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

(b)(6)

[redacted]

Date: APR 0 1 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 petition, the petitioner claims to be a restaurant established in 2003 with 20 employees and a gross annual income of $1.7 million. It seeks to employ the beneficiary as an assistant executive chef. The petitioner, therefore, endeavors to classify the beneficiary 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 proffered position was not a specialty occupation. On appeal, counsel for the petitioner contends that the director's findings were erroneous and submits a brief in support of this contention.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

> *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 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. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The record of proceeding before the AAO contains: (1) 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 decision denying the petition; and (5) the petitioner's Form I-290B and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

In a letter of support dated April 1, 2011, the petitioner claimed that its restaurant, established in 2003, "delivers five star cuisine and has received rave reviews from many publications. . . ." Regarding the proffered position, the petitioner claimed that the position of assistant executive chef "requires a professional with a strong background in the restaurant environment" It stated that the duties of the proffered position would be as follows:

> Work with Executive Chef in overseeing all food operations at all company properties. Planning menus taking into account probable number of guests, marketing conditions, & popularity of various dishes. Estimating consumption & purchases foodstuffs and kitchen supplies. Reviewing menus, analyzing recipes, determining food, labor, and overhead costs, & assigning prices to menu items. Directing foodstuffs apportionment policy to control costs. Observing methods of foodstuffs preparation and cooking, sizes of portions, and garnishing of dishes to ensure dishes are prepared in prescribed manner. Tasting foodstuffs. Devising special menus and developing recipes. Recommends hiring & discharging employees. Familiarizing newly hired Chefs with practices of kitchen. Maintaining time & payroll records. Establishing & enforcing nutrition and sanitation standards. Overseeing fashioning of tables & dishes decorations. Supervising & coordinating activities of chefs & other workers engaged in preparing & cooking foodstuffs. Giving instructions to chefs in fine points of cooking. Assuming duties of Executive Chef during his absence.

The petitioner concluded by stating that the proffered position required the incumbent to have a B.A. degree or equivalent in Culinary Arts, and claimed that the beneficiary was qualified to perform the duties of the proffered position by virtue of his education and experience equating to a U.S. bachelor's degree in culinary arts.

The director found the initial evidence insufficient to establish eligibility and issued an RFE dated April 11, 2011. The director requested additional documentation in support of the contention that the proffered position was a specialty occupation, including more details regarding the proposed duties of the proffered position and the petitioner's hiring history for this position.

In a response dated April 28, 2011, counsel for the petitioner addressed the director's queries. Counsel listed the percentage of time the beneficiary would devote to each of the proposed duties as follows:

a) Work with Executive Chef in overseeing all food operations at all company properties. 100%

b) Devising special menus and developing recipes. Planning menus taking into account probable number of guests, marketing conditions, & popularity of various dishes. Estimating consumption & purchases foodstuffs and kitchen supplies. Reviewing menus, analyzing recipes, determining food, labor, and overhead costs, & assigning prices to menu items. Directing foodstuffs apportionment policy to control costs. 30%
c) Supervising & coordinating activities of chefs & other workers engaged in preparing & cooking foodstuffs. Giving instructions to chefs in fine points of cooking. Observing methods of foodstuffs preparation and cooking, sizes of portions, and garnishing of dishes to ensure dishes are prepared in prescribed manner. Tasting foodstuffs. Familiarizing newly hired Chefs with practices of kitchen. 30%
d) Recommends hiring & discharging employees. 5%
e) Maintaining time & payroll records. 7.5%
f) Establishing & enforcing nutrition and sanitation standards. 5%
g) Overseeing fashioning of tables & dishes decorations. 2.5%
h) Assuming duties of Executive Chef during his absence. 20%

Counsel for the petitioner also provided additional statements regarding the nature of the restaurant industry, claiming that a bachelor's degree in culinary arts or hotel and restaurant management is the requirement in most restaurants in the industry for the proffered position. Counsel provided a list of restaurants that allegedly require such a degree for their assistant executive chef positions and claimed that these establishments had H-1 visas approved for individuals for the position of assistant executive chef. Finally, counsel submitted letters from restaurants in the industry as well as job vacancy announcements in support of the contention that the position of assistant executive chef requires at least a bachelor's degree in culinary arts or its equivalent for entry into the occupational category.

