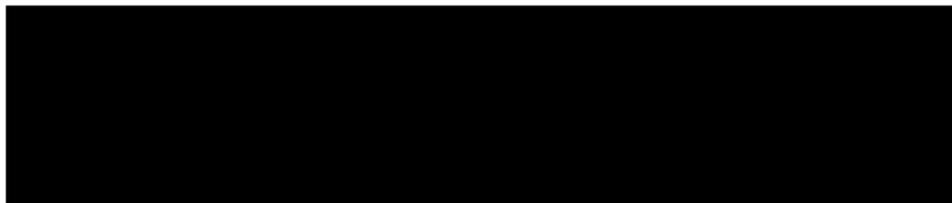


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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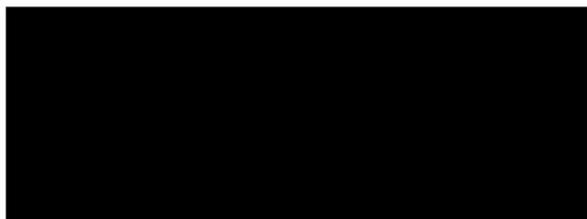
Date: **OCT 06 2011** Office: VERMONT SERVICE CENTER FILE:

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 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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, 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 operates restaurant and catering enterprises, and seeks to employ the beneficiary as a manager. 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, finding that (1) the proffered position was not a specialty occupation; and (2) the beneficiary was not qualified to perform the services of a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief in support of this contention.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

*Specialty occupation* means an occupation which requires [(1)] 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 [(2)] 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 at 387. 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), U.S. Citizenship and Immigration Services (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 occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

In a May 22, 2007 statement appended to the petition, the petitioner provided an overview of the proffered position. Specifically, the petitioner indicated that the position offered to the beneficiary was that of a “front of house manager,” and that he would report to the general manager. The job was summarized as follows:

Opens, closes and manages the operation during business hours; staffs the restaurant with FOH personnel, monitoring and directing the service guests receive from FOH and BOH personnel; works "hands on" in the dining rooms providing service to the customers and promoting the restaurant and its product through direct customer relations; inspects and maintains the facility and its ambiance on a daily basis; interviews, hires, trains and develops FOH departments; assists in the monitoring and controlling costs; payroll and expenses and promoting sales.

The petitioner further provided the following list of essential functions of the position:

- Works the floor "hands on" besides services and in the kitchen during peak hours; greets, seats, takes orders, serves, buses, processes checks and investigates and resolves customer complaints; makes table, podium and bar visits to talk to customers; monitors and controls "ambiance" (music, lighting, temperature, orderliness). Walks and surveys dining rooms and kitchen to "reverse expedite" food to the customer.
- Approaches and talks to customers in friendly social encounters to establish a personal, professional rapport with the guest; promotes the restaurant's products and services as well as other restaurants in the company.
- Interviews, hires, trains, schedules and develops line employees in a specific department; writes and posts weekly schedules and sets specific service goals for the staff to work during the shift.
- Writes and presents four Performance Appraisals per month to line employees and assigns developmental goals based on observation of the employees performance.
- Writes monthly, weekly and daily plans and negotiates realistic shift strategies for self and other managers[.]
- Directs and coordinates the work of staff in all departments in response to business.
- Conducts daily menu class, inspections of uniforms, "floors," sections, bars and service areas; inspects equipment, supplies, furniture, machinery and building in compliance with "ambiance" safety, health and sanitation regulations; directs personnel in safety and health prevention measures.
- Prints out daily labor reports [and] cuts the daily staff in response to budgets and daily OT alerts; monitors the operation and expense projections to meet other budgets.
- Assists in monthly inventory; counts, weighs and records product in storage.
- Writes agendas for and conducts departmental meetings; assigns service goals for the month.
- Attends and participates in weekly manager meetings; receives and follows-through on assignments received from the General Manager.
- Consistently applies and enforces official [petitioner] "Priorities" and "Methods" of management.

On December 17, 2007, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary. The director specifically requested information pertaining to the beneficiary's specific job duties and the percentage of time devoted to such duties, as well as information regarding other similarly-employed managers in the petitioner's companies.

In response, counsel for the petitioner submitted a letter dated January 28, 2008, which included the previously-submitted statement from the petitioner dated May 22, 2007. Counsel also resubmitted the educational evaluation of the beneficiary, and submitted a list of management employees of the petitioner as well as excerpts from the petitioner's website.

The director found, and the AAO concurs, that the proffered position of restaurant manager is not a specialty occupation position. Citing to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner contends that the director's decision was erroneous. Counsel contends that the proffered position is specialized since it requires the candidate to perform duties in numerous areas. Counsel further claims that the beneficiary has previously been approved for H-1B employment in this capacity as two other restaurants in the geographical area of the petitioner. It is noted, however, that no documentary evidence to support these claims was submitted with counsel's brief.

As will now be discussed, upon review of the record, the AAO finds that the petitioner has established none of the alternative criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

The AAO routinely consults the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The AAO has reviewed the discussion of food service managers as described by the 2010-2011 edition of the *Handbook*, and agrees with the director's determination that the proffered position is akin to that of a food service manager. According to the *Handbook*, the duties of a food service manager are 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

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<sup>1</sup> The AAO consulted the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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 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.

