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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

[REDACTED]

Date: **APR 29 2013**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 service center director denied the nonimmigrant visa petition that is now before the Administrative Appeals Office (AAO) on appeal. The petition will be denied.

On the Form I-129 visa petition, the petitioner stated that it is an ocean shipping operation with one employee in the United States. To employ the beneficiary in what it designates as a "Port Captain & Transportation Officer" position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his 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.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is 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 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. 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, the position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (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 Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Port Captain and Transportation Manager, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3071.01 Transportation Managers from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence to show that the beneficiary has a bachelor's degree in Maritime Safety System Engineering from [REDACTED] in the Republic of Korea. An evaluation submitted states that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in marine engineering.

Counsel also submitted a letter, dated December 1, 2010, from the petitioner's branch manager, which states the following as the duties of the proffered position:

The beneficiary will plan and coordinate with Seoul head office and ship Masters about the transportation operations of [the petitioner's] ocean carriers incoming to and outgoing from US sea ports. For such transportation operation in the US, he will set operations policies and standards, including safety procedures for handling dangerous cargoes. He will also negotiate and authorize agency agreements with equipment and material suppliers and monitor contract fulfillment. He will manage the procurement processes, including vendor contracts and requisitions approvals for [the petitioner's] outgoing ships. Also he will direct investigation to verify and resolve shippers' or clients' complaints.

In addition, he is required to communicate with ship Masters to provide advice and counsel concerning crew and operational matters and to attend vessels for cargo expediting and to discuss operational safety and crew issues with Masters. He is also required to review vessel port clearance and berth information to evaluate and recommend allowable maximum terminal details for terminal facilities called on by [the petitioner's] ships. He will also attend various seminars and maritime/transportation association meetings pertaining to relevant operational matters to stay current with federal or state regulatory matters related to vessel operations, safety and environmental issues.

Further, he will collaborate or coordinate with other managers in head office to formulate and implement operational policies, procedures, goals, and objectives of Houston branch office. He will supervise ship crew members when they are at ports and direct agency contractors to promote safe stevedoring activities with efficiency. He will also organize and manage the work of crew members at ports to ensure that their work is done in compliance with [the petitioner's] guidelines and requirements.

The petitioner's branch manager stated the following:

The position is a specialty occupation requiring professional skills and knowledge to perform the job. The job duties are complex and specialized, requiring to have technical knowledge of maritime safety, navigation, ship construction, navigational instruments, engineering mathematics, cargo operation, navigation system, ship management, cargo handling and stowage, etc.

As such, O*Net occupation of SOC Code: 11-3071.01 – Transportation Managers, which is mostly pertinent to the job described above is listed as JobZone 4 with SVP Range of 7.0 to <8.0, and it states that most of these occupations require a four-year bachelor's degree.

On December 10, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center specifically requested that, if the petitioner had previously employed people in the proffered position, it provide evidence of the number of individuals it has employed in that position in the past, the level of education of each individual, and the field of study in which each individual's degree was earned.

In response, counsel submitted, *inter alia*, (1) three letters from others in the petitioner's industry; (2) a letter from the petitioner's president and CEO, dated January 6, 2010;¹ (3) a letter, dated January 10, 2011, from the petitioner's branch manager; (4) a printout of web content from an Internet site maintained by the United States Merchant Marine Academy (USMMA); (5) a printout of web content from an Internet site maintained by the [redacted] from which the beneficiary graduated; and (6) two vacancy announcements.

One of the letters from others in the petitioner's industry is from the operations manager of [redacted]. He stated that, in the maritime shipping industry, port captains are required to be familiar with vessel operations, and therefore usually have experience as ships officers. He further stated that shipping companies require a bachelor's degree in maritime engineering for ship officer, ship captain, and port captain/transportation manager positions. He

¹ The letter from the petitioner's president and CEO is dated January 6, 2010. Because it was submitted in response to the December 10, 2010 RFE, and because that response was received on January 18, 2011, the AAO assumes that the letter was incorrectly dated.

concluded that, therefore, port captains and transportation managers "are mostly at least the graduates of merchant marine colleges with a bachelor's degree."

