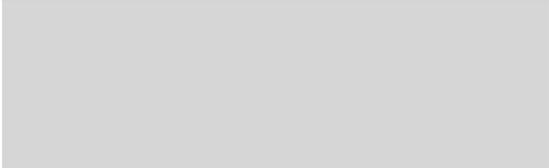


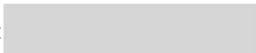


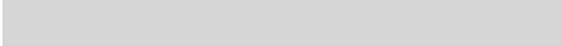
U.S. Citizenship
and Immigration
Services

(b)(6)



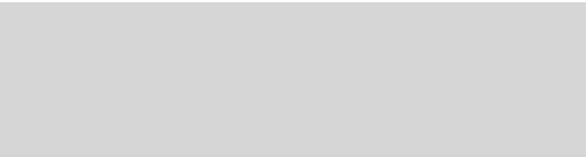
DATE: **JUN 03 2015**

PETITION RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a 36-employee "Restaurant Operation" established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Sous Chef" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the Director's RFE. The Director denied the petition, finding that the evidence of record did to establish that the petitioner would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the Director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation; (2) the service center's RFE; (3) the petitioner's response to the RFE; (4) the Director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.¹

As will be discussed below, we have determined that the Director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Sous Chef position, and that it corresponds to Standard Occupational Classification (SOC) code and title 35-1011, Chefs and Head Cooks, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

In a letter, dated March 31, 2014, the petitioner provided the following duty description:

As Sous Chef, [the beneficiary] will be second to the Executive Chef. He will carry an enormous amount of responsibility and his position is vital to the success and efficiency of the restaurant. [The beneficiary] will coordinate with the Executive

¹ We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Chef to make sure that his policies are followed and enforced. He will also be participating in menu planning and development of new dishes with the Executive Chef.

[The beneficiary] will be involved in inventory control and ordering needed supplies. He will ensure that the ingredients are high quality. He will also ensure that the high standards of food safety and sanitation imposed by [REDACTED] and New York State are followed. He will oversee the food preparation and production to maintain quality and regulate costs.

As Sous Chef, [the beneficiary] is in charge of managing the kitchen staff. He will participate in scheduling the staff and assigning them specific tasks. He will attend to training staff as well as to the regular staff. Because he is the second-in-command, he will do what is necessary to ensure the success of the kitchen. This entails filling in spots if there is a need for it while at the same time maintaining control of the kitchen and providing direction to the staff.

As to the educational requirements of the proffered position, the petitioner stated:

[The proffered position] requires knowledge in food sanitation and regulation, kitchen management, food and beverage cost control, institutional food management, restaurant marketing, public health, and different world cuisines. As such, we believe that a Bachelor's degree in Culinary Arts or a Bachelor's degree in a related field is suited for this position.

The petitioner also provided another description of the proffered position, in a letter dated July 23, 2014, in which it specified the percentages of time the beneficiary will devote to certain duties. In that letter, the petitioner stated that the beneficiary will spend 15% of his time "consulting with the Executive Chef and analyzing available local and seasonal ingredients to fit [the petitioner's menu]"; 25% of his time on "spearheading inventory control and ordering of supplies"; 20% of his time "managing the kitchen staff"; and 40% of his time "overseeing the food being served [at the petitioner]."

III. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.

A. Legal Framework

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and 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 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 result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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.

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.

B. Discussion

Turning to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), we will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

The LCA submitted to support the visa petition states that the proffered position is a wage Level I sous chef position as described by O*NET under Chefs and Head Cooks. We recognize the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by the petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations

that it addresses.² We reviewed the *Handbook* chapter entitled "Chefs and Head Cooks," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following in its "How to Become a Chef or Head Cook" subchapter:

How to Become a Chef or Head Cook

Most chefs and head cooks learn their skills through work experience. Others receive training at a community college, technical school, culinary arts school, or a 4-year college. A small number learn through apprenticeship programs or in the armed forces.

