129, dated August 31, 2011, the petitioner's president described the proffered position as follows:

As Executive Chef, the Beneficiary will coordinate the daily work of the entire kitchen staff at our location at [REDACTED] Washington, DC [REDACTED]. He will direct the day-to-day operations of all areas of the kitchen including banquets, catered meals for customer sites and purchasing.

As Executive Chef, [the beneficiary] will contribute to the overall management and profitability of [REDACTED]. In 2010, [REDACTED]'s total restaurant sales were almost one million dollars. [The beneficiary] will be directly involved in overseeing the budgetary management of over \$650,000 in food and restaurant expenses. Our volume of sales and purchases requires an Executive Chef who is able to evaluate financial statements and balance cash/charge receipts against budgeted expenditures, duties associated with the attainment of a bachelor's degree or the equivalent in a related field. In addition, [the beneficiary] will teach and direct the cooking staff in the Mughlai and Tandoori cuisines. As a large part of [the beneficiary's] duties will be related to training staff in the culinary art of Indian cuisine, it is reasonable and necessary that the Executive Chef possess a Bachelor's degree or the equivalent in a related field.

The Executive Chef will keep abreast of new market trends and industry changes in order to amend menu offerings. As Manager of Kitchen operations, the Executive Chef will also ensure that fresh and best quality authentic herbs and spices are purchased and stored properly.

The Executive Chef will manage the kitchen staff in order to attract, retain and motivate employees while providing a safe environment. He will conduct performance and salary review and resolve problems. He will also plan and manage the preparation and presentation of all food in the restaurant in a safe, sanitary, and cost effective manner. The Executive Chef will oversee and maintain the sanitation of the kitchen equipment and related areas. He will train junior chefs, existing and new kitchen staff in current trends and technologies used to cook and serve food.

According to the petitioner, the minimum educational requirement for the proffered position is the equivalent of a four-year Bachelor of Culinary Design degree from an accredited college or university in the United States. The beneficiary does not have a college or university degree of any kind. Nevertheless, the petitioner declares that the beneficiary is qualified for the job by virtue of his progressive experience in the culinary field over more than 25 years. According to an "Expert Opinion Evaluation" from an Associate Professor of Hotel, Restaurant, and Tourism

Management at [REDACTED] dated November 10, 2005, the beneficiary's previous culinary experience (23 years up to then) was equivalent to a Bachelor of Arts in Culinary Arts from an accredited U.S. college or university.

In his denial decision the director determined that the duties of the proffered position are comparable to those of a chef or head cook, as described in the Department of Labor (DOL)'s *Occupational Outlook Handbook (Handbook)*. The director quoted from the *Handbook* regarding the educational and training requirements for this occupation, which indicated that a baccalaureate or higher degree in a specific field of study is not a minimum requirement for chefs and head cooks.¹ The director determined that the evidence of record did not show that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). As for the second criterion under the regulations, the director stated that the petitioner had not submitted any evidence that the claimed degree requirement is common to the industry in parallel positions among similar organizations or that the proffered position is so complex or unique that it can be performed only by an individual with a degree. Accordingly, the evidence of record did not show that the proffered position qualifies as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). With regard to the third criterion, the director noted that the only individual specifically identified as having worked as a chef with the petitioner does not have a degree or formal education of any kind in the culinary arts, and that the petitioner failed to provide documentary evidence of all individuals who had been employed as executive chef in the past as well as their educational degrees and fields of study, as requested in the RFE. The director determined, therefore, that the evidence of record did not show that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). Finally, with regard to the fourth criterion, the director cited the "Expert Opinion Evaluation" but determined that it did not establish, with respect to the proffered position in this case, that the specific duties were so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Therefore, the evidence of record did not show that the proffered position qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). In accordance with the foregoing analysis, the director concluded that the petitioner had failed to establish that the proffered position qualifies as a specialty occupation under any of the criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal the petitioner asserts that the proffered position of Executive Chef qualifies as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4) – the fourth criterion in the