Another industry letter is from Captain [REDACTED], the general manager of the Houston office of [REDACTED] who stated that shipping companies normally require at least a bachelor's degree in marine engineering for port captain or marine transportation manager positions.

The final industry letter is from [REDACTED], the general manager of [REDACTED]. That letter also states that maritime shipping companies normally require a minimum of a bachelor's degree in marine engineering for such positions.

The January 6, 2010 letter from the petitioner's president and CEO states that the petitioner employs 27 workers as port captains/transportation managers or transportation personnel who have bachelor's degrees in marine engineering. That letter states:

The current branch manager at our Houston Office, [REDACTED] is also a graduate of a merchant marine college. Although the branch manager was primarily responsible for managing business development, strategic planning, and overall branch operations, he has also put substantial amount of time in carrying out such functional job duties as a port captain/transportation manager is required to do.

The January 10, 2011 letter from the petitioner's branch manager cites the content from websites maintained by the [REDACTED] and the [REDACTED] from which the beneficiary graduated, as evidence that the proffered position requires a bachelor's degree and is a specialty occupation position.

The content from the [REDACTED] and [REDACTED] websites indicate that both institutions teach material applicable to maritime employment ashore, but do not suggest that a port captain/transportation manager position requires a minimum of a bachelor's degree in a specific specialty, or its equivalent, which appears to be the proposition for which they were cited.

The vacancy announcements provided are both for positions entitled Port Captain.

One vacancy announcement states that the position it announces requires a "Bachelor of Science Degree from Federal or State Maritime Academy." The AAO preliminarily notes that the record does not demonstrate that Federal and State Maritime Academies only offer degrees in marine engineering, or that all of the degrees they offer, considered together, would delineate a specific specialty.² That vacancy announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

² The content of the website maintained by the [REDACTED], provided by counsel, states, "The academic faculty are divided into six departments, of which Marine Engineering and Marine Transportation are the two

The other vacancy announcement states that the position it announces requires five years of experience as a commercial port captain, *or* five years of experience as a ship's Master of Chief Mate on a USCG unlimited license, *or* a combination of a bachelor's degree in Marine Transportation and three years of sailing experience on an unlimited USCG license. The AAO preliminarily observes that a bachelor's degree is only part of one of the three alternative ways of qualifying for the position announced, and that the other two paths to qualify for the position announced have not been shown to be equivalent to a minimum of a bachelor's degree in a specific specialty. That vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.³

The director denied the petition on January 28, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a position described in the "Water Transportation Occupations" section of the *Handbook*.

On appeal, counsel noted that port captain/transportation manager positions are not specifically discussed in the *Handbook* section pertinent to "Water Transportation Occupations," and reiterated that the proffered position is a transportation manager position as discussed in O*Net. Counsel also asserted that its specific vocational preparation rating of 7.0 to <8.0 demonstrates that it qualifies as a specialty occupation position. Counsel also cited the industry letters; the vacancy announcements; and the letter from the petitioner's president and CEO, provided in response to the RFE, as evidence that the proffered position requires a bachelor's degree and qualifies as a specialty occupation position. Counsel also cited content from a website maintained by the U.S. Department of Transportation, Maritime Administration for the proposition that graduates of maritime academies sometimes find employment in shore side occupations.

It is noted that the content from the Maritime Administration website does, in fact, state that some graduates of the maritime academies are employed on shore. It does not indicate that port captain/transportation manager positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

largest." This suggests that the [REDACTED] may offer degrees in more than one subject. The AAO further observes that, if degrees in Marine Engineering and Marine Transportation are both available from maritime academies, the names of those subjects and a comparison to the duties of the proffered position suggest that Marine Transportation might be the subject more closely related to the proffered position.

³ Further, the record does not demonstrate that a degree in Marine Transportation is identical to, or equivalent to, a degree in marine engineering.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that an authoritative, objective, and reliable resource, such as the *Handbook*, supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

In the "Water Transportation Occupations" chapter, the *Handbook* provides the following description of the duties of those positions:

What Water Transportation Occupations Do

Workers in water transportation occupations operate and maintain ships that take cargo and people over water. These ships travel to and from foreign ports across the ocean, to domestic ports along the coasts, across the Great Lakes, and along the country's many inland waterways.

