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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

D2

[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 06 2010

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

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*for Michael T. Kelly*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The director of the Vermont 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 an airline catering services company with five employees that seeks to employ the beneficiary as a catering service manager. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

The AAO will first examine whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 also 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.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently 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. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner states that it is seeking the beneficiary's services as a Catering Service Manager. In the March 31, 2008, letter of support, the petitioner states that the beneficiary will:

- Coordinate and monitor food preparation methods, portion sizes, and garnishing and presentation of foods;
- Monitor budgets and payroll records and review financial transactions;
- Monitor compliance with health and safety regulations concerning food preparation and packaging;
- Consult with chef to plan and coordinate menus;
- Together with the chef, manage cooking assignments for dishes, appetizers, dinners, and desserts in accordance with recipes, methods, and special flight requests;
- Order supplies and maintain inventory levels; and
- Train new staff members.

The petitioner also stated that it “hires only those candidates possessing the equivalent of a bachelor’s degree in Hotel Management, Catering Technology, Culinary Arts, Marketing, Business Administration, etc.” The beneficiary has a U.S. bachelor’s degree in culinary arts.

The director's [REDACTED] asked for documentation to support a finding that the proffered position is a specialty occupation, including, in part, a more detailed job description, copies of any employment agreements between the petitioner and the beneficiary, documentation regarding other individuals employed in the proffered position, and brief job descriptions for the petitioner's other employees.

In the response to the RFE, counsel broke down the day-to-day responsibilities as follows:

- Manage, coordinate, and direct chefs and kitchen personnel on food preparation methods, portion sizes, and garnishing and presentation of foods (25%);
- Monitor budgets and payroll records and review financial transactions to ensure that expenditures are authorized and budgeted (25%);
- Direct and supervise quality control and operating efficiencies by making sure the kitchen complies with health and safety regulations concerning food preparation and packaging, including completing records for government agencies as per FDA guidelines and HACCP methodologies (20%);
- Consult with chefs to plan and coordinate menus and recipes under catering operational methods and procedures (10%);
- Directing cooking assignments for dishes, appetizers, dinners, and desserts in accordance with recipes, methods, and special flight requests (5%);
- Supervise and monitor ordering of supplies and maintenance of inventory levels (5%);
- Establish standards for employees (5%); and
- Interact with customers and clients (5%).

Counsel submitted a copy of the petitioner's offer letter to the beneficiary as well as a letter from the petitioner, dated May 25, 2008, which explains the following regarding the creation of the proffered position:

[N]ow at present we are poised to rapid expansion. Our formula for expansion is to have unique individuals such as [the beneficiary] to manage all facets of operations included but not limited to production, budgeting, food cost control, recruiting, training, and lastly managing the overall day to day activities of the operation. These individuals will have at least a Bachelor's degree, Master's degree or the desires to complete one are preferred. . . .

\* \* \*

I feel that in order to consider [the beneficiary's] approval we have to give you a brief background of [the petitioner] and its direction for the future. [The petitioner] is an offshoot for [REDACTED] t. [REDACTED] have [sic] been the only Indian Restaurant in the world to receive the Coveted Five Star Diamond Award in 2003, 2005, 2006, and 2007. This is the very reason that premier airlines such as Jet Airways and King Fisher Airlines have approached Ada and [the] very reason for the existence of [the petitioner].

The petitioner's letter states that the petitioner already employs an Executive Chef with a foreign bachelor's degree in hotel and catering management, a Sous Chef with two diplomas in hotel management and catering technology as well as experience, and a Chef de Partie with a foreign bachelor's degree in hospitality and hotel administration. No documentation was submitted to establish that any of these individuals have the

equivalent of a U.S. bachelor's degree in a specific specialty.