On May 12, 2011, the director denied the petition, finding that the proffered position was not a specialty occupation position. On appeal, counsel for the petitioner asserts that the director's findings were erroneous, and submits a brief on appeal outlining the reasons the proffered position is a specialty occupation.

In reviewing the record, the AAO observes that the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation, as required by the Act. *See* section 214(i)(1) of the Act.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(1)*, which requires

that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports that the industry requires a minimum of a bachelor's degree in a specific specialty or its equivalent as a standard for entry into the occupation in the United States.

The petitioner claims that the proffered position is that of an assistant executive chef. The AAO turns to the 2012-2013 online edition of the *Handbook* for its discussion of "Chefs and Head Cooks," the section of the *Handbook* which aligns most closely to the duties of the proffered position.[1] As stated by the *Handbook*, the occupation of chefs and head cooks is described in relevant part as follows:

> 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

[1] Since the issuance of the director's decision, an updated version of the *Handbook* has become available.

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:

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.

U.S. Dep't 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 (last visited March 5, 2013). The AAO finds that the above-referenced occupational category encompasses the claimed duties of the proffered position. The *Handbook's* discussion of the educational requirements for this occupation, however, does not indicate that a degree in a specific specialty is normally required for entry into this occupation. Specifically, the *Handbook* states:

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.

Id. at http://www.bls.gov/ooh/food-preparation-and-serving/chefs-and-head-cooks.htm#tab-4 (last visited March 5, 2013). In other words, a bachelor's degree in a specific specialty or its equivalent is not required for entry.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In this matter, the proffered position is that of an assistant executive chef, which is included in the *Handbook's* description of the duties of chefs and head cooks. The *Handbook*, however, indicates that most chefs acquire their skills through work experience, although some receive formal training at a variety of institutions including community colleges and culinary schools. Although the *Handbook* indicates that some students receive training at two- or four-year colleges, there is no formal requirement that candidates for the position of assistant executive chef earn a bachelor's degree in culinary arts or its equivalent for entry into the occupation.

On appeal, counsel repeatedly asserts that post-secondary education in hotel and restaurant management or culinary arts is the preferred method of preparation for a career as an assistant executive chef, and cites to multiple publications in support of this premise. Be that as it may, counsel's reliance on these publications as a means of establishing that the proffered position in this matter is a specialty occupation is misplaced. The *Handbook* indicates there is no standard requirement of at least a bachelor's degree in a specific specialty for employment as a chef or head cook. The fact that counsel cites publications which indicate that post-secondary education in the field of culinary arts is only preferred, as opposed to being required, and further claims that "hundreds" of schools offer four year degrees in the field, does not provide persuasive evidence that the proffered position is one for which at least a bachelor's degree in a specific specialty or the equivalent is normally the minimum requirement for entry. The existence of four-year degree programs directly related to the occupational category does not, by itself, establish that the proffered position is a specialty occupation. Therefore, the AAO finds that the petitioner has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Although the petitioner provided twelve letters from various restaurants it claims are engaged 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, these letters lack sufficient detail regarding the nature of the positions referenced.

Specifically, the letters submitted consist of one to two paragraphs, which state either that (1) the employer requires its assistant executive chefs to hold at least a bachelor's degree in culinary arts; or (2) their opinion is that a bachelor's degree in culinary arts is required to perform the duties required for an assistant executive chef. There is no evidence outlining the nature of the businesses that these authors represent, nor is there evidence that these restaurants actually employ specialty-degreed or equivalent individuals as claimed in the position of assistant executive chef. Moreover, it is noted that none of these letters are dated and none are specifically addressed to USCIS or the petitioner, thereby raising questions regarding the legitimacy of the claimed statements and their accuracy, since they do not assert that they are similar to the petitioner in size and scope and thus represent an accurate example of hiring practices within the petitioner's industry. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

In addition, the petitioner submitted copies of seven job advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the restaurant industry. The petitioner, however, 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, the job vacancy posted by a $1.2 billion business with over 250 locations, cannot be deemed similar to a job vacancy in the petitioner's restaurant, which is a 20-person restaurant. Moreover, many of the postings are for large hotel chains such as the all of which cannot be deemed akin to the petitioner in size

and scope. Finally, many of the postings state simply that a degree in culinary arts is "preferred," thereby demonstrating that a degree requirement is not a common requirement in the industry for similar positions, regardless of the size of the employing entity. It is also noted that the posting for the position of assistant executive chef posted by casinocareers.com, which does not specify the nature or name of the employer, requires a non-specialty degree in the field of business, further undermining the claim that a specialty-degree in culinary arts or a closely related field is the common requirement for parallel positions within similar organizations in the petitioner's industry. For these reasons, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.[2]