Duties

Water transportation workers typically do the following:

- Operate and maintain private ships
- Follow their ship's strict chain of command
- Ensure the safety of all people and cargo on board

These workers, sometimes called *merchant mariners*, work on a variety of ships.

Some operate large deep-sea container ships to transport manufactured goods around the world.

Others work on bulk carriers that move heavy commodities, such as coal or steel across the oceans and over the Great Lakes.

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

Still others work on both large and small tankers that carry oil and other liquid products around the country and the world. Others work on supply ships that transport equipment and supplies to offshore oil and gas platforms.

Workers on tugboats help barges and other boats maneuver in small harbors and at sea.

Salvage vessels that offer emergency services also employ merchant mariners.

Cruise ships employ a large number of water transportation workers, and some merchant mariners work on ferries to transport passengers along shorter distances.

A typical deep sea merchant ship, large coastal ship, or Great Lakes merchant ship employs a captain and chief engineer, along with three mates, three assistant engineers, and a number of sailors and marine oilers. Smaller vessels that operate in harbors or rivers may have a smaller crew, with a captain, sometimes a mate, and one to a few sailors.

Also, there are other workers on ships, such as cooks, electricians, and mechanics, who do not need a merchant marine license. For more information, see the profiles on cooks, electricians, and general maintenance and repair workers.

The following are some types of water transportation occupations:

Captains, sometimes called ***masters***, have overall command of a ship. They have the final responsibility for the safety of the crew, cargo, and passengers. Captains typically do the following:

- Supervise the work of other officers and the crew
- Ensure that proper safety procedures are followed
- Assess their crew's abilities and determine if more workers are needed
- Prepare a maintenance and repair budget
- Oversee the loading and unloading of cargo or passengers
- Keep logs and other records that track the ship's movements and activities
- Interact with passengers on cruise ships

Mates, or ***deck officers***, direct the operation of a ship while the captain is off duty. Large ships have three officers, called first, second, and third mates. The first mate has the highest authority and takes command of the ship if the captain is incapacitated. Usually, the first mate is in charge of the cargo and/or passengers, the second mate is in charge of navigation, and the third mate is in charge of safety. On smaller vessels, there may be only one mate. Deck officers typically do the following:

- Alternate watches with the captain and other officers
- Supervise and coordinate the activities of the deck crew
- Directly oversee docking the ship
- Monitor the ship's position, using charts and other navigational aides
- Determine the speed and direction of the vessel
- Inspect the cargo hold during loading, to ensure that the cargo is stowed according to specifications
- Make announcements to passengers, when needed

Pilots guide ships in harbors, on rivers, and on other confined waterways. They work in places where a high degree of familiarity with local tides, currents, and hazards is needed. Many pilots are independent contractors and go aboard a ship to guide it through a particular waterway. Some, called **harbor pilots**, work for ports and help many ships coming into the harbor during the day.

Sailors, or **deckhands**, operate and maintain the vessel and deck equipment. They make up the deck crew and keep all parts of a ship, other than areas related to the engine and motor, in good working order. New deckhands are called **ordinary seamen** and do the least-complicated tasks. Experienced deckhands are called **able seamen** and usually make up most of a crew. Some large ships have a **boatswain**, who is the chief of the deck crew. Sailors typically do the following:

- Stand watch, looking for other vessels or obstructions in their ship's path, as well as looking for navigational aids, such as buoys and lighthouses
- Steer the ship and measure water depth in shallow water
- Do routine maintenance, such as painting the deck and chipping away rust
- Keep the inside of the ship clean
- Handle lines when docking or departing
- Tie barges together when they are being towed
- Load and unload cargo
- Help passengers, when needed

Ship engineers operate and maintain a vessel's propulsion system. This includes the engine, boilers, generators, pumps and other machinery. Large vessels usually carry a **chief engineer**, who has command of the engine room and its crew, and a first, second, and third assistant engineer. The engineer's alternate oversees the engine and related machinery. Engineers typically do the following:

