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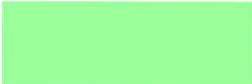


U.S. Citizenship  
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Services

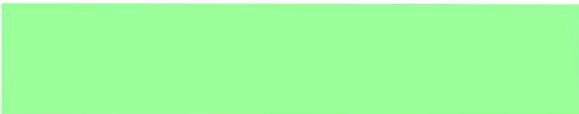


Date: **FEB 25 2013**

Office: VERMONT SERVICE CENTER

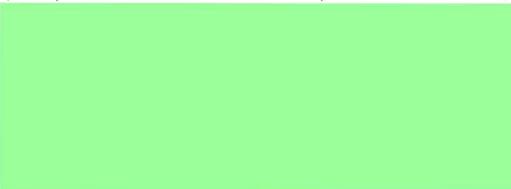
FILE: 

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

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

In the Petition for a Nonimmigrant Worker (Form I-129) the petitioner stated that it is a travel agency with eight employees. To employ the beneficiary in what it designates as a sales and promotions manager position, the petitioner endeavors to classify her 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 before the AAO 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 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.

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.

On the Labor Condition Application (LCA) submitted to support the visa petition, the petitioner stated that the proffered position corresponds to the Standard Occupational Classification (SOC) title and code 11-2022.00 Sales Managers as described in the Occupational Employment Statistics (OES) maintained by the U.S. Department of Labor. The petitioner further stated that the proffered position corresponds to Wage Level I of that SOC.

With the visa petition, counsel provided evidence that the beneficiary has a bachelor's degree in tourism awarded by the [REDACTED] in Manila, Philippines. An evaluation submitted states that the beneficiary's foreign degree is equivalent to a U.S. Bachelor of Arts degree in tourism management.

Counsel also provided a letter, dated September 9, 2010, from the petitioner's vice president and chief operating officer (COO), and an unsigned, unattributed description of the duties of a position entitled "Asia Marketing and Sales Director."

In her September 9, 2010 letter, the petitioner's vice president stated that the duties of the "Asian Sales and Marketing Director" would include:

- Managing market research and On-line opportunities
- Developing tourism promotions strategies
- Overseeing development of marketing program concepts
- Implementing communication materials and tourism promotional campaigns
- Coordinating efforts of creative agencies and graphic designers

The petitioner's vice president and COO further stated:

[The beneficiary's] duties will include performing competitive analysis to determine the products and services offered by the competition, their direction for the future, and their customer segments; servicing as the Company's liaison with clients and marketing representatives for both storefront and on-line initiatives; and managing advertising policies and the production of collateral materials promoting the company and its products and services.

As to the educational requirement of the proffered position, the petitioner's vice president stated: "This position requires an individual with at least a Bachelor's degree, or the equivalent, in tourism, marketing, or a related field . . . ."

The unsigned, unattributed description states the following duties of the Asia Sales and Marketing Director, presumably the proffered position:

- Representing [the petitioner] to the travel marketing suppliers for both Corporate and Leisure products. Extensive knowledge in Cruises, tours, hotels, cars and rail product lines is required for Store-front Sales and On-line Sales
- Providing leadership regarding the structure and processes necessary to manage and carryout [sic] Asia marketing and sales initiatives
- Creating and maintaining a marketing kit that includes update material and options for services such as employee incentive programs, group travel, family reunions, church groups, hobby groups such as golfing, spa and shopping, etc.
- Creating and maintaining leisure group promotions and corporate promotions for direct mail, e-mail blasts and on-line website promotions
- Planning and selling transportation and accommodations for travel agency customers. Determine destination, modes of transportation, travel dates, costs and accommodations required.
- Booking such itineraries. Prepare, package and forward all travel documents tour [sic] clients and following up with clients upon their arrival from trip. Create welcome home postcards/e-mails upon return from trip.
- Developing and maintaining corporate accounts for their travel needs. Maintain/update corporate traveler profiles
- Developing and maintaining leisure product relationships
- Supervising the members of the corporate and leisure team, providing certification opportunities, education updates. Create a "buddy" training system so that others can learn from experience and knowledge.
- Setting and monitoring budgets set and and [sic] achieve target sales
- Keeping up to date with new products/policy changes, etc.
- Identify, cultivate and solicit potential and current clients for [the petitioner]. Providing quality customer service that [the petitioner] prides themselves on and customers are dealt with in an appropriate manner at all times
- Database Management of all clients – train corporate and leisure team on the use of Client Majik and maintain the database. Use the database as a solicitation base for updating clients of specials and on-going marketing programs.

That description of the Asia Marketing and Sales Director position further states, "A Bachelor's degree in Tourism, Marketing, or a related field is preferred."

On January 26, 2011, 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.