The *Handbook* continues:

**Work environment.** Many food service managers work long hours—12 to 15 per day, 50 or more per week, and sometimes 7 days a week. Such schedules are common for fine dining restaurants and those, such as fast-food restaurants, that operate extended hours. Managers of institutional food service facilities, such as school, factory, or office cafeterias, work more regular hours because the operating hours of these establishments usually conform to the operating hours of the business or facility they serve. However, many managers oversee multiple locations of a chain or franchise or may be called in on short notice, making hours unpredictable.

The work environment of a food service manager, as described by the *Handbook*, appears to correlate with the description of the proffered position.

With regard to the educational requirements of a food service manager, the *Handbook* states:

**Education and training.** 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.

The *Handbook* reports that food service managers do not normally require a bachelor's degree in a specific specialty. Accordingly, the petitioner has failed to establish that a baccalaureate or higher

degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the proffered position.

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 alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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.

The petitioner submits no documentation to demonstrate that a bachelor's degree in a specific specialty, is common to the petitioner's industry in positions that are parallel to the proffered position and located in organizations that are similar to the petitioner. Therefore, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specific specialty. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment.

The petitioner, then, has failed to establish the proffered position as a specialty occupation under either alternative prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel for the petitioner's principle founders and operators were college graduates that "prided themselves in setting a business model that would be both good fellowship and good fun." Counsel further submitted a list of the management team for the restaurant in which the beneficiary would allegedly work. However, the petitioner provides no evidence that satisfies this criterion; namely, that the petitioner normally requires a degree for its front of house managers.

The record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them, since neither the petitioner nor counsel provide evidence of the petitioner's hiring and recruiting practices. Moreover, while the petitioner provides a list of its managerial employees, it provides no detail regarding the credentials and educational backgrounds of these employees, nor does it submit evidence that these persons are actually employed by the petitioner. There is no evidence, therefore, to support a finding that the petitioner normally requires a degree as a prerequisite for entry into the proffered position.

The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS 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. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

The petitioner has submitted no independent documentation, such as letters or expert testimony, in support of the contention that complex knowledge is required to perform the duties of the proffered position. Instead, counsel simply provides her own opinions with regard to the qualifications necessary for a restaurant manager/food service manager to successfully function in the proffered position. 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)). Moreover, 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).

Furthermore, the AAO finds that, to the extent that they are depicted in the record of proceeding, the duties do not appear so specialized and complex as to require highly specialized knowledge usually associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Rather, the proposed duties as described in the record appear indistinguishable from those of the general range of food service manager positions for which the *Handbook* indicates no requirement for knowledge usually associated with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The second issue before the AAO is whether the beneficiary is qualified to perform the duties of a specialty occupation. Generally, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. However, since the qualifications of the beneficiary were addressed by the director as a basis for denial in this matter, the AAO will review this issue though moot.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, an alien must also meet one of the following criteria:

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

The director found that the beneficiary was not qualified for the proffered position because the evidence submitted in the record was insufficient to establish the beneficiary's qualifications.

The record contains the following evidence pertaining to the beneficiary's education and experience:

1. Evaluation – Advisory Interpretation from [REDACTED] of [REDACTED]
2. A letter dated December 10, 2001 from [REDACTED] at the [REDACTED] confirming the beneficiary's completion of a four-year course of study in Hotel & Catering Management;
3. A copy of the beneficiary's diploma from the [REDACTED] demonstrating that he earned a "National Diploma in Business Studies in Hotel and Catering Management."

The AAO will first address the evaluation from [REDACTED]

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) provides:

For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

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

██████████ is employed by ██████████, a credentials evaluation organization. Therefore, the submission of this evaluation is intended to establish the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

The director found the evaluation to be insufficient, since it simply provided a brief conclusory statement and lacked sufficient analysis of the beneficiary's academic credentials. Counsel on appeal provides no arguments to contest this finding.

USCIS uses an evaluation by a credential evaluation organization of a person's foreign education as an advisory opinion only. When an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be disregarded or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm.1988). In this matter, the AAO concurs with the director's findings. The evaluation submitted states that the beneficiary has achieved the "functional equivalent" of a bachelor's degree in hotel, restaurant and food services management based on his studies at the ██████████. ██████████ does not discuss the documents upon which he reviewed in order to form this opinion.

A review of the letter from ██████████, Secretary of ██████████, indicates only minimal information regarding the nature of the beneficiary's coursework. This letter does not include a detailed transcript and fails to explain the nature of the coursework taken by the beneficiary. ██████████ does not indicate whether he reviewed a course catalog or program overview which would otherwise support his finding of equivalence in this matter.

Based on the cursory and vague statement contained in the evaluation, the AAO concurs that the petitioner has failed to establish that the beneficiary's degree is the equivalent of a U.S. bachelor's degree under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3).

As noted by the director, the remaining manner in which the beneficiary's credentials could be evaluated is under 8 C.F.R. § 214.2(h)(4)(iii)(D)(5): a determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains no evidence pertaining to the beneficiary's work experience or specialized training. Moreover, there is no evidence that the beneficiary has recognition of expertise in the industry, membership in a recognized association in the specialty occupation, or published material by or about the beneficiary. Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry.

Therefore, the petitioner has failed to establish that the beneficiary has the equivalent of a U.S. bachelor's degree based on a combination of education, training, and/or experience. While counsel contends that the beneficiary previously worked as a manager in two other restaurants in the petitioner's geographical region, no evidence to support this contention was submitted. As previously stated, absent documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

As related in the discussion above, the petitioner has failed to establish that the beneficiary is qualified to perform the duties of the proffered position. For this additional reason, the petition will be denied.

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.