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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**



Dr

Date: **JUL 17 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:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Restaurant" business with ten employees. To employ the beneficiary in what it designates as an "Executive Sous Chef" 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, 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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 which [(2)] 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). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such 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 petitioner submitted the following documents, *inter alia*, with the Form I-129: (1) an evaluation of the proffered position and the beneficiary’s foreign degree equivalency; (2) copies of the beneficiary’s foreign diplomas and transcripts; and (3) copies of previous, unpublished AAO decisions.

Relying on the petitioner’s description of the proffered position’s duties, counsel states that the beneficiary will be responsible for the following:

- [The beneficiary] will be responsible for the cost effective and efficient management of all aspects of kitchen operations, for implementing goals, policies, and procedures related to its demanding operations and to ensure that all activities are performed in accordance with the restaurant's standards and philosophy[;]
- [The beneficiary] will direct hiring, training, and scheduling of restaurant staff, handle disciplinary problems, counsel employees according to the standards of Petitioner's restaurant and for other personnel matters, as necessary[;]
- [The beneficiary] will participate in strategic planning and goal setting and conduct meetings with the staff in order to review all information pertinent to each day's business[;]
- [The beneficiary] will manage the development and implementation of payroll and budget[;]
- [The beneficiary] will also develop recipes and procedures designed to enhance and maintain the restaurant's reputation and establish procedures with regard to recipes, menus, and inventory controls[;]
- [The beneficiary] will exercise discretionary authority over thy-today [sic] restaurant operations and will regularly meet and liaise with other managers to ensure coordination of culinary activities.

The petitioner states that it is a restaurant serving south French cuisine and is owned by [REDACTED] who until recently [REDACTED] restaurant in Washington, DC. The petitioner states that the proffered position is a specialty occupation "requiring the services of a member of the profession holding at least a Bachelor's degree, or its equivalent, in Hospitality Management or a closely related field" and that the beneficiary is qualified for the proffered position as he "possesses the equivalent of a U.S. bachelor's degree in Hospitality Management." The petitioner further states that the beneficiary worked at [REDACTED] "December 2006 to present" and that [REDACTED] would like to replicate its success with [REDACTED] in the new petitioning restaurant.

On February 9, 2010, the director issued an RFE requesting the following: (1) a detailed statement articulating the beneficiary's proposed duties and day-to-day responsibilities and the percentage of time the beneficiary will spend performing these functions each day; (2) an indication of which specific tasks require the expertise of someone who holds a bachelor's degree and how the beneficiary's education relates to the position itself; (3) additional evidence demonstrating that the beneficiary qualifies for a "specialty occupation"; (4) evidence showing that a bachelor's degree in a specific specialty is a standard minimum requirement for the proffered position in the petitioner's business and similarly situated businesses in the petitioner's industry; and (5) evidence of the three most recent pay stubs from [REDACTED] to establish and/or verify that the beneficiary has been maintaining valid nonimmigrant status.

On March 24, 2010, in response to the director's RFE, the petitioner submitted, *inter alia*, the following documents: (1) a letter from the petitioner's counsel dated March 22, 2010; (2) a letter from the petitioner dated March 10, 2010; (3) eight job vacancy announcements; and (4)

affidavits by [REDACTED] and the beneficiary.

The director denied the petition on March 31, 2010, finding that the proffered position of executive sous chef is not a specialty occupation. Citing to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), the director noted that the proffered position did not require a bachelor's degree in a specific specialty. The director also found that the petitioner failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner's counsel contends that the proffered position is a specialty occupation and noted that the "beneficiary was previously granted H-1B status for the same position, with the same employer (incorporated under a different name and FEIN)." Counsel for the petitioner further contends that the position of executive sous chef is assigned the "very high Specific Vocational Preparation (SVP) number of 8" which "clearly shows that according to the [*Dictionary of Occupational Titles (DOT)*], the position of Sous Chef requires at least a bachelor's degree." The petitioner's counsel also states that, because the specific duties are so complex, a bachelor's degree, or its equivalent, in Hospitality Management or a closely related field is required.

