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



**U.S. Citizenship
and Immigration
Services**

D2



DATE: **JUL 20 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 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 director of the California Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner describes itself as Italian restaurant with 20 employees and a gross annual income of \$2,000,000.00. It seeks to employ the beneficiary as an executive chef 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

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

The AAO will therefore consider whether the 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 one 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), 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 this matter, the petitioner seeks the beneficiary's services as an executive chef. In the December 3, 2009, letter of support, the petitioner states that the beneficiary will:

- Manage, plan and improve true Italian cuisine menu, taking into account prospective popularity dishes;
- Oversee maintenance of superior quality standards for food services, including ingredients qualities and quantities, sanitation standards, customer services standards;
- Analyze current food services policies and reformulate goals for purpose of increased methods of staff productivity and overall profitability;
- Oversee the daily activities and manage the performance of the culinary staff; develop and implement company training programs which support increased customer satisfaction, profitability, safety and security; as well as staff performance evaluations;
- Collaborate with other management personnel to develop special menus, items and presentations. Plan and develop recipes and menus, taking into account such factors as seasonal availability of ingredients and the likely number of customers; [and]
- Work with [the] Food and Beverage Manager and [the] Owner to analyze monthly profit and loss statements and execute corrective action plans as necessary[.]

The letter goes on to state that because of the great deal of responsibility involved and the need to apply highly specialized knowledge, methodology and analytical thinking skills, the position requires a minimum of a U.S. bachelor's degree or foreign equivalent experience. The petitioner submitted an educational equivalency evaluation prepared by Professor [REDACTED] of Hofstra University, the beneficiary's diploma in catering services technician, and other educational and experience documents as evidence of the beneficiary's qualifications. In addition, the petitioner submitted eight job vacancy announcements.

The Labor Condition Application (LCA) was submitted for a full-time executive chef to work at the petitioner's restaurant in Indianapolis, Indiana at an annual salary of \$39,500.

On December 11, 2009, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation.

The petitioner's response provided a more detailed job description of the proffered position, including the percentage of time the beneficiary would spend to perform each of the duties. The more detailed job description describes the duties as follows:

- Oversee the daily activities and manage the performance of the culinary staff; develop and implement company training programs which support increased customer satisfaction, profitability, safety and security; as well as staff performance evaluations – 20%[;]
- Create and design specialty dishes and entrees to achieve regional and national accolades in order to maintain our reputation of prestigious and high-

end fine dining; coordinate with the food and beverage manager to determine the complementation of premium drinks and dishes and determine prices of each dish; oversee maintenance of superior quality standards for food services, including ingredients qualities and quantities, sanitation standards, customer services standards – 20%[;]

- Manage, plan and improve true Italian cuisine menu, taking into account prospective popularity dishes – 15%[;]
- Analyze current food services policies and reformulate goals for purpose of increased methods of staff productivity and overall profitability – 15%[;]
- Collaborate with other management personnel to develop special menus, items and presentations. Plan and develop recipes and menus, taking into account such factors as seasonal availability of ingredients and the likely number of customers – 15%[;]
- Chair weekly meetings with Sous Chef and work with [the] Food and Beverage Manager and [the] Owner to analyze monthly profit and loss statements and execute corrective action plans as necessary; [and] [i]nterviewing, hiring, training and when necessary firing employees – 15%[.]

The petitioner also stated that the proffered position required at least a bachelor's degree in food service management or related field.

In addition, counsel for the petitioner submitted, in part, (1) an organizational chart; (2) two job vacancy announcements previously submitted with the initial petition; and (3) a letter from another Italian restaurant.

The director denied the petition on February 5, 2010, finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

On appeal, counsel claims that the petitioner provided sufficient evidence with the original application and with the response to the RFE to establish that the proffered position is a specialty occupation requiring a baccalaureate degree or equivalent.

To make its determination whether the proffered position, as described in the initial petition and the petitioner's response to the RFE, qualifies as a specialty occupation, the AAO 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 *Handbook* covers the executive chef in the chapter titled "Chefs and Head Cooks" of the 2012-13 edition. As indicated by the *Handbook*:

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.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, "Chefs and Head Cooks," <http://www.bls.gov/ooh/Food-Preparation-and-Serving/Chefs-and-head-cooks.htm#tab-2> (accessed July 18, 2012).

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

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.

* * *

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

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 2012 – 2013 edition available online.

program.

Handbook, 2012-13 ed., "Chefs and Head Cooks," <http://www.bls.gov/ooh/Food-Preparation-and-Serving/Chefs-and-head-cooks.htm#tab-4> (accessed July 18, 2012).

As indicated in that passage, there are numerous different paths that may lead to a chef position, including experience, a two-year degree, or a four-year degree. Because the *Handbook* indicates that entry into a chef position does not normally require a bachelor's or higher degree in a specific specialty or its equivalent as a minimum for entry into the occupation, 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 with the initial petition. The letter is from Professor ██████████, Associate Professor of Management and Strategic Planning and Former Department Chairperson at Hofstra University in Hempstead, New York. In the letter, ██████████ states that, in his opinion, the proffered position is a specialty occupation and the nature of the specific duties are so specialized and complex that the knowledge required to perform the duties requires at a minimum a bachelor's degree in management, or a related field. First, it must be noted that ██████████ conclusion that a general degree in "management" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as management, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, it must be established that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in management, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Further, ██████████ does not list the reference materials on which he relies as a basis for his conclusion. It appears that ██████████ did not base his opinion on any objective evidence, but instead restates the duties listed on the O*NET Summary Report for 35-1011.00 – Chefs and Head Cooks. 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)). 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, especially when compared to the information provided by the Bureau of Labor Statistics in the *Handbook* indicating that a bachelor's or higher degree in a specific specialty is not required for entry into this occupation.²

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, or its equivalent, 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.