¹ In determining whether a position meets the statutory and regulatory criteria of a specialty occupation, USCIS routinely consults the DOL *Handbook* as an authoritative source of information about the duties and educational requirements of particular occupations. Factors typically considered are whether the *Handbook* indicates a degree is required by the industry; 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*, 764 F. Supp. 1095, 1102 (S.D.N.Y. 1989)). USCIS also analyzes the specific duties and complexity of the position at issue, with the *Handbook's* occupational descriptions as a reference, as well as the petitioner's past hiring practices for the position. See *Shanti, Inc. v. Reno*, *id.*, at 1165-66.

regulations – because the specific duties are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. The petitioner does not contest the director's findings that the proffered position does not qualify as a specialty occupation under the other three criteria in the regulations – 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), (2), and (3). In support of the appeal the petitioner submits a brief from counsel, a letter from the petitioner's vice president, an online review of the restaurant, a February 2013 printout of the *Handbook's* entry on Chefs and Head Cooks, and some other documents already in the record. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

In the appeal brief counsel asserts that the letter from the petitioner's vice president, dated February 13, 2013, details the complexities of the job duties and why the position requires a bachelor's degree. The vice president's letter repeats all of the duties described in the president's letter of August 2011, and adds some additional language. In the quotation below, the underlined portions are newly added:

As Executive Chef, the Beneficiary will coordinate the daily work of the entire kitchen staff at [REDACTED] restaurant located at [REDACTED] Washington, DC [REDACTED]. In this capacity, he will be setting the overall direction and standards for all [REDACTED] restaurants to follow, since it is imperative for the success of our business that each [REDACTED] location meets the same exacting standard. He will direct the day-to-day operations of all areas of the kitchen including banquets, catered meals for customer sites and purchasing. In addition, he will be responsible for hiring, scheduling, promoting, and firing all staff. The Executive Chef is required to monitor the staffing levels as well as the quality of food and service, and adjust staff assignments accordingly. He will supervise the head chef and provide overall direction.

As Executive Chef, [the beneficiary] will contribute to the overall management and profitability of [REDACTED]. He is responsible for inspecting the operations of [sic] in terms of sauces, food quality, presentation, inventory, and purchasing to ensure that our high standards are being met. In 2012, [REDACTED]'s total restaurant sales were 1.2 Million. [The beneficiary] will be directly involved in overseeing the budgetary management of over \$400,050 in food and restaurant expenses. Our volume of sales and purchases requires an Executive Chef who is able to evaluate financial statements and balance cash/charge receipts against budgeted expenditures, duties associated with the attainment of a bachelor's degree or the equivalent in a related field. In addition, [the beneficiary] will teach and direct the cooking staff in the Mughlai and Tandoori cuisines. As a large part of [the Beneficiary]'s duties will be related to training staff in the culinary art of Indian cuisine, it is reasonable and necessary that the Executive Chef possess a Bachelor's degree or its equivalent in Culinary Arts or a related field.

The Executive Chef will keep abreast of new market trends and industry changes in order to amend menu offerings. As Manager of Kitchen operations, the Executive Chef will also ensure that fresh and best quality authentic herbs and spices are purchased and stored properly.

The Executive Chef will manage the kitchen staff in order to attract, retain and motivate employees while providing a safe environment. He will conduct performance and salary review and resolve problems. He will also plan and manage the preparation and presentation of all food in the restaurant in a safe, sanitary, and cost effective manner. The Executive Chef will oversee and maintain the sanitation of the kitchen equipment and related areas.

Furthermore, the Executive Chef will conduct training of junior chefs, existing and new kitchen staff from all of our locations in current trends and technologies used to cook and serve food at our flagship location.