As a preliminary matter, the AAO will address the unpublished AAO decisions cited by counsel. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. With regard to *Matter of [name not provided]*, Case No. [REDACTED] cited by counsel, the facts in this decision are not analogous to the instant petition. For instance, in *Matter of [name not provided]*, Case No. [REDACTED] the petitioner owns and operates several businesses in the food and beverage industry, in addition to a French restaurant. The petitioner in that matter has 115 employees and a gross annual income of \$5.5 million. With regard to *Matter of [name not provided]*, Case No. [REDACTED] cited by counsel, the AAO noted that the proffered position was "not a typical chef position." The AAO further noted that that petitioner's restaurant employed 140 people at three different locations with an annual income of approximately \$8 million. Furthermore, the facility at which the beneficiary in that matter would be employed was recognized as the best patisserie in New York by a renowned restaurant ratings guide, and the facility was also featured in a well-known television program and in various publications. The petitioner in that matter also described in "great detail, the facility and services that the beneficiary would manage" and also "noted that the beneficiary would be a member of the petitioner's management team, and established that all members of the management team possess a bachelor's degree, or its equivalent." Regardless, even if the facts of those cases were analogous to those in this matter, they are both unpublished decisions and, as such, are not binding on the AAO. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns next 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 *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 AAO finds that the record evidence most closely reflects the duties of a sous chef. The *Handbook* section on "Chefs and Head Cooks" states the following:

Chefs and head cooks oversee the daily food preparation at restaurants or other places where food is served. They direct kitchen staff and handle any food-related concerns.

Duties

Chefs and head cooks typically do the following:

- Check freshness of food and ingredients
- Supervise and coordinate activities of cooks and other food preparation workers
- Develop recipes and determine how to present the food
- Plan menus and ensure uniform serving sizes and quality of meals
- Inspect supplies, equipment, and work areas for cleanliness and functionality
- Hire, train, and supervise cooks and other food preparation workers
- Order and maintain inventory of food and supplies needed to ensure efficient operations
- Monitor sanitation practices and ensure that kitchen safety standards are followed

Chefs use a variety of kitchen and cooking equipment, including step-in coolers, high-quality knives, meat slicers, and grinders. They also have access to large quantities of meats, spices, and produce. Some chefs use scheduling and purchasing software to help them in their administrative duties.

Chefs might also be a restaurant's owner. Some may be busy with kitchen and office work and not have time to interact with diners.

The following are types of chefs and head cooks:

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

Executive chefs, head cooks, and chefs de cuisine are primarily responsible for overseeing the operation of a kitchen. They coordinate the work of sous chefs and other cooks, who prepare most of the meals. Executive chefs also have many duties beyond the kitchen. They design the menu, review food and beverage purchases, and often train employees. Some executive chefs are primarily occupied by administrative tasks and spend little time in the kitchen.

Sous chefs are a kitchen's second-in-command. They supervise the restaurant's cooks, do some meal preparation tasks, and report results to the head chefs. In the absence of the head chef, sous chefs run the kitchen.

Personal chefs plan and prepare meals in private homes. They also may order groceries and supplies, serve meals, and wash dishes and utensils. Personal chefs are often self-employed or employed by a private cooking company, preparing food for a variety of customers.

Private household chefs typically work full time for one client, such as a corporate executive, university president, or diplomat, who regularly entertains as part of his or her official duties.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Chefs and Head Cooks," "What They Do," <http://www.bls.gov/ooh/Food-Preparation-and-Serving/Chefs-and-head-cooks.htm#tab-2> (last visited July 11, 2012).

While the *Handbook* reports that "[a] growing number of chefs and head cooks receive formal training at community colleges, technical schools, culinary arts schools, and 2-year or 4-year institutions," it does not indicate that a bachelor's degree is a minimum entry requirement or, more importantly, that the degrees held by such workers must be baccalaureate degrees in a specific specialty that is directly related to culinary arts, as would be required for the occupational category to qualify as a specialty occupation as that term is defined by section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Chefs and Head Cooks," "How to Become One," <http://www.bls.gov/ooh/Food-Preparation-and-Serving/Chefs-and-head-cooks.htm#tab-4> (last visited July 11, 2012).