- Maintain the electrical, refrigeration, and ventilation systems of a ship

- Start the engine and regulate the vessel's speed, based on the captain's orders
- Record information in an engineering log
- Keep an inventory of mechanical parts and supplies
- Do routine maintenance checks throughout the day
- Calculate refueling requirements

Marine oilers work in the engine room, helping the engineers keep the propulsion system in working order. They are the engine room equivalent of sailors. New oilers are usually called *wipers* or *pumpmen* on vessels handling liquid cargo. With experience, an oiler can become a Qualified Member of the Engine Department (QMED). Marine oilers typically do the following:

- Lubricate gears, shafts, bearings, and other parts of the engine or motor
- Read pressure and temperature gauges and record data
- Help engineers with repairs to machinery
- Connect hoses, operate pumps, and clean tanks

Motorboat operators run small, motor-driven boats that carry six or fewer passengers. They work for a variety of services, such as fishing charters, tours, and harbor patrols.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Water Transportation Occupations," <http://www.bls.gov/ooh/transportation-and-material-moving/water-transportation-occupations.htm#tab-2> (last visited April 10, 2013).

It is noted that the proffered position is not aboard a ship, and counsel correctly observed that the "Water Transportation Occupations" section of the *Handbook*, while it describes various other individual positions in some detail, does not specifically discuss port captain or maritime transportation manager positions. Therefore, the AAO agrees with counsel that the proffered position does not fall under this section of the *Handbook*. However, even if the proffered position were to fall under the occupational category "Water Transportation Occupations," the *Handbook* would not support the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.⁵ Because the *Handbook* contains no section that specifically describes the educational requirements of port captain/transportation manager positions, it does not negate the proposition that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, but also offers no support for that proposition.

⁵ The *Handbook* does not indicate that Water Transportation Occupations in general, or any of the individual positions it describes more particularly, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Counsel urges that the proffered position is a transportation manager position as described at 11-3071.01 on the O*NET Internet site, and that the classification of such positions as SVP 7.0 to <8.0 demonstrates that such positions are specialty occupation positions.

Counsel's reference to the SVP rating of transportation managers is not persuasive. The AAO finds that the *DOT* does not support the assertion that assignment of an SVP rating of 7 to <8 is indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the Specialized Vocational Preparation (SVP) rating system.⁶ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

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

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

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

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

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

⁶ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

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

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

Thus, an SVP rating of 7 to <8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

Furthermore, a designation of Job Zone 4 indicates that a position requires "considerable preparation." It does not, however, demonstrate that at least a bachelor's degree in a specific specialty or its equivalent is required, and does not, therefore, demonstrate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 4 does not indicate any requirements for degrees in specific specialties) (last visited April 10, 2013).

Yet further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I transportation manager position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, absent a showing that all transportation manager positions require such a specialized degree or equivalent.

Finally, the AAO finds 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 transportation management, but do not establish any particular level of formal, post-secondary 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, 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 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 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 a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations 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.

The record does contain three letters, discussed above, from individuals in the petitioner's industry. As was observed above, the letter from [REDACTED] stated that port captains and transportation managers usually have bachelor's degrees from merchant marine colleges, but not that it is a requirement or that it is driven by the requirements of the position. Rather, it was explained that it is because port captains and transportation managers usually have experience as merchant marine officers, which positions require a bachelor's degree in maritime engineering.

The letter from [REDACTED] states that shipping companies normally require at least a bachelor's degree in marine engineering for port captain or marine transportation manager positions, but does not address whether that is a requirement or, as explained in the previous letter, merely an anomaly based on their being selected from among merchant marine officers. The letter also does not indicate that this company has any such requirement.

The letter from [REDACTED] also states that a graduate with a bachelor's degree in marine engineering normally works onboard before attaining a port captain or transportation manager position, and that shipping companies normally require a minimum of a bachelor's degree in engineering for such positions. Again, it does not state that the demands of port captain or

transportation manager positions inherently require a minimum of a bachelor's degree in a specific specialty or its equivalent for port captain or transportation manager positions.

