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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

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Date: **JAN 04 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,

*Lot*   
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.

The record contains a July 29, 2011 letter from a California attorney who stated that he represents the petitioner and requested a videoconference or teleconference pertinent to this matter. The record, however, contains no Form G-28 Notice of Entry of Appearance executed by an employee of the petitioner recognizing that attorney as the petitioner's counsel. As such, no communication with that attorney pertinent to the instant matter is permitted. This decision will be furnished to the petitioner and to an attorney whom the petitioner's owner recognized as the petitioner's counsel in a Form G-28 he executed on October 9, 2009.

On the Form I-129 visa petition the petitioner stated that it is an Indian Cuisine Restaurant and Retail Sales firm. To employ the beneficiary in what it designates as an Executive Chef (Indian Cuisine) position, the petitioner endeavors 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, finding that the petitioner failed to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel additional evidence and a brief signed by the petitioner's owner.

As will be discussed below, the AAO has determined that the director's determination to deny the petition on the specialty occupation issue was correct. 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, the petitioner's owner's brief, and the other submissions in support of the 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)(I) of the Act, 8 U.S.C. § 1184(i)(I), 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.

With the visa petition, counsel submitted a letter, dated October 9, 2009, from the petitioner’s owner. That letter states the following as the duties of the proffered position:

- Planning menu, Ordering raw foods and spices.
- Overall restaurant management, including Supervising cooks
- Supervising and training kitchen staff members to assure recipe, cooking, and quality control
- Utilizing food surplus and leftovers in a proper manner.
- Forecasting the probable number of guests for consumption of food depending on the day of the week, weather conditions, events and market conditions.
- Managing portion control and cost control.
- Creating daily specials, as well as special requests from patrons, as needed
- Managing daily operations
- Coordinating kitchen assignments and Scheduling kitchen staff in a cost effective manner.
- Responsible for Hiring and discharging of kitchen staff, if needed
- Responsible organizing the customized dishes and importing Indian cooking equipment, as needed for the kitchen, Tandoor (Indian clay ovens).
- Educating the wait staff/servers to portray the recipes and ingredients accurately to the guests.
- Establishing and enforcing nutritional and sanitation standards.
- Assuring compliance with all federal, state, and local laws and regulations.
- Improvement in quality, taste and variety of vegetarian and non-vegetarian Indian dishes
- Responsible for enhancement of the restaurant’s standards to meet the international grade of culinary

[Verbatim from the original.]

The petitioner’s owner also stated:

Qualifications Required: In order to perform these duties, the employee must have a Bachelor’s Degree or Combination of education and experience equivalent to

Bachelors degree in Culinary Arts, Restaurant Management in & minimum 2 years experience as Executive Chef of Indian Cuisine.

[Verbatim from the original.]

Counsel also provided a diploma and an evaluation of the beneficiary's education and experience. That evaluation will be addressed further below.

On December 4, 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. The service center specifically requested that the petitioner explain why the duties described require a minimum of a bachelor's degree or the equivalent in a specific specialty.

In response, counsel submitted (1) a letter, dated December 29, 2009, from the petitioner's owner; (2) web content entitled Education & Training Required for an Executive Chef, taken from a website maintained by the University of Phoenix; (3) vacancy announcements; (4) an expanded list of the duties of the proffered position; (5) a letter from the manager of another Indian restaurant; (6) classified advertisements placed by the petitioner for various positions; and (7) vacancy announcement from the petitioner's website.

In his December 29, 2009 letter, the petitioner's owner described the duties of an executive chef and stated that those duties are taught in a bachelor's degree program in culinary arts or restaurant management. The petitioner's owner concluded that the requisite skills can only be learned in college-level classes, and appeared to cite the U.S. Department of Labor, Bureau of Labor Statistics (DOL) *Occupational Outlook Handbook (Handbook)* in support of that assertion.

The content from the University of Phoenix website states, "The vast majority of executive chefs have graduated from culinary school," but did not indicate any basis for that statement. Further, it stated that culinary school degree programs are from two to four years in length. That web content also states that culinary school certificate programs last from a few months to a year, but are not appropriate for those intending to become executive chefs. The AAO observes that, because that web content indicates that a two-year degree may be sufficient for an executive chef position, it does not support the proposition that an executive chef position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The expanded description of the duties of the proffered position contains no indication of who produced it, or their basis for asserting that the description is accurate. As to each group of duties, it asserts that the requisite minimum education for the position is a bachelor's degree or a combination of education and experience equivalent to a bachelor's degree in culinary arts or restaurant management. It does not explain why such a degree or equivalent is necessary for the performance of those duties.

One of the classified advertisements placed by the petitioner is only partly legible. Whether it is for an executive chef position is unclear. The other classified advertisements provided are not for executive chef positions.

The posting of the proffered executive chef position on the petitioner's website reiterates the duties of the proffered position as stated in the petitioner's owner's October 9, 2009 letter, and states that the position requires a bachelor's degree or a combination of education and experience equivalent to a bachelor's degree in culinary arts or restaurant management. It does not state what experience the petitioner would accept as equivalent to a bachelor's degree.