That the *Handbook* does not indicate that chef and head cook positions normally require at least a bachelor's degree in a specific specialty is also evident in the following discussion in the "How to Become a Chef or Head Cook" section of its chapter "Chefs and Head Cooks," which does not specify a requirement of a bachelor's degree in a particular major or academic concentration:

Most chefs acquire their skills through work experience. Many others, however, receive formal training at a community college, technical school, culinary arts school, or a 2-year or 4-year college. A few learn through apprenticeship programs or in the armed forces.

Work Experience

Most chefs and head cooks start working in kitchens in other positions, such as line cooks or dishwashers, learning cooking skills from the chefs they work for. Many spend years working in kitchens before learning enough to get promoted to chef or head cook positions.

Education

A growing number of chefs and head cooks receive formal training at community colleges, technical schools, culinary arts schools, and 2-year or 4-year institutions. Students in culinary programs spend most of their time in kitchens practicing their cooking skills. These programs cover all aspects of kitchen work, including menu planning, food sanitation procedures, and purchasing and inventory methods. Most formal training programs also require students to get experience in a commercial kitchen through an internship, apprenticeship, or out-placement program.

Apprenticeship

Formal apprenticeship programs sponsored by professional culinary institutes, industry associations, and trade unions in coordination with the U.S. Department of Labor, also are common. Apprenticeship programs generally last about 2 years and combine classroom training and work experience. The American Culinary Federation accredits more than 200 formal academic training programs at post-secondary schools and sponsors apprenticeships around the country.

Training

Some chefs and head cooks train in mentorship programs, where they work under the direction of experienced chefs. Executive chefs, head cooks, and sous chefs who work in fine-dining restaurants have many years of training and experience. Some chefs receive formal training through the armed forces or from individual hotel or restaurant chains.

Certification

Although not required, certification can show competence and lead to advancement and higher paying positions. The American Culinary Federation certifies pastry professionals, personal chefs, and culinary educators in addition to various levels of chefs. Certification standards are based primarily on work-related experience and formal training. The minimum work experience for certification can range from 6 months to 5 years, depending on the level of certification.

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

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

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, as briefly addressed above and 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 eight advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions.² The advertisements provided, however, do not establish that at least a bachelor's degree or the equivalent in a specific specialty is 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

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 eight job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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 executive sous chef for a restaurant with ten employees 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 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.

organizations in the same industry.

For instance, the first advertisement submitted in response to the RFE appears to state that a "Bachelor's degree in Institutional Management or Hotel and Restaurant Management" is required; however, it is for a position in a wholly different organization, i.e., the hospitality division of a major university with a \$13 million operating budget and 179 full-time employees. Thus, it cannot be found to be a parallel position in a similar organization.³ The second advertisement does not indicate that a bachelor's degree or even one in a specific specialty is required.⁴ The advertisement only states only that a "[d]egree in culinary arts is preferred." Furthermore, the advertising employer is a hotel with 278 rooms; thus, it too, cannot be found to be a parallel position in a similar organization. The third advertisement is for a position in a health care cafeteria and does not require a bachelor's degree in a specific specialty. The fourth advertisement is for an executive sous chef position in a casino which requires "[a] college degree, culinary degree or formal apprenticeship program." Thus, it, too, cannot be found to require a baccalaureate or higher degree in a specific specialty or to be a parallel position in a similar organization.