In addition, the petitioner submitted an expert opinion letter from [REDACTED] Assistant Professor of Culinary Science at California State University in Fresno and Program Director of the Culinology program within the University's Department of Food Science and Nutrition. Assistant Professor Tenbergen writes as follows:

[B]ased on my experience working for several restaurants and serving as a consultant to numerous restaurants and food businesses, I believe that it is a general practice among active, dynamic in-flight catering companies to hire an individual in a position such as a Catering Service Manager, with a bachelor's-level educational and/or professional background in Culinary Arts, Food Service Management, or a related field. . . .

I have reviewed an outline of the job duties required for the subject position of "Catering Service Manager" with [the petitioner], a specialized catering operation of Ada House of India Restaurant, a successful Indian restaurant in Manhattan. I have also reviewed an expanded description of the position duties, specifying the percentages of time to be spent in various activities. The company is FDA certified and follows HACCP guidelines. The duties require that the candidate have an academic understanding of culinary arts, the planning and coordination of menus and food preparation methods and presentation, monitoring of compliance with industry safety regulations, the management of budgets and related operations, and food and beverage service management, and the ability to use this academic background in managing the food preparation operations for complex in-flight catering services. The job duties of the proffered position of Catering Service Manager cover a range of advanced responsibilities in food preparation, menu costing and planning, personnel management, and operations management, including specialized logistical requirements arising from the nature of in-flight catering and related quality and safety standards.

In particular, [the beneficiary] will be responsible for coordinating and monitoring food preparation methods, portion sizes and garnishing and presentation; monitoring budgets and payroll records; reviewing financial transactions to ensure control of costs and compliance with established budgets; and monitoring compliance with health and safety regulations for food preparation and packaging (including specialized FDA and HACCP regulations). Hazard Analysis and Critical Control Points (HACCP) is a systematic preventative approach to food safety and pharmaceutical safety that addresses physical, chemical, and biological hazards as a means of prevention rather than finished product inspection. . . .

The work of the Catering Manager with [the petitioner] involves advanced and complex duties in the areas of culinary arts and food service management requiring bachelor's-level academic training in these areas, and knowledge of principles of culinary arts, food and beverage service management, personnel management, budgeting and financial management, and quality assurance. A bachelor's-level background in culinary arts, food service management, or a related discipline is necessary for the Catering Service Manager to properly fulfill the position duties. . . . Further, the position involves a specialized component in

connection with the particular requirements of culinary preparation for in-flight catering. This is an area with specialized logistical challenges arising from the need to transport food and maintain it for more extended periods of time, while ensuring quality standards and observing specialized safety procedures (particularly those outlined in FDA guidelines and

A bachelor's degree in Culinary Arts, Food Service Management, or a related field, teaches culinary and catering service management professionals to analyze food preparation and catering strategies, plan menus and cuisines, develop cooking and kitchen procedures, direct the operations of the kitchen, supervise kitchen personnel, manage kitchen operations efficiently while maintaining quality control, and apply in a practical setting the concepts and issues involved in the operations of a substantial catering operation.

Indeed, the job duties specified above are indicative of a professional position commonly required in dynamic catering enterprises, requiring academic mastery of concepts of culinary arts, food preparation, food and beverage service management, budget and financial management, purchasing, inventory management, and human resources administration. The proffered position should be distinguished from that of a cook or general chef by virtue of the advanced responsibilities in connection with the planning of catering operations, management of cooking and kitchen activities, supervision of kitchen personnel, planning of menus and recipes, maintenance of quality and health standards, and development of and adherence to budgets. In my opinion, the specialized nature and the level of sophistication of the responsibilities of the position necessitate that the incumbent have the background and analytical expertise required to assess and analyze complex food service matters from the perspective of various food service, business, financial, logistics, and operational issues. The complexity of the job duties necessitates that a candidate be well-versed in the theoretical and academic concepts taught in bachelor's-level classes in Culinary Arts, Food Theory, Nutrition, Food Cost Control, Culinary Techniques, Catering Management, Food and Beverage Service Management, Quality Management, Organizational Behavior, and Personnel Management, such that he would have the ability to analyze, synthesize and apply academic and business issues in the planning, development, and management of kitchen and restaurant operations.