Education

A growing number of chefs and head cooks receive formal training at community colleges, technical schools, culinary arts schools, and 4-year colleges.

Students in culinary programs spend most of their time in kitchens practicing their cooking skills. Programs cover all aspects of kitchen work, including menu planning, food sanitation procedures, and purchasing and inventory methods. Most training programs also require students to gain experience in a commercial kitchen through an internship or apprenticeship program.

Work Experience in a Related Occupation

Most chefs and head cooks start working in other positions, such as line cooks, 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.

Training

Some chefs and head cooks train on the job, where they learn the same skills as in a formal education program. Some train in mentorship programs, where they work under the direction of an experienced chef. Executive chefs, head cooks, and sous chefs who work in fine-dining restaurants often have many years of training and experience.

Some chefs and head cooks learn through apprenticeship programs sponsored by professional culinary institutes, industry associations, and trade unions in coordination with the U.S. Department of Labor. Apprenticeship programs generally last about 2 years and combine instructions and on-the-job training. Apprentices must complete at least 1,000 hours of both instructions and paid on-the-job training.

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

Courses typically cover food sanitation and safety, basic knife skills, and equipment operation. Apprentices spend the rest of the training learning practical skills in a commercial kitchen under a chef's supervision.

The American Culinary Federation accredits more than 200 academic training programs at post-secondary schools and sponsors apprenticeships around the country. The basic qualifications to enter an apprenticeship program are as follows:

- Minimum age of 17
- High school education or equivalent
- Drug free

Some chefs and head cooks receive formal training in the armed forces or from individual hotel or restaurant chains.

Licenses, Certifications, and Registrations

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

Important Qualities

Business skills. Executive chefs and chefs who run their own restaurant should understand the restaurant business. They should be skilled at administrative tasks, such as accounting and personnel management, and be able to manage a restaurant efficiently and profitably.

Communication skills. Because the pace in the kitchen can be hectic during peak dining hours, chefs must be able to communicate their orders clearly and effectively to staff.

Creativity. Chefs and head cooks must be creative in order to develop and prepare interesting and innovative recipes. They should be able to use various ingredients to create appealing meals for their customers.

Dexterity. Chefs and head cooks need excellent manual dexterity, including proper knife techniques for cutting, chopping, and dicing.

Leadership skills. Chefs and head cooks must have the ability to motivate kitchen staff and develop constructive and cooperative working relationships with them.

Sense of taste and smell. Chefs and head cooks must have a keen sense of taste and smell, to inspect food quality and to design meals that their customers enjoy.

Time-management skills. Chefs and head cooks must efficiently manage their time and the time of their staff. They must ensure that meals are prepared and that customers are served on time, especially during busy hours.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Chefs and Head Cooks," <http://www.bls.gov/ooh/food-preparation-and-serving/chefs-and-head-cooks.htm#tab-4> (last visited May 27, 2015).

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.

When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such cases, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

To satisfy this requirement, the petitioner provided two evaluations of proffered position. They were prepared by (1) [REDACTED] a professor in the Department of Hotel, Restaurant and Tourism Management at [REDACTED], and (2) [REDACTED] an associate professor in the Hospitality & Service Management Department at the [REDACTED]. Professor [REDACTED] stated, "a bachelor's degree in Restaurant Management or a related field is absolutely required to fulfill the duties of [the proffered] position." Professor [REDACTED] stated: "It is my opinion that the [proffered position] . . . requires the services of someone with advanced training through a Bachelor's program in Culinary Arts or a closely related field."