Again, 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.

In addition, as previously discussed, the expert opinion letter submitted by the petitioner with the initial petition is not deemed credible as [REDACTED] did not list or cite the reference materials on which he relied as a basis for his conclusion that the proffered position requires at a minimum a bachelor's degree in management, or a related field, such that it does not refute the statistics-based findings of the Bureau of Labor Statistics that a specialty, baccalaureate degree is not a minimum entry requirement for this occupation.

The petitioner also submitted an undated letter from [REDACTED] and General Manager of Meridian Restaurant and Bar in response to the RFE confirming that the company

² It is further noted that O*NET indicates that Chefs and Head Cooks only require medium preparation, i.e., most require training in vocational schools, related on-the-job experience, or an associate degree. As such, O*NET indicates that positions, such as the one proffered in this case, do not require a bachelor's or higher degree or its equivalent for entry into the occupation in the United States.

requires its executive chef to possess at a minimum a bachelor's degree in food service management or equivalent for an entry level position. While the letter states that the company has one chef and two sous chefs, it does not indicate how many executive chefs are employed. The writer himself is titled Executive Chef and General Manager; however, he did not provide any evidence showing that he or any other executive chef possesses a bachelor's or higher degree in food service management or equivalent. Even if it were established that an entry-level executive chef at Meridian Restaurant and Bar required at least a bachelor's degree in food service management or its equivalent, this finding would not establish in itself that the minimum requirement is an industry-wide standard. As such, the letter is insufficient to refute the *Handbook's* report that a bachelor's or higher degree in a specific specialty is not required for entry into this occupation.

In addition, the record also contains eight advertisements for executive chef positions from other businesses. The advertisements state their respective education requirements as follows: (1) culinary school degree, completed apprenticeship or equivalent experience; (2) bachelor's degree in F&B and/or course certification from an accredited culinary institute; (3) culinary arts degree or equivalent bachelor's degree; (4) fifth year college or university program certificate; or two to four years related experience and/or training; or equivalent combination of education and experience; (5) bachelor's degree; (6) culinary degree from an accredited institution; (7) culinary degree, bachelor's degree, culinary apprenticeship certification or equivalent knowledge; (8) four year culinary degree or equivalent work experience. Although one advertisement states that it requires a four year culinary degree or equivalent work experience, there is no indication that either (1) a four year culinary degree is equivalent to a bachelor's degree; or (2) the "equivalent work experience" requires experience equivalent to a U.S. bachelor's or higher degree in a specific specialty under the equivalency standards established by 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D). Therefore, none of these advertisements established that an executive chef requires at a minimum a U.S. bachelor's degree in a specific specialty or its equivalent for entry into this occupation.

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 for executive chef positions, 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, three of the advertisements are for executive chef positions for large, multi-million dollar restaurant chains and, therefore, they cannot be found to be parallel positions in similar organizations. 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.³

³ 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

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 executive chef.

Specifically, even though the petitioner and its counsel claim that the proffered position's duties are so complex and unique that a bachelor's degree is required, the petitioner failed to demonstrate how the executive 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 one or two courses in food service management may be beneficial in performing certain duties of this executive chef position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, 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 a two-year degree or even just 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 executive 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).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. In response to the director's RFE, counsel stated that the duties of the proffered position have only been performed by [REDACTED] the owner of

estimates of error").

As such, even if the job announcements supported the finding that the position of executive chef for a 20-person Italian restaurant required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that 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.

the petitioner. While the petitioner claims that the proffered position requires a bachelor's degree in food service management or related field, counsel did not submit evidence showing that [REDACTED] holds a U.S. bachelor's degree in food service management or a closely related field or its equivalent. 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)). As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴

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 executive 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 petitioner does not distinguish the duties of the proffered position as those requiring a 4-year rather than a 2-year degree in a specific specialty. The petitioner has thus failed to establish the referenced regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).⁵

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 food service

⁴ 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").

⁵ Although the letter from [REDACTED] refers to certain responsibilities of the proffered position as being "specialized and complex," he does not identify which duties those are or otherwise explain how they are specialized and complex relative to other executive chef positions for which the *Handbook* does not indicate a minimum entry requirement of a bachelor's or higher degree in a specific specialty.

management. The petitioner submits a credential evaluation from [REDACTED] Associate Professor of Management and Strategic Planning and Former Department Chairperson at Hofstra University in Hempstead, New York, that considers the beneficiary's work experience. The record does not establish, however, 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)(I). For instance, no documentation was provided from Hofstra University establishing that, at the time [REDACTED] produced his evaluation for the petitioner, (1) Hofstra University 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)(I) 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 food service management. 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 food service management, 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.