With regard to the additional duties (underlined) in the vice president's letter, the AAO notes that their primary emphasis is on the Executive Chef's comprehensive personnel responsibilities – managing the staff in all aspects of their work both at the [REDACTED] restaurant and at any additional restaurants currently open or opening in the future. The vice president's letter in February 2013 is the first mention in the record of additional restaurants under the [REDACTED] banner and that the Executive Chef's duties would extend to any such restaurants.² Nevertheless, the duties of the job are described in the *Handbook's* occupational category of Chefs and Head Cooks. in the *Handbook, 2014-15 Edition*, as follows:

Chefs and head cooks typically do the following:

- Check freshness of food and ingredients.
- Supervise and coordinate activities of cooks and other food preparation workers.
- Develop recipes and determine how to present the food.
- Plan menus and ensure uniform serving sizes and quality of meals.
- Inspect supplies, equipment, and work areas for cleanliness and functionality.
- Hire, train, and supervise cooks and other food preparation workers.
- Order and maintain inventory of food and supplies.
- Monitor sanitation practices and follow kitchen safety standards.

The following are examples of types of chefs and head cooks:

² If augmented duties changed the job in a fundamental way, or turned it into another occupation, that would constitute a material change to the petition. On appeal, 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 the associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Executive chefs, head cooks, and chefs de cuisine are primarily responsible for overseeing the operation of a kitchen. They coordinate the work of sous chefs and other cooks, who prepare most of the meals. Executive chefs also have many duties beyond the kitchen. They design the menu, review food and beverage purchases, and often train cooks and other food preparation workers. Some executive chefs primarily handle administrative tasks and may spend less time in the kitchen.

Sous chefs are a kitchen's second in command

Private household chefs typically work full time for one client

<http://www.bls.gov/ooh/food-preparation-and-serving/print/chefs-and-head-cooks.htm> (accessed April 15, 2004). The job duties described in the *Handbook* for chefs and head cooks, including executive chefs, are closely aligned with the job duties of the proffered position as described in the letters of the petitioner's president and vice president.

With regard to the education, training, and experience required to become a chef or head cook, the *Handbook, 2014-15 Edition*, states, in pertinent part, as follows:

Most chefs and head cooks learn their skills through work experience. Others receive training at a community college, technical school, culinary arts school, or a 4-year college. A small number learn through apprenticeship programs or in the armed forces.

A growing number of chefs and head cooks receive formal training at community colleges, technical schools, culinary arts schools, and 4-year colleges.

Most chefs and head cooks start working in other positions, such as line cooks, learning cooking skills from the chefs they work for. Many spend years working in kitchens before learning enough to get promoted to chef or head cook positions.

Some chefs and head cooks train on the job, where they learn the same skills as in a formal education program.

Some chefs and head cooks learn through apprenticeship programs sponsored by professional culinary institutes, industry association, and trade unions

Id. What the *Handbook* makes clear is that a four-year baccalaureate degree in the culinary arts or a related specialty is not a minimum educational requirement to become a chef or head cook. Rather, years of experience at lower level cook positions, perhaps combined with some formal training courses, appear to be far more common paths to chef and head cook positions.

Counsel highlights specific duties of the Executive Chef as explained in the vice president's letter of February 13, 2013 – including the hiring, scheduling, promoting and firing of staff; monitoring staffing levels and performance of the restaurant and adjusting staff assignments;

direct involvement in overseeing the budgetary management of more than \$400,000 in food and restaurant expenses; and training all chefs and kitchen staff at the flagship restaurant and other locations – and asserts that the complexity of these managerial and administrative duties requires specialized knowledge at a bachelor's degree level. The job duties cited by counsel, however, are well within the scope of the job duties described in the *Handbook* for chefs and head cooks. For example, the staff and budgetary management duties cited by counsel are reflected in the *Handbook's* previously quoted paragraph on “executive chefs, head cooks, and chefs de cuisine,” who in addition to “coordinat[ing] the work of sous chefs and other cooks, who prepare most of the meals . . . also have many duties beyond the kitchen They . . . review food and beverage purchases and . . . [s]ome executive chefs primarily handle administrative tasks [outside] the kitchen.” *Handbook, 2014-15 Edition, id.* As for the training component of the proffered position, it also falls within the *Handbook's* list of typical duties for chefs and head cooks, which includes “hir[ing], train[ing], and supervis[ing] cooks and other food preparation workers.” *Id.*