The fifth and eighth advertisements are for executive chef positions in a company serving senior dining clients in 44 states with 1,200 registered dietitians and 200 executive chefs, thus, the positions cannot be found to be parallel positions in similar organizations.⁵ With respect to that company's degree requirements for the advertised positions, the advertisements state that a culinary certificate or an associate's degree in culinary arts is sufficient to qualify for the jobs. The sixth advertisement states only that the ideal candidate "will possess a degree or related culinary degree." The seventh advertisement states only that an "undergraduate degree in Food Science, Nutrition, Culinary Arts or Hotel/Restaurant Management is highly desirable." Furthermore, the advertising company is a "food and dining management services specialist dedicated to serving senior services, hospitals and businesses." Thus, it, too, cannot be found to require a degree in a specific specialty or to be a parallel position in a similar organization. Consequently, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The petitioner and counsel claim that the duties of the proffered position are complex. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the

³ It appears that the right margin of the copy of the first job vacancy advertisement has been cut off due to an error in copying prior to submission, and, thus, it is impossible for the AAO to determine the exact language used therein.

⁴ Again, it appears that the right margin of the copy of the second job vacancy advertisement has been cut off due to an error in copying prior to submission, and, thus, it is impossible for the AAO to determine the exact language used therein.

⁵ Once again, it appears that the right margin of the copy of the fifth job vacancy advertisement has been cut off due to an error in copying prior to submission, and, thus, it is impossible for the AAO to determine the exact language used therein.

second prong of the criterion. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the executive sous chef 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 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 and unique. While some culinary and hospitality courses may be beneficial in performing certain duties of an executive sous chef, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree in a specific specialty, or its equivalent are required to perform the duties of the particular position here proffered. Consequently, as the petitioner fails to demonstrate how the proffered position of executive sous chef 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).

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. The hiring history of [REDACTED] is irrelevant to the instant matter as the petitioner is a separate legal entity and has not been demonstrated to be a successor-in-interest to [REDACTED]. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than chef positions that are not usually

⁶ 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").

associated with a degree in a specific specialty.⁷

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO will now discuss the alleged SVP rating of "8" for the occupation of sous chef. The AAO notes that O*NET assigns the occupation of "chefs and head cooks" an SVP rating of 6.0 < 7.0, not 8, as alleged by the petitioner. See O*NET Online, Chefs and Head Cooks, <http://www.onetonline.org/link/summary/35-1011.00> (last visited July 11, 2012). The AAO finds that an assignment of an SVP rating of 6.0 to 7.0, or even an 8, is not indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.⁸ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);

⁷ Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other chef positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

⁸ The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (last visited July 11, 2012).

- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 6 through 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP information is not probative of the proffered position being a specialty occupation.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to establish that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. However, the AAO notes that in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based in part on experience, there is no evidence that the evaluator 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 and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1).

Furthermore, to determine whether the beneficiary's foreign diplomas are equivalent to a bachelor's degree in hospitality management from an accredited institution of higher education in

the United States, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, AACRAO is "is a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." <http://www.aacrao.org/About-AACRAO.aspx> (last visited July 11, 2012). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to its website, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://www.aacrao.org/premier-services.aspx> (last visited July 11, 2012).

EDGE provides a great deal of information about the educational system in France and, contrary to the questionable evaluation submitted in this matter, it indicates that the *Diplome National du Brevet* awarded to the beneficiary, is only comparable to completion of the 9th grade in the United States. Furthermore, EDGE indicates that the *Certificat d'Aptitude Professionnelle* and *Brevet d'Etudes Professionnelles* diplomas individually represent attainment of a level of education comparable to the 11th grade in a vocational program. Finally, the *Diplome du Baccalaureat Professionnel* diploma represents attainment of a level of education comparable to completion of a vocational or other specialized high school curriculum in the United States. As EDGE does not suggest that these diplomas, individually or combined, represent a level of education deemed to be the foreign equivalent to a U.S. baccalaureate degree, and as the record lacks credible, objective evidence to refute the information provided by EDGE, it must be found that the petitioner has failed to establish that the beneficiary is qualified to perform the duties of *any* specialty occupation.

Furthermore, where an opinion is not in accord with other information or is in any way questionable, USCIS 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). As a reasonable exercise of its discretion the AAO discounts the professor's opinion as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) and with respect to the beneficiary's qualifications. As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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.