In response, counsel submitted (1) five vacancy announcements; (2) a letter from the petitioner's president dated March 8, 2011; (3) an amended description of the duties of the proffered position and justifications for those duties ostensibly requiring a bachelor's degree; and (4) counsel's own letter, dated March 11, 2011.

The letter from the petitioner's president states:

[The petitioner has] an employee in our company, [REDACTED] who has a Bachelor's degree in Tourism Management. Her title is Promotions Manager. As Promotions Manager, [REDACTED] addresses general tourism and travel promotions marketing for our company, without any specific focus on the geographical market.

The amended position description for an "Asia Marketing and Sales Director" position states:

- **Managing market research and On-line opportunities (25%)**
  - Representing [the petitioner] to the travel marketing suppliers for both Corporate and Leisure products. Extensive knowledge in Cruises, tours, hotels, cars and rail product lines is required for Store-front Sales and On-line Sales
  - Supervising the members of the corporate and leisure team, providing certification opportunities, education updates. Create a "buddy" training system so that others can learn from experience and knowledge.
  - Setting and monitoring budgets set and achieve target sales
- **Developing tourism promotions strategies (30%)**
  - Creating and maintaining a marketing kit that includes update material and options for services such as employee incentive programs, group travel, family reunions, church groups, hobby groups such as golfing, spa and shopping, etc.
  - Creating and maintaining leisure group promotions and corporate promotions for direct mail, e-mail blasts and on-line website promotions.
  - Identify, cultivate and solicit potential and current clients for [the petitioner].

- Providing quality customer service that [the petitioner] prides itself on and ensuring customers are dealt with in an appropriate manner at all times.
- Developing and maintaining corporate accounts for their travel needs. Maintain/update corporate traveler profiles
- Developing and maintaining leisure product relationships
- **Overseeing development of marketing program concepts (10%)**
  - Providing leadership regarding the structure and processes necessary to manage and carryout [sic] Asia marketing and sales initiatives
  - Setting and monitoring budgets set and achieve target sales
- **Implementing communication materials and tourism promotional campaigns (20%)**
  - Database Management of all clients – train corporate and leisure team on the use of Client Majik and maintain the database. Use the database as a solicitation base for updating clients of specials and on-going marketing programs
  - Planning and selling transportation and accommodations for travel agency customers. Determine destination, modes of transportation, travel dates, costs and accommodations required.
  - Booking such itineraries. Prepare, package and forward all travel documents tour [sic] clients and following up with clients upon their arrival from trip. Create welcome home postcards/e-mails upon return from trip.
- **Coordinating efforts of creative agencies and graphic designers (15%)**
  - Keeping up to date with new products/policy changes, etc.
  - Creating and maintaining leisure group promotions and corporate promotions for direct mail, e-mail blasts and on-line website promotions.

That same position description offers the following justifications for those duties requiring a bachelor's degree:

- **Managing market research and On-line opportunities (25%)**
  - Duties require baccalaureate-level knowledge of Marketing Principles & Practices in the Tourism Industry; Tourism Development & Control; Business Policy in Tourism Industry; and Research Methods in Tourism;
- **Developing tourism promotions strategies (30%)**

- Duties require baccalaureate-level knowledge of Principles of Tourism; Domestic Tourism; World Tourism; Tourism Promotion; and Tourism Laws; Management of Tourism Enterprises: Airline & Travel Agency Operations; Tourism Development & Control; Business Policy in Tourism Industry; and Research Methods in Tourism;
- **Overseeing development of marketing program concepts (10%)**
  - Duties require baccalaureate-level knowledge of Tourism Development & Control; Business Policy in Tourism Industry; and Research Methods in Tourism;
- **Implementing communication materials and tourism promotional campaigns (20%)**
  - Duties require baccalaureate-level knowledge of Principles of Tourism; Domestic Tourism; World Tourism; Tourism Promotion Marketing Principles & Practices in the Tourism Industry; Tourism Promotion; Tourism Laws; and Management of Tourism Enterprises; Airline & Travel Agency Operations;
- **Coordinating efforts of creative agencies and graphic designers (15%)**
  - Duties require baccalaureate-level knowledge of Principles of Tourism; Domestic Tourism; World Tourism; Tourism Promotion; Public Personnel Administration & Management; and Marketing Principles & Practices in the Tourism Industry.

The amended job description states that a "[b]achelor's degree in Tourism, Marketing, or a related field is preferred."

Counsel's March 11, 2011 letter states that the duties of the proffered position require theoretical and practical application of a body of highly specialized knowledge, and that all of the beneficiary's time would be devoted to duties requiring baccalaureate-level expertise.

The director denied the petition on March 25, 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 supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted a letter from the president and owner of another travel agency, [REDACTED], a