

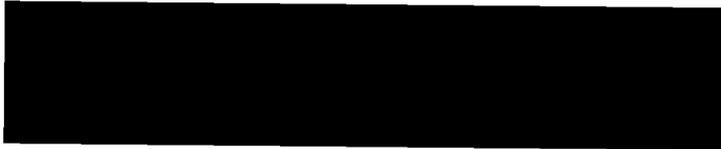
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



D2

Date: **APR 05 2012**

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:



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 service center director 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.

On the Form I-129 visa petition the petitioner stated that it is a restaurant, established in 1999. To employ the beneficiary in what it designates as a food service manager position, the petitioner endeavors to classify her 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 record contains a Form G-28 Notice of Entry of Appearance duly executed by the petitioner's vice president recognizing counsel in this case. The record does not show, however, that counsel participated in the appeal of this matter. Nevertheless, a copy of this decision will be provided to the petitioner's counsel of record.

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner's vice president asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position.

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.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a 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 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 a particular position 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), 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 contains evidence sufficient to show that the beneficiary was awarded a bachelor's degree in tourism by ██████████ in Thailand. An evaluation of the beneficiary's education states that it is equivalent to a bachelor's degree in travel and tourism management awarded by a U.S. institution.

With the visa petition, counsel submitted a letter, dated July 22, 2009, from the petitioner's vice president; and counsel's own letter, dated July 23, 2009.

The petitioner's vice president's July 22, 2009 letter provides the following description of the duties of the proffered position:

This is a highly professional position, which entails ensuring food preparation methods, portion sizes, and garnishing and presentation of food.

[The beneficiary] will ensure that food is prepared and presented in an acceptable manner. Her responsibility includes monitoring to ensure that food supplies are kept in the proper temperature and places.

The Food Service Manager will oversee the entire restaurant and interact with customers. [The beneficiary] will investigate and resolve complaints regarding food qualities and services. She will also maintain food and equipment inventories, and keep inventory records.

The position further entails monitoring payroll records and maintaining balance of the cash register at the end of each shift.

The petitioner's vice president further stated, "Only someone with at least a Bachelor's degree can even begin to do the job."

In his July 23, 2009 letter, counsel reiterated the assertions made by the petitioner's vice president. Neither counsel nor the petitioner's vice president asserted, however, that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*.

On August 20, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted another letter, dated September 16, 2009, from the petitioner's vice president; and another letter, dated October 1, 2009, from counsel.

The letter from the petitioner's vice president contains the following revised description of the proffered position:

[The beneficiary] will oversee the entire operation of the restaurant and interact with customers. [She] will investigate and resolve complaints regarding food qualities and services. 60% or more of her employment time will involve in managerial and supervisory capacity. Her management duties will include planning, organizing, directing, organizing [sic], controlling and staffing. She will take roles and responsibilities in overseeing and up keeping of the entire business. The food service manager will keep track of the restaurant cash flow. She will ensure that the restaurant is in compliance with licensing and other laws relating to the restaurant business. She will keep records required by government agencies regarding sanitation. She will review operational procedures and problems to determine methods to improve service, and performance. [The beneficiary] will manage the Point-of-service (POS) system and find a system solution, which will fit sales and marketing needs.

[The beneficiary] will spend 25% of her time creating comprehensive sales and marketing strategies in accordance with the market condition. She will promote the restaurant in order to increase its sales revenue. She will ensure expenditures stay within budget limitations.

She will spend 10% of her time for closing account balance and report to the president. The food service manager will spend 5% of the time preparing payroll and maintaining business records. She will also coordinate activities among various departments, such as kitchen, dining, and stocking room. [The beneficiary] will also maintain records of supplies and equipment purchases and ensure that all accounts with suppliers have no outstanding balance.

As to the educational requirement of the proffered position, the petitioner's vice president stated, "The food service manager position in question is a high-level professional one, which requires a Bachelor's degree with a food manager certification." The AAO notes that the vice president did not state that the requisite bachelor's degree must be in any specific specialty.

The petitioner's vice president further stated that the petitioner had employed two part-time food service managers with at least bachelor's degrees. Information provided shows that one has a master's degree in fine arts and the other has a master's degree in business administration. Although they both likely also have bachelor's degrees, the record contains no evidence pertinent to the subject matter of those degrees.

The petitioner has provided information pertinent to the education of two of its managers, and that information does not support the proposition that the petitioner requires its managers to have a minimum of a bachelor's degree or the equivalent in a specific specialty, as one had a degree in fine arts and one had a degree in business administration.

Counsel's letter of October 1, 2009 is accompanied by evidence that four identified restaurants participate in career placement on Career Day at Cornell University. Counsel stated, "This confirms that a Bachelor's degree is commonly required by the industry." The AAO is unconvinced by counsel's reasoning and notes that, in any event, those particular restaurants' participation in Career Day does not show that restaurants in general, or even those particular restaurants, require a minimum of a bachelor's degree or the equivalent *in any specific specialty* for their managerial positions.

Neither counsel nor the petitioner's vice president has ever even alleged that the proffered position requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. The failure of the petitioner even to allege that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

The director denied the petition on February 3, 2010, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

In the brief filed on appeal, the petitioner's vice president asserted that the evidence presented demonstrates that the proffered position is a specialty occupation position. The petitioner's vice president also cited the U.S. Department of Labor's Occupational Outlook Handbook (*Handbook*) for the proposition that food service managers require a bachelor's degree. With the appeal, counsel provided printouts of 11 vacancy announcements placed by other restaurants. Those vacancy announcements are addressed below.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent.