Those letters, taken together, demonstrate that many port captains and transportation managers in the petitioner industry have bachelor's degrees in marine engineering or some other specialty offered at merchant marine academies. However, they do not demonstrate that this prevalence is due to the demands of the position, rather than that port captains and transportation managers in the industry are selected from among merchant marine officers, which positions are alleged to require a bachelor's degree. Moreover, the letters lack sufficient information regarding the organizations to conduct a meaningfully substantive comparison of the business operations to the petitioner. Notably, the petitioner failed to provide any supplemental information to establish that the organizations are similar to the petitioner. Thus, from the onset, this prong of the regulations has not been established by the writers.

Also, the AAO observes that the letters were not accompanied by any documentary evidence to corroborate that the claims made therein. It must be noted that even if the letters indicated that a requirement for a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these letters with regard to determining the common educational requirements for entry into parallel positions in similar organizations.

As discussed above, the submitted vacancy announcements do not indicate that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent. The vacancy announcements do not, therefore, demonstrate that a *requirement* of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in parallel positions in similar organizations. Counsel's reliance on those two vacancy announcements, therefore, is misplaced.

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficiency of both vacancy announcements has been addressed.⁷

⁷ 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 two job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only a basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specialty closely related to maritime transportation management, or its equivalent, the petitioner would be obliged to demonstrate that other Level I transportation management positions, entry-level positions requiring only a basic understanding of transportation management, require such a degree.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other port captain or transportation manager positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The record contains no evidence that would differentiate the work of the proffered position from the work of port captain or transportation manager positions in general. The duties of the proffered position (such as planning and coordinating operations of ocean carriers, setting operations policies and standards, negotiating and authorizing agreements with equipment and material suppliers, monitoring contract fulfillment, managing procurement processes, and directing investigations to verify and resolve complaints) are described in terms of generalized functions that are likely generic to port captains and transportation managers in the petitioner's industry in general, and so have not been shown to be more complex or unique than the duties of other port captain or transportation manager positions.

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While related courses may be beneficial in performing some of the proposed duties, 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 is required to perform the duties of the proffered position.

As such, even if the job announcements supported the finding that the position of port captain and transportation manager for an ocean shipping operation 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.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I transportation manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of transportation management. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree.

For the reasons explained above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.⁸

The petitioner's president and CEO states that the petitioner employs 27 port captains/transportation managers or other transportation personnel on land who have degrees in marine engineering. He did not explicitly state the total number of port captains/transportation managers the petitioner employs. Further, he did not provide any evidence to corroborate that any of the petitioner's port captains/transportation managers have such degrees.

In the December 10, 2010 RFE, the service center specifically requested that, if the petitioner has previously employed anyone in the proffered position, it provide evidence, "such as copies of degrees and transcripts to verify" "[t]he level of education held by each [such] individual and [t]he field of study in which the degree was earned."

Even if the service center request is taken to refer only to the petitioner's port captain/transportation managers in the United States, the petitioner did not comply with the request. The petitioner's president stated that the petitioner's branch manager in Houston, the petitioner's sole employee in the United States, has performed the duties of the proffered position and is a merchant marine college graduate. No evidence was provided to corroborate the assertion that the petitioner's Houston branch manager has the claimed degree, nor was evidence submitted demonstrating that the degree is in the specific specialty.

⁸ 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").

The record contains insufficient evidence to show that anyone the petitioner has ever employed in the proffered position has a minimum of a bachelor's degree in a specific specialty, or its equivalent. The evidence is insufficient, therefore, to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

Communicating with ship Masters to provide advice concerning crew and operational matters; attending vessels for cargo expediting; discussing operational safety and crew issues with Masters; reviewing vessel port clearance and berth information; attending seminars and association meetings to stay current with federal or state regulatory matters; collaborating with other managers to formulate and implement operational policies, procedures; goals, and objectives; organizing, managing, and supervising ship crew members when they are at ports; and directing contractors to promote safe and efficient stevedoring activities, for instance, contain no indication of a nature so specialized and complex that they are 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 port captain and transportation manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I transportation manager position, a position with only a basic understanding of transportation management. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely related to transportation management.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only

(b)(6)

when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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. The appeal will be dismissed and the petition denied.

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