

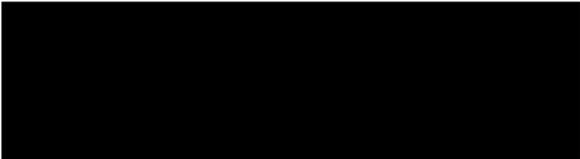
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



b2

Date:

FEB 08 2012

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

The petitioner states that it is a company with a gross annual income of over \$10 billion that provides casino branded entertainment. It seeks to employ the beneficiary as a chef tournant and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as 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) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration is 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 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

Specialty occupation means an occupation which [(1)] 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 [(2)] 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, a proposed 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 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 (5th Cir. 2000) (hereinafter *Defensor*). 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.

In the petition signed on October 8, 2009, the petitioner claimed to have 80,000 employees and a gross annual income of over \$10 billion. The petitioner indicated that it wished to employ the beneficiary as a chef tournant at a rate of pay of \$42,000 per year.

In the petitioner's support letter dated October 7, 2009, the petitioner states the proffered position's duties, along with specific details regarding the complexity of each duty. According to the letter, the beneficiary will:

- Verify all inventory rotation, pars, and provide the daily orders of products for restaurant operations;

These duties require comprehensive knowledge and understanding of the principles and functions of kitchen management and supervision, knowledge of catering systems, and utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- Budgetary compliance with regard to the purchase and management of all fish, shellfish, and caviar products;

These duties require comprehensive knowledge and understanding of the principles and functions of kitchen management and supervision, knowledge of food selection, food chemistry, budgetary compliance and finance management for the restaurant industry, and utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- New menu idea development, including item preparations, sourcing, adjustments, and finalization;

These duties require comprehensive knowledge and understanding of the principles and functions of food selection and the physical, microbiological, and chemical makeup of food[. In addition, these duties require the knowledge of] sourcing, adjustments, finalization, and utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- Form new purveyor contracts and perform research for sourcing new products and alternative productions for the restaurant;

These duties require comprehensive knowledge and understanding of the principles and functions of food selection, food chemistry, and the utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- Organize and execute external functions, including nationally recognized festivals, Master Chef dinners, charity events, etc.;

These duties require comprehensive knowledge and understanding of the principles and functions of the physical, microbiological, and chemical

makeup of food]. In addition, these duties require knowledge of] food selection, preparation, testing, presentation, catering systems, [and the] utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- Train, support, and development of current and new staff; research new individuals for potential future openings;

These duties require comprehensive knowledge and understanding of the principles and functions of kitchen management, human resources, and finance management for the restaurant industry, as well as utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- [Perform the daily execution of the] Station [REDACTED], including protein fabrication, vegetable preparation, Sauce Work, and Station set up; and

These duties require comprehensive knowledge and understanding of the principles and functions of food selection, preparation, testing, presentation[,] food chemistry, kitchen management[,] food station production, catering systems, [and the] utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

- Service and menu item execution of gastronomic food, working within guidelines established by the Executive Chef and Monsieur Savoy, and focus on exacting techniques, seasoning, and methods.

These duties require comprehensive knowledge and understanding of the principles and functions of food selection, preparation, techniques, testing, presentation[,] food chemistry, kitchen management, food station technique and production, catering systems, [and the] utilization of field and practicum training in the restaurant industry. These skills are typically taught during a Bachelor's Degree program in the United States.

The petitioner's support letter also stated that the minimum requirement for the proffered position is a bachelor's degree in culinary arts or its equivalent.

The petitioner submitted copies of the beneficiary's foreign degree, transcripts and a credential evaluation indicating that the beneficiary possesses the equivalent of a U.S. bachelor's degree in culinary arts.

On October 22, 2009, the director issued an RFE requesting the petitioner to submit, *inter alia*, (1) a more detailed job description, including specific job duties, percentage of time spent on each duty, level of responsibility, hours per week of work and the minimum education, training

and experience necessary; (2) a line-and-block organizational chart showing the petitioner's hierarchy and staffing levels; (3) evidence that the proffered position is a common position required by similar sized organizations with similar annual incomes; (4) documentation to show that an industry-related professional association has made a bachelor's degree in a specific speciality a requirement for entry into the field; and (5) copies of the petitioner's present and past job vacancy announcements.