The AAO recognizes the *Handbook*, cited by the petitioner's vice president, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the chapter entitled Food Service Managers, the *Handbook* provides the following descriptions of the duties of those positions:

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

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

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.

The referenced section of the U.S. Dept. of Labor's Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos024.htm> (last accessed February 21, 2012).

The duties the petitioner's vice president attributed to the proffered position are consistent with the duties of food service managers as described in the *Handbook*, and the AAO finds that the proffered position is a food service manager position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of food service manager positions:

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.

Although the *Handbook* indicates that post-secondary education, up to and including a bachelor's degree, is increasingly preferred for food service manager positions, it also makes explicit that most food service managers have less than a bachelor's degree. Further, although it indicates that specialized degrees are often preferred, a preference is not a minimum requirement. Through both assertions, the *Handbook* makes clear that entry into a food service manager position in the United

States does not normally require a bachelor's or higher degree in a specific specialty or its equivalent.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge in restaurant management, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

The petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, satisfied the criterion of 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 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.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry normally requires food service managers to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of food service managers that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the restaurant industry.

As was noted above, the petitioner did provide 11 vacancy announcements on appeal. All of those announcements were placed for restaurant managerial personnel. The restaurants vary from a Waffle House to much more upscale businesses. How many, if any, are similar to the petitioner's restaurant in that regard is unknown to the AAO. The vacancies announced include positions for general managers, assistant general managers, managers, food and beverage managers, and assistant managers. How many of the positions offered are parallel to the proffered position is unknown to the AAO. Establishing the necessary parallelism would require substantive details about the duties of both the proffered and the advertised positions that have not been presented.

Eight of the 11 announcements state that the position requires a bachelor's degree, but not that the degree must be in any specific specialty. That is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

One of the announcements states that a bachelor's degree is preferred, but not required. That is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty, and does not address whether a degree in any specific specialty is even preferred.

One of the announcements states that successful candidates typically have a bachelor's degree. That does not state a minimum requirement of a bachelor's degree, and does not address whether a degree in any specific specialty is even preferred.

One announcement states that the position offered requires a bachelor's degree in business administration. Even that announcement does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, as an unspecified degree in business administration is not a degree in a specific specialty. 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 correlation 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. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) 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).

None of the vacancy announcements provided has been shown to be for a position in a restaurant similar to the petitioner's; none have been shown to be for positions parallel to the proffered position; and none have been shown to require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, even if all 11 positions were demonstrated to be for positions parallel to the proffered position with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the 11 announcements is statistically insufficient to demonstrate an industry-wide requirement.<sup>2</sup> The record contains no

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<sup>2</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar religious organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196

independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the restaurant industry.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other food service manager positions in the restaurant industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The duties described, though, contain no indication that they are sufficiently complex or unique that they require such a degree. Rather, they appear to be the ordinary duties of food service managers in general. Ensuring that food is prepared and presented in an acceptable manner, monitoring food storage, interacting with customers, investigating and resolving complaints, maintaining inventories, keeping records, and reconciling shift receipts contain no indication of complexity or uniqueness that would require a person with a minimum of a bachelor's degree or the equivalent in a specific specialty, especially in view of the *Handbook* information that food service manager positions in general do not.

The proffered position and its constituent duties are described in terms of generalized functions generic to the food service manager occupation, and, as such, they do not distinguish the proffered position from the range of food service manager positions that are held by persons without at least a bachelor's degree in a specific specialty closely and directly related to the position.

For the reasons discussed above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner provided the names of two part-time food service managers and two degrees they had earned. The record contains no indication that they are the only food service managers the petitioner

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(explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of food service manager for a restaurant required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

has employed and, as was noted above, that seems unlikely. Further, they received degrees in fine arts and business administration. The information provided makes clear that the petitioner does not require a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position. The petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>3</sup>

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

The AAO finds that the generalized and generic descriptions of the duties of the proffered position do not evince specialization and complexity usually associated with a bachelor's degree. Overseeing the operation of a restaurant, including hiring and supervising personnel, ensuring compliance with licensing and other legal requirements, maintaining required records, creating sales and marketing strategies, promoting the restaurant, preparing payroll, etc., are the generic duties of a food service manager position. The vague description provided of the duties of the proffered position contains no indication of complexity or specialization associated with a minimum of a bachelor's degree or the equivalent in a specific specialty, especially relative to other food service manager positions that, according to the *Handbook*, normally do not have such a minimum entry requirement.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director did not err in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an additional issue that was were not addressed in the decision of denial. The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority

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<sup>3</sup> 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 claimed 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 artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

An examination of the various descriptions of the duties of the proffered position suggests that those duties might be more closely related to a degree in some branch of business administration than they are to the beneficiary's degree in tourism.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968). The AAO finds, however, that the beneficiary's degree in tourism has not been shown to convey at least a bachelor's degree level of a body of highly specialized knowledge closely related to restaurant management.

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not reach the issue of the beneficiary's qualifications.

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. The appeal will be dismissed and the petition denied.

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