The petitioner, therefore, has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty or its equivalent can perform the duties associated with the position. The petitioner fails (1) to specifically articulate the reasons for which it requires the services of a specialty-degreed chef and (2) to identify which tasks, if any, can only be performed by a specialty-degreed individual.

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[2] According to the *Handbook*'s detailed statistics on chefs and head cooks, there were approximately 46,700 persons employed in this occupational category by full-service restaurants in 2010. *Handbook*, 2010-11 ed., available at http://www.bls.gov/ooh/food-preparation-and-serving/chefs-and-head-cooks.htm#tab-6 (last accessed March 5, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just seven job postings with regard to the common educational requirements for entry into parallel positions in similar organizations in the restaurant industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of assistant executive chef for a twenty-person 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 issue under this criterion is whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not address this prong on appeal, nor does the petitioner explain or clarify at any time in the record which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

As the record has not established a prior history of 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). The petitioner has failed to submit evidence that responds to this criterion and thus has not satisfied it, since it cannot demonstrate that it imposes a standard requirement for a degree in a specific specialty or its equivalent on candidates for the position of assistant executive chef.

Moreover, while the petitioner stated in the initial letter of support that the educational credentials required for entry into the proffered position included a bachelor's degree in culinary arts or its equivalent, it should be noted that while a petitioner may believe or otherwise assert that a proffered position requires a certain degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's 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 required the individual to have a baccalaureate or higher degree in a specific specialty. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The AAO does not find that sufficient evidence was provided to demonstrate that (1) the proffered duties, as described by the petitioner in its initial support letter, its response to the RFE, and the arguments submitted by counsel on appeal, possess a nature that is more specialized and complex than the nature of those generic duties that the *Handbook* attributes to chefs and head cooks, or (2) the nature of those duties is so complex and specialized as to be usually associated with attainment of at least a bachelor's degree in a specific specialty or its equivalent. Moreover, even though the proffered position appears supervisory in nature and affords the incumbent some, limited additional supervisory duties during the absence of the executive chef, the evidence in this record of proceeding does not develop relative specialization and complexity as distinguishing attributes of the nature of the proposed duties.

The AAO, therefore, concludes that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Beyond the decision of the director, the petitioner did not submit sufficient documentation to show that the beneficiary qualifies to perform services in any specialty occupation.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C), to qualify to perform services in a specialty occupation, the alien must meet one of the following criteria:

> (*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 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 have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), for purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by 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;

(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.

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

(i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;

(ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

(iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;

(iv) Licensure or registration to practice the specialty occupation in a foreign country; or

(v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The beneficiary does not hold a U.S. degree in culinary arts and there is no indication that the beneficiary holds a post-secondary foreign degree. Therefore, pursuant to 8 C.F.R. §

214.2(h)(4)(iii)(C)(4), in order for the beneficiary to qualify for a specialty occupation requiring a degree in culinary arts, the record must demonstrate that he has education, specialized training, and/or progressively responsible experience equivalent to a U.S. baccalaureate or higher degree in culinary arts, as well as recognition of his expertise through progressively responsible positions directly related to this specialty.

The record contains credentials evaluation reports by Chief Evaluator for and a second by Chief Evaluator, Both evaluations claim that the beneficiary's twelve years of experience in the culinary industry is equivalent to a U.S. bachelor's degree in culinary arts.

These evaluations, however, do not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). The record does not state that have the authority to grant credit for training and/or work experience at an affiliated university, and there is no record that the has programs for granting such credit. Therefore, the evaluations do not meet the standard of 8 C.F.R. § 214.2(h)(4)(iii)(D)(*1*). Furthermore, the petitioner has provided insufficient evidence for USCIS to perform its own Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*). More specifically, the evidence of the beneficiary's work experience lacks sufficient detail demonstrating that "the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty. . . ."

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO also finds that the beneficiary is not qualified to perform the duties of a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

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. Section 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.