The director denied the petition on January 14, 2010, finding, as was noted above, that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel provided additional classified advertisements and another letter from a restaurant owner. Counsel also provided a brief that appears to have been prepared by the petitioner's owner. That brief reiterates the duties of the proffered position and asserts that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. It also appeared to cite the *Handbook* in support of that proposition.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A). It 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 proffered position is one for which a bachelor's or higher degree, or its equivalent, is normally the minimum entry requirement.

The AAO recognizes the *Handbook*, cited by the petitioner's owner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The *Handbook* describes the duties of executive chef positions, in the chapter entitled Chefs, Head Cooks, and Food Preparation and Serving Supervisors, as follows:

*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.*

The AAO finds that the duties of the proffered position, as described by the petitioner's owner in his October 9, 2009 position, mark the proffered position as a position for a chef, head cook, or food preparation and serving supervisor, and possibly an executive chef. The *Handbook* describes the

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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.

education necessary for chefs, head cooks, or food preparation and serving supervisors, including executive chefs, as follows:

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.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos330.htm> (last accessed October 17, 2011).

That most chef, head cooks, and food preparation and serving supervisors have some postsecondary training does not indicate that it is a minimum requirement. Further, "some postsecondary training" may not be equivalent to a minimum of a bachelor's degree or the equivalent in a specific specialty. The *Handbook* indicates that acceptable experience may take place in a community college, a technical school, a culinary arts school, a two-year or four-year college, the armed forces, or a hotel or restaurant training and job-placement program. Most of those alternative venues would not bestow a bachelor's degree. Further, that executive chefs and sous chefs at some restaurants require many years of training and experience does not suggest that they require a minimum of a bachelor's degree or the equivalent in a specific specialty. The *Handbook* offers no support for the proposition that the particular position of executive chef requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

The petitioner provided vacancy announcements posted by other restaurants. Four of those announcements are for executive chef positions. One of those executive chef position announcements is for a position at Coast Global Seafood in Plano, Texas. That announcement states, "Our ideal candidate will . . . [h]ave a culinary degree." The AAO observes that a preference for a culinary degree is not a minimum requirement. Further, the web content from the site maintained by the University of Phoenix, provided by the petitioner, indicates that a culinary degree may take less than four years of study. As such, it is not necessarily equivalent to a bachelor's degree.

Another announcement is for an executive chef to work [REDACTED]. It states, "Preferred Experience: Culinary Arts Degree." Again, a preference is not a minimum requirement, and a culinary arts degree is not necessarily equivalent to a bachelor's degree.

Another vacancy announcement is for an executive chef to work [REDACTED]. It states, "College degree or certification in culinary field/hospitality field preferred." Again, a preference is not a minimum requirement. Further, that announcement indicates that certification in a culinary or hospitality field would suffice. The University of Phoenix content indicates that certification may take as little as a few months or as much as a year. It is not, therefore, equivalent to a bachelor's degree. That vacancy announcement makes clear that the position announced does not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

Another announcement was placed by [REDACTED] for an executive chef. It states that the position requires a degree in culinary arts. Again, a degree in culinary arts may take as little as two years to acquire, and is not necessarily equivalent to a bachelor's degree.

None of the four executive chef vacancy announcements submitted indicates that the position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, even if all four positions unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the four announcements is statistically insufficient to demonstrate an industry-wide requirement. The record contains no indication 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 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, or any other, requires executive chefs 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 executive chefs that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The vacancy announcements provided do not support the

proposition that a minimum of a bachelor's degree or the equivalent in a specific specialty is common to similar positions in the petitioner's industry.

The petitioner did provide two letters from others in its industry. One is from the manager of the [REDACTED]. It states that the [REDACTED] restaurants require trained chefs with bachelor's degrees in hospitality or culinary arts or equivalent experience. It further states, "In both our restaurants since opening, we employ Executive Chefs with relevant degrees." It does not detail what experience it would consider to be equivalent to a bachelor's degree. It was accompanied by no evidence to corroborate its assertion about its executive chefs' educational credentials.

The other letter is from the owner of the [REDACTED]. It states, "[W]e require our executive chef to have a bachelor's degree in culinary art & restaurant management or [to] have an acceptable education and experience equivalent to bachelor's degree . . . ." It does not detail what experience it would consider to be equivalent to a bachelor's degree. It was accompanied by no evidence to corroborate the assertion about the restaurant's executive chef's educational credentials, or evidence pertinent to any previous executive chefs it may have employed.

Although the letters from others in the industry are evidence, they can be accorded little weight absent any corroboration of the assertions that the restaurants in question employ executive chefs, and that they require their executive chefs to have a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the demands of an executive chef position likely vary between restaurants, depending upon the size of the restaurant, the complexity of its menu, and other factors. The record does not indicate that the executive chef positions referred to in the letters provided are truly parallel to the proffered position, or that they are at restaurants that are similar to the petitioner in those salient ways.