[F]urther, as described above, the position involves additional logistical challenges due to the specialized logistics of in-flight catering services, and the accordant need for adherence to more stringent (preventive) standards for quality and food safety. . . .

Thus, it is my opinion that individuals serving as Catering Service Managers, in positions with job duties comparable to those required in the proffered position, generally are required to demonstrate academic training in culinary arts, food service management, or a related functional area, in order to competently execute the required job duties. Generalized knowledge of culinary arts or food service management, alone, is not sufficient for a Catering Service Manager to handle the analytical, managerial, and technical requirements for the instant position. . . .

Additionally, counsel submitted an advertisement from Gate Gourmet, the world's largest independent

provider of airline catering and provisioning services, for a Food Production Supervisor, which encompasses some of the proffered duties, but not the majority of the proffered duties. Therefore, the position in the advertisement is not parallel to the proffered position. Moreover, the advertisement states that either a college degree (without specifying that the degree be in a specific specialty) plus five years of experience or a high school diploma with ten years of experience is required. A high school diploma with ten years of experience is not equivalent to at least a bachelor's degree under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The director denied the petition finding that the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner argues that the proffered position is a specialty occupation. Counsel includes a copy of the catering service agreement signed between the petitioner and its client, Jet Airways (India) Ltd., dated August 13, 2007, together with invoices. Counsel also submits an expanded letter from Assistant Professor Tenbergen, who states as follows:

[T]he company is the outgrowth of a successful New York City restaurant, and currently operates a 5000 square-foot facility in support of catering operations. Further, the company observes specialized FDA and HACCP regulations . . . being indicative of a systematic, preventative approach to food safety and pharmaceutical safety that addresses physical, chemical, and biological hazards as a means of prevention. . . .

\* \* \*

I find that the job duties of the position describe a specialty culinary position, with senior-level responsibilities analogous to the content of courses offered at a major level in culinary and food service programs . . . .

\* \* \*

In my capacity as a consultant to food companies large and local, I have found that it is customary for such a company, when seeking to exploit service optimization methods via hiring of a catering services manager, to seek a *fully-trained* catering services manager (i.e., a graduate of an appropriate culinary or food services program). . . .

Thus, it is accurate to state that it is a general, industry-standard practice across companies of comparable size, operational magnitude, and constitution – with commercial and operational objectives requiring substantive culinary direction and planning (such as those of the employer) – to hire a professional-level catering services manager (i.e., a catering services manager with at least a bachelor's-level educational background in culinary arts, food service management, or a related area). In fact, based on my teaching in this field at the collegiate-level and my independent consulting activities – and on the job placement patterns of our graduating students and recruitment of employers nationwide – I note that it is a common industry practice for companies that range in size to hire a fully trained catering services manager. Accredited U.S. universities granting four-year degrees in culinary disciplines devote their programs of study to prepare graduates for professional careers in various venues

and food-service contexts. As mentioned above, the very purpose of education in the culinary discipline is to prepare students for positions entailing this type of higher-tier responsibility. Were all of the skills required of catering services management available in programs in other fields or lesser tiers of degree education, there would be no reason for universities to offer bachelor's majors in culinary arts or food service management. . . .

To make its determination whether the employment qualifies as a specialty occupation, the AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO finds that the proffered position fits best under the *Handbook's* description of food service managers as follows:

*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's equipment and facilities. Managers are generally responsible for all administrative and human-resource functions of the business, including recruiting new employees and monitoring employee performance and training.*

Managers interview, hire, train, and when necessary, fire employees. Retaining good employees is a major challenge facing food service managers. Managers recruit employees at career fairs and at schools that offer academic programs in hospitality

management or culinary arts, and arrange for newspaper advertising to attract additional applicants. Managers oversee the training of new employees and explain the establishment's policies and practices. They schedule work hours, making sure that enough workers are present to cover each shift. If employees are unable to work, managers may have to call in alternates to cover for them or fill in themselves. Some managers may help with cooking, clearing tables, or other tasks when the restaurant becomes extremely busy.