There is insufficient indication that either Professor [REDACTED] or Professor [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the brief descriptions they provided in their evaluations. They do not discuss the duties of the proffered position in any substantive detail. Further, they do not demonstrate or assert in-depth knowledge of the petitioner's business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that Professor [REDACTED] or Professor [REDACTED]

Sackler visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

Professor [REDACTED] and Professor [REDACTED] assert a general industry educational standard for sous chef positions without referencing any supporting authority or any empirical basis for that pronouncement. Likewise, they do not provide a substantive, analytical basis for their opinions and their ultimate conclusions. They do not relate their conclusions to specific, concrete aspects of the petitioner's business operations to demonstrate a sound factual basis for their conclusions about the educational requirements for the particular position here at issue. Accordingly, the very fact that they attribute a degree requirement to such a generalized treatment of the proffered position undermines the credibility of their opinions.

Furthermore, there is no indication that the petitioner advised Professor [REDACTED] and Professor [REDACTED] that the petitioner characterized the proffered position as a low, entry-level position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA) relative to other positions within the occupational category. It appears that Professor [REDACTED] and Professor [REDACTED] would have found this information relevant for their opinion letters. Moreover, without this information, the petitioner has not demonstrated that Professor [REDACTED] and Professor [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letters rendered by Professor [REDACTED] and Professor [REDACTED] are not probative evidence to establish that the proffered position qualifies as a specialty occupation. The conclusions reached by Professor [REDACTED] and Professor [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. There is an inadequate factual foundation established to support the opinions and we find that the opinions are not in accord with other information in the record. As such, neither Professor [REDACTED] or Professor [REDACTED] findings nor their ultimate conclusions are worthy of any deference, and their opinion letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We may, in our 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, we are 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 our discretion we discount the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letters into each of the bases in this decision for dismissing the appeal.

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of culinary arts and commercial kitchen management, but do not establish any particular level of

formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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 the equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find 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 calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are: (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that it has made a degree a minimum entry requirement. Furthermore, the petitioner did not submit any letters or affidavits from similar firms or individuals in the petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

The evidence of record also does not 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." A review of the record indicates that the petitioner has not credibly demonstrated that the duties that comprise the proffered position 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 has not demonstrated how the duties that collectively constitute the proffered position 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a wage Level I chef or head cook position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the job of a chef or head cook. This does not support the proposition that the proffered position is so complex or unique relative to other positions in the same occupation that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that most chefs and head cooks learn their skills through work experience.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of educational qualifications acceptable for such positions, including a high school diploma or an associate's degree from a community college. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the evidence does not demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category 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).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

The petitioner submitted evidence pertinent to its other employees, however, none of the evidence demonstrates that it normally requires a bachelor's or higher degree in a specific specialty, or its equivalent for the proffered position or any other position.

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. However, the petitioner has not

demonstrated that it has ever hired anyone in the proffered position, and appears to imply that it has not. Further, the petitioner asserts that its line cooks have been performing the duties of the proffered position, but provides no evidence that any of its line cooks have had bachelor's or higher degrees in a specific specialty related to the position or its equivalent.

The petitioner also suggests that, because the beneficiary, in the proffered position, would supervise personnel with culinary certificates and associates' degrees, he must necessarily have a bachelor's degree. The petitioner offers insufficient evidence to support this contention.

While a petitioner may believe or otherwise assert that a proffered position requires a specific 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 petitioner 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 388.

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. The duties of the proffered position, such as ensuring that the executive chef's policies are followed, participating in menu planning, performing inventory control, ordering supplies, inspecting ingredients for quality, enforcing food safety and sanitation standards, overseeing food production and managing kitchen staff, etc., contain insufficient indication of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than chef or head cook positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

On appeal, the petitioner stated that being sous chef for the petitioner is different from being a sous chef at other restaurants, as the petitioner is a "top tier" restaurant seeking to maintain its prestige and high standing, and that the position "requires a person to have managerial skills as well as the highest culinary skills." However, as was noted above, the petitioner filed the instant visa petition for a wage Level I chef or head cook position, a position for a beginning-level employee with only a basic understanding of such a position. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to the culinary arts and commercial kitchen, especially as the *Handbook* indicates that some chef and head cook positions require no such degree.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. Therefore, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has not established 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.

IV. CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed. The petition is denied.