On December 3, 2009, in response to the director's RFE, the petitioner submitted, in part, (1) a more detailed job description; (2) a line-and-block organizational chart; (3) an expert opinion letter; (4) job vacancy announcements; and (5) the resumes of the persons currently employed in the proffered position.

The director denied the petition on December 16, 2009.

On appeal, counsel for the petitioner claims that USCIS abused its discretion by misinterpreting the Act and the regulations, and acted both arbitrarily and capriciously in its adjudication. Counsel further claims that the "preponderance of the evidence" standard is applicable in this matter, and that the petitioner clearly established through credible and uncontested evidence that the proffered position is a specialty occupation that requires at a minimum a bachelor's degree in culinary arts or its equivalent.

With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or

petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Applying the preponderance of the evidence standard, the AAO agrees with the director and finds that the evidence of record does not establish that the proffered position is more likely than not a specialty occupation.

To make its determination whether the proffered position 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 (DOL’s) *Occupational Outlook Handbook* (hereinafter the *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)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The duties of the proffered position are essentially those noted for chefs. In the *Handbook*, in part, the duties of a chef are described as follows:

Chefs, head cooks, and food preparation and serving supervisors oversee the daily food service operation of a restaurant or other food service establishment. *Chefs and head cooks* are usually responsible for directing cooks in the kitchen, dealing with food-related concerns, and providing leadership. They are also the most skilled cooks in the kitchen and use their creativity and knowledge of food to develop and prepare recipes.

* * *

¹ 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.

All of these workers—chefs, head cooks, and food preparation and serving supervisors—hire, train, and supervise staff, prepare cost estimates for food and supplies, set work schedules, order supplies, and ensure that the food service establishment runs efficiently and profitably. Additionally, these workers ensure that sanitation and safety standards are observed and comply with local regulations. Fresh food must be stored and cooked properly, work surfaces and dishes clean and sanitary, and staff and customers safe from illness or injury to avoid being closed by the health department or law enforcement.

While all chefs have a role in preparing the food, developing recipes, determining serving sizes, planning menus, ordering food supplies, and overseeing kitchen operations to ensure uniform quality and presentation of meals, different types of chefs may have unique roles to perform or specialize in certain aspects of the job. *Executive chefs, head cooks, and chefs de cuisine*, are primarily responsible for coordinating the work of the cooks and directing the preparation of meals. Executive chefs are in charge of all food service operations and also may supervise several kitchens of a hotel, restaurant or corporate dining operation. A *sous chef*, or sub chef, is the second-in-command and runs the kitchen in the absence of the chef. Many chefs earn fame both for themselves and for their kitchens because of the quality and distinctive nature of the food they serve.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 Ed., “Chefs, Head Cooks, and Food Preparation and Serving Supervisors,” <http://www.bls.gov/oco/ocos330.htm> (accessed Jan. 25, 2012).

In its discussion of the educational and training requirements for chefs, head cooks, and food preparation and serving supervisors, the *Handbook* states the following, in pertinent part:

While most chefs, head cooks, and food preparation and serving supervisors have some postsecondary training, many experienced workers with less education can still be promoted. Formal training may take place at a community college, technical school, culinary arts school, or a 2-year or 4-year college with a degree in hospitality. A growing number of chefs participate in training programs sponsored by independent cooking schools, professional culinary institutes, 2-year or 4-year colleges with a hospitality or culinary arts department, or in the armed forces. Some large hotels and restaurants also operate their own training and job-placement programs for chefs and head cooks. Executive chefs, head cooks, and sous chefs who work in fine-dining restaurants require many years of training and experience.

Id. As indicated in that passage, chefs who work in fine-dining restaurants only require years of training and experience. Thus, that passage does not indicate that a chef position normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, it indicates that numerous different paths may lead to a chef position.