Food service managers ensure that diners are served properly and in a timely manner. They investigate and resolve customers' complaints about food quality and service. *They monitor orders in the kitchen to determine where backups may occur, and they work with the chef to remedy any delays in service.* Managers direct the cleaning of the dining areas and the washing of tableware, kitchen utensils, and equipment to comply with company and government sanitation standards. Managers also monitor the actions of their employees and patrons on a continual basis to ensure the personal safety of everyone. *They make sure that health and safety standards and local liquor regulations are obeyed.*

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

Managers tally the cash and charge receipts received and balance them against the record of sales, securing them in a safe place. Finally, managers are responsible for locking up the establishment, checking that ovens, grills, and lights are off, and switching on alarm systems.

(Emphasis added.)

Under the section on Training, Other Qualifications, and Advancement, the *Handbook* states that:

Most food service managers have less than a bachelor's degree; however, some postsecondary education, including a college degree, is increasingly preferred for many food service manager positions. *Many food service management companies and national or regional restaurant chains recruit management trainees from 2- and 4-year college hospitality or food service management programs, which require internships and real-life experience to graduate. While these specialized degrees are often preferred, graduates with degrees in other fields who have demonstrated experience, interest, and aptitude are also recruited.*

(Emphasis added.) Because the *Handbook* indicates that working as a food service manager does not normally require at least a bachelor's degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

Regarding the expert opinion letters submitted by counsel in response to the RFE and on appeal, Assistant Professor Tenbergen's statements that the proffered position requires at least a bachelor's degree in culinary arts, food service management, or a related area contradicts the petitioner's much more broadly stated requirements in the initial support letter that the proffered position requires a bachelor's degree or the equivalent in hotel management, catering technology, culinary arts, marketing, business administration, etc. as well as the response to the RFE that it will be hiring a number of individuals as catering service managers who the petitioner *prefers* to have at least a bachelor's degree, master's degree, or the desire to complete a degree. Assistant Professor Tenbergen states that he has based his opinion on a review of the position's job duties, but he does not address the petitioner's own stated requirements for the proffered position, which are considerably broader than those espoused by Assistant Professor Tenbergen and which do not entail at least a bachelor's degree or the equivalent in a specific specialty.

It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by counsel and, moreover, lists a degree requirement that is not in accordance with the petitioner's own stated minimum requirements. 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).

Therefore, the AAO finds that the letters from [REDACTED] do not establish that the proffered position is a specialty occupation.

Even if established by the evidence of record, which it is not, the petitioner's stated requirements, which include a bachelor's degree in business administration as one possible degree that could be held by the person who fills this position, is inadequate to establish that a position qualifies as a specialty occupation. 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 a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

As stated previously, the one advertisement submitted is not probative of a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner. The advertisement is not for a position that encompasses the majority of the proffered position's duties. Further, the advertisement does not reflect a common requirement for at least a bachelor's degree or its equivalent in a specific specialty.

The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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." The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for catering service manager positions. Although Assistant Professor Tenbergen attempts to explain how the proffered proffered position is unique from or more complex than food service manager positions that can be performed by persons without a specialty degree or its equivalent, as stated previously, Assistant Professor Tenbergen did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by counsel and, moreover, lists a degree requirement that is not in accordance with the petitioner's own stated minimum requirements.

Next, as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner did not provide any information about who, if anyone, previously worked for the petitioner in the proffered position.

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved

for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties do not indicate that they are more specialized and complex than those of food service manager positions that are not usually associated with a degree in a specific specialty. As stated previously, [REDACTED] opinion to the contrary was not based on any objective evidence, but instead restates the proffered position description as provided by counsel and, moreover, lists a degree requirement that is not in accordance with the petitioner's own stated minimum requirements.

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this reason, the petition will be denied.

The petition will be denied and the appeal dismissed. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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