Counsel cites a catering contract the petitioner has with a local business to cater at least four lunches a week for 80-120 guests, but has not explained how this part of the petitioner's restaurant operations is beyond the scope of the administrative tasks typically performed by an executive chef. Counsel claims that the petitioner is expanding its restaurant operations to additional locations, which will make the duties of its Executive Chef more complex. No documentary evidence of the proposed expansion has been submitted. 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. *See 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). Moreover, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm. 1978).

For the reasons discussed above, the record does not establish that the specific duties of the Executive Chef position are so specialized and complex in their nature that the knowledge required to perform them is usually associated with a baccalaureate or higher degree. As far as the record shows, the duties of the proffered position do not exceed the scope of those normally performed by an executive chef, within the occupational category of chefs and head cooks, as described in the *Handbook*. Most jobs in this occupation, the *Handbook* indicates, do not require baccalaureate level knowledge in a specific specialty. The petitioner has not shown that the duties of the Executive Chef position in this case are more specialized and complex than other chef or head cook positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Thus, the proffered position does not meet the criterion of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Furthermore, the petitioner has designated the Executive Chef as a Level I position on the certified Labor Condition Application (LCA), with an offered wage of \$27,000 per year, which indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. *See U.S. Department of Labor, Employment & Training Administration,*

Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs (revised Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.³ The DOL's Foreign Labor Certification Data Center Online Wage Library indicates that for chefs and head cooks in the Washington, DC metropolitan area the average annual Level I Wage is \$22,984, the average Level II Wage is \$33,405, the average Level III Wage is \$43,826, and the average Level IV Wage is \$54,246. See <http://www.flcdcenter.com> (accessed April 14, 2014). The DOL *Handbook* indicates that the median annual wage for chefs and head cooks nationwide in May 2012 was \$39,790. Thus, the petitioner's offered wage of \$27,000 per year for its Executive Chef position is consistent with an entry level position for an employee who has only basic understanding of the occupation. The entry level wage offer supports the finding that the petitioner's Executive Chef position does not have specialized and complex duties requiring baccalaureate level knowledge in the culinary arts or a related specialty.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Counsel asserts that the AAO has approved petitions for similar positions in the past, but no documentary evidence thereof has been submitted. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*. *Id.* Moreover, prior USCIS decisions are not binding on the AAO unless they are published precedent decisions. See 8 C.F.R. § 103.8(d). Each nonimmigrant petition is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the evidence contained in the petitioner's record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). The record in this proceeding does not establish that the proffered position meets the statutory and regulatory requirements of a specialty occupation.

Accordingly, the record does not establish that the beneficiary will be coming temporarily to the United States to perform services in a specialty occupation, as required under section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b).

Beyond the decision of the director, even if the petitioner had established that the proffered position is a specialty occupation, the petitioner is not otherwise eligible for the benefit because it has not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation.

³ As explained in the Guidance, Wage Level I positions require a basic understanding of the occupation and the performance of routine tasks. Wage Level II positions require a good understanding of the occupation and the performance of moderately complex tasks. Wage Level III positions require a sound understanding of the occupation and the performance of tasks that require the exercise of judgment. Wage Level IV positions require full competency in the occupation, advanced skills and diversified knowledge, and the performance of management and supervisory responsibilities. *Id.* at 7.

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,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also 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 are 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the

specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In this case, the record indicates that the beneficiary does not meet any of the first three criteria in 8 C.F.R. § 214.2(h)(4)(iii)(C). Therefore, the only remaining avenue for the beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), under which the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and (2) that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (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
- (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. . . .