Because the *Handbook* indicates that entry into the chef occupation does not normally require a degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO will now discuss the expert opinion letter submitted by the petitioner in response to the RFE. The letter is from [REDACTED] and Service Management at the [REDACTED]. In the letter, [REDACTED] states that, in his opinion, the proffered position is a specialty occupation and therefore requires at a minimum a bachelor's degree in culinary arts, hospitality management, or a related field. [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. 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'r 1988). Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is 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, 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 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.

As stated earlier, 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).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of seven advertisements with the Form I-129 and three advertisements in response to the RFE as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in fine dining establishments within the gaming and entertainment industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*. The AAO notes that three of the advertisements indicate that a degree is preferred, not required. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, one of the advertisements is for a personal chef position at a private home and thus, it cannot be found to be a parallel position in a similar organization. Moreover, another advertisement is for a chef position at pizza franchise company and therefore, it also cannot be found to be a parallel position in a similar organization in the same industry. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.²

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

The petitioner also failed to satisfy 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 petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of chef tournant.

Specifically, even though the petitioner and its counsel claim that the proffered position's duties

² 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 just ten job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar fine dining establishments within the gaming and entertainment industry. *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 (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 chef tournant for a fine dining establishment within the gaming and entertainment industry 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 appear to 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.

are so complex and unique that a bachelor's degree is required, the petitioner failed to demonstrate how the chef tournant duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the AAO notes that in the petitioner's support letter dated October 7, 2009, the petitioner states that the skills needed to perform the proffered position's duties are typically obtained in a bachelor's degree program in the United States, however, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex or unique. While one or two courses in food preparation may be beneficial in performing certain duties of a chef position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in culinary arts or its equivalent are required to perform the duties of the particular position here proffered.

Therefore, the evidence of record does not establish that this position is significantly different from other chef positions such that it refutes the *Handbook's* information to the effect that many years of training and experience are acceptable for chef positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than chef positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of chef tournant is so complex or unique relative to other chef positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner states that it normally requires a degree in culinary arts or its equivalent for the proffered position noting that it employs four other chef tournants who possess a combination of education and work experience, which is equal to a bachelor's degree. However, the petitioner did not submit evaluations for each of its chef tournants from officials who have authority to grant college-level credit for training and/or experience in the specialty of culinary arts or related field. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Here, 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.³

³ 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").

Finally, the petitioner has not proven, and the record does not establish, that the nature of the position's duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The duties as described appear to be routine for chefs in the industry, which, as noted in the *Handbook*, do not require a baccalaureate degree in a specific specialty to perform them. Even if the petitioner had sufficiently developed relative specialization and complexity in this matter such that post-secondary education and not just experience were associated with the proffered position as a minimum entry requirement, the petition does not even distinguish the duties of the proffered position as those requiring a 4-year rather than a 2-year degree. The petitioner has thus failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it satisfies any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it has failed to establish that the proffered position qualifies as specialty occupation. The appeal must be dismissed and the petition denied for this reason.

Beyond the decision of the director, the record does not establish that the beneficiary is qualified to perform the services of an occupation requiring a U.S. bachelor's degree in culinary arts. The petitioner submits a credentials evaluation that considers both the beneficiary's educational credentials and work experience. The record does not establish that the evaluator, [REDACTED] is 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, as required by 8 C.F.R. § 214.2(h)(4)(iii)(d)(1). For instance, no documentation was provided from the [REDACTED] establishing that, at the time [REDACTED] produced his evaluation for the petitioner, [REDACTED] had a program for granting college-level credit in the pertinent academic specialty for work experience in that specialty, and (2) that this evaluator had authority for granting such credit based upon a person's work experience. Accordingly, this evaluation does not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) for competency to render to USCIS an opinion on the educational equivalency of the beneficiary's work experience. Thus, the opinion does not establish that the beneficiary has the equivalent of a bachelor's degree in culinary arts. In other words, even if the proffered position were established as being a specialty occupation requiring a U.S. bachelor's or higher degree in culinary arts, the petitioner failed to demonstrate that the beneficiary is qualified for that specialty occupation. For this additional reason, the petition may not be approved.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.