Further still, even if the restaurants referred to in those two letters were demonstrated to employ executive chefs, the proffered position were demonstrated to similar in complexity to the executive chef positions at those other restaurants, and those chefs had been demonstrated to have at least a bachelor's degree or the equivalent in a specific specialty, the submission of two letters pertinent to three restaurants is insufficient to show that a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty is common to parallel positions in restaurants similar to the petitioner.

Additionally, the letters do not attest that firms similar to the petitioner routinely recruit and hire as executive chefs only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 demonstrates that, notwithstanding that other executive chef positions in the petitioner's 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 a degree.

Nothing in the record, however, demonstrates that the petitioner's executive chef position is more complex or unique than other executive chef positions. The descriptions of the duties of the proffered position are the only evidence that might have distinguished it from other executive chef positions. However, planning a menu, ordering foods and spices, training and supervising staff, utilizing food surplus, forecasting the probable number of guests, managing portion and cost control, creating daily specials and taking special requests from patrons, and otherwise managing a restaurant are the general and generic duties of an executive chef position. They contain no indication of complexity or uniqueness that would distinguish the proffered position from more ordinary executive chef positions, which the *Handbook* indicates may not require a minimum of a bachelor's degree or the equivalent in a specific specialty.

As the petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree, it has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that 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, or its equivalent.

Again, however, the duties described do not distinguish it as more specialized or complex than other executive chef positions, which the *Handbook* indicates may not require a minimum of a bachelor's degree or the equivalent in a specific specialty. Coordinating kitchen assignments; hiring, training, scheduling, and discharging employees; obtaining equipment; establishing and maintaining nutritional, sanitation, and quality standards; and assuring compliance with laws and regulations are duties typical of executive chef positions. Although the petitioner's owner has asserted that each of the duties of the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, those duties are indistinguishable from the duties of other executive chef positions. The record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge required to perform its duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO finds that, to the extent that they are described, the proposed duties do not convey either

the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. Rather, the AAO finds that the vague description of the proposed duties are presented in the record of proceeding in terms of generalized and generic functions that, as so generally described, fail to convey that their performance would require application of a particular level of a body of highly specialized knowledge that is usually associated with attainment of a particular level of educational attainment in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of a level of specialized and complex knowledge usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific discipline, 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 was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

Beyond the decision of the director, the AAO finds that the petition must also be denied on an additional ground, which will now be discussed, that was not addressed in the director's decision. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the exercise of this function that the AAO identified this additional basis for denying the petition.

Evidence in the record indicates that the beneficiary has a bachelor's degree in music from the University of Calcutta, in India; training in food preparation; and over nine years of experience in food preparation. An evaluation in the record states that the beneficiary's education and his employment experience, considered together, are equivalent to a second major in culinary arts and restaurant management.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

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

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

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

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish either that the beneficiary has completed a degree in the specialty that the occupation requires, or that, if he or she does not possess the required degree, that the alien has (1) experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (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;<sup>2</sup>

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<sup>2</sup> The petitioner should note that, in accordance with this provision, the AAO will accept a 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. . . .

The beneficiary does not meet either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree, or of an unrestricted state license, registration or certification which authorizes him to fully practice and be immediately engaged in a specialty occupation in the state of intended employment. The beneficiary cannot meet the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), as his degree in music is not in a specific specialty related to an executive chef position. The petitioner appears, therefore, to rely on 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), which requires (a) 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 (b) recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.<sup>3</sup> As was noted above, however, the beneficiary's credentials must also satisfy the alternative requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D).

The record contains no evidence of recognized college-level equivalency examinations or special credit programs, and the petitioner has not satisfied the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(2).

The alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is inapplicable, as the petitioner does not seek to rely on the beneficiary's education alone.

The alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) has not been met, as there is no evidence of certification or registration from a nationally-recognized professional association or society of executive chefs that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence.

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evaluation service's evaluation of *education only*, not experience.

<sup>3</sup> The AAO observes that the only evidence submitted of recognition of expertise in the specialty through progressively responsible positions are the employment verification letters stating that the beneficiary has previously worked as an executive chef. Although this evidence might be found to be insufficient, the AAO prefers to rely on the failure of the petitioner to satisfy any of the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D).

Because there has been no 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, the beneficiary cannot qualify to work in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The remaining alternative criterion, upon which the petitioner apparently intends to rely, is the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), which requires 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.

The record does contain an evaluation. It was prepared by [REDACTED] a credential evaluator with Washington Evaluation Service. His résumé indicates that he has a Ph.D. and a Master's degree in education, worked in the publishing industry for 13 years, and has worked for the Library of Congress for more than 16 years. It contains no indication that he is an official who has authority to grant college-level credit for training and/or experience in culinary arts and restaurant management at an accredited college or university which has a program for granting such credit in those subjects based on an individual's training and/or work experience. As such, that evaluation does not satisfy the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

Because the petitioner has not satisfied the provisions of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D), it has not demonstrated that the beneficiary is qualified to work in a specialty occupation. The appeal will be dismissed and the visa petition will be denied on this additional basis.

The appeal will be dismissed and the visa petition will be denied on both of the bases described above, with each considered as an independent and alternative basis for the decision. 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.