In this case, the petitioner has submitted an evaluation from an Associate Professor of Hotel, Restaurant, and Tourism Management at [REDACTED] dated November 10, 2005, who rated the beneficiary's 23 years of culinary experience at

⁴ In accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

restaurants in India and Germany as equivalent to a Bachelor of Arts in Culinary Arts from an accredited U.S. college or university. The evaluation is deficient, however, because Prof. [REDACTED] does not meet the regulatory requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). While stating that "[b]ecause of the positions I have held and hold at the above-mentioned universities, I have the authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international universities," Prof. [REDACTED] does not identify any "above-mentioned universities" in which he has held a position aside from [REDACTED]. [REDACTED] does not specifically claim that he has authority at [REDACTED] to grant college-level credit for training and/or experience in the culinary field, and does not indicate whether [REDACTED] has a program for granting such credit based on an individual's training and/or work experience. Since the evaluator does not meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), the petitioner has failed to establish the beneficiary's qualifications for the proffered position under this regulatory criterion.

There is no evidence in the record that the petitioner satisfies criteria (2), (3), or (4) in 8 C.F.R. § 214.2(h)(4)(iii)(D). Accordingly, the AAO will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

By its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination. Furthermore, by the clear terms of the rule experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a recognition of expertise in the specialty occupation.

When USCIS 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." The regulation further states that:

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 occupation;⁵
- (ii) Membership in a recognized foreign or United States association or

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).

- 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.

The only comprehensive description of the beneficiary's work experience in the record is in the aforementioned evaluation from Prof. [REDACTED]. He discussed the beneficiary's job duties as a chef with the [REDACTED] in New Delhi, India, from December 1982 through May 1994, and from September 1997 up to November 2005, as well as with the [REDACTED] in Germany from May 1994 through May 1997. This evidence is not adequate proof of the beneficiary's work experience, which must be submitted by present or former employers of the beneficiary. *See* 8 C.F.R. § 214.2(h)(4)(A)(2). The evaluation from Prof. [REDACTED] states that he acquired his knowledge about the beneficiary's employment history through original documents provided by Mr. [REDACTED]. However, no copies of these documents were attached to the evaluation. Thus, there is no evidence that the alien's experience as a chef in the years 1982-2005 was gained while working with colleagues who have a degree or its equivalent in the culinary arts, or that the beneficiary has recognition of expertise in the culinary arts as evidenced by any of the documentation listed in items (i) through (v) of the regulation. The only document in the record that refers to the beneficiary is a publication (undated) called [REDACTED] with an entry on page 145 that includes a photograph of the beneficiary and the following language:

Chef [REDACTED]

Born in Northern India, Chef [REDACTED] a self-taught chef with more than 25 years of experience, came to work for the [REDACTED] in Germany. He is now the Executive Chef of the group, having travelled and worked in Prague, and now, in the USA. [REDACTED] remains committed to continuously improving the standards of the restaurant and working with his team to create new dishes for his customers daily.

While "[REDACTED]" may be considered a type of publication within the contemplation of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(iii), its brief story about the beneficiary does not contain enough information about his work experience to constitute a recognition of baccalaureate level expertise in the field of culinary arts. Therefore, the AAO cannot conclude, based on the cited piece in [REDACTED] that the beneficiary's work experience included the theoretical and practical application of a body of highly specialized knowledge in the field of culinary arts or that the beneficiary has recognition of expertise in the culinary arts, as required in the regulation.

In accordance with the foregoing analysis, the AAO concludes that the evidence of record does not establish the beneficiary is qualified to perform the duties of a specialty occupation. For this reason as well, the petition cannot be approved.

Conclusion

The petition is deniable on two grounds:

1. The petitioner has failed to establish that the proffered position meets the statutory and regulatory requirements to qualify as a specialty occupation.
2. The petitioner has failed to establish that the beneficiary is qualified under applicable regulations to perform the duties of a specialty occupation.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

The petitioner bears the burden of proof in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. Accordingly, the AAO will not disturb the director's decision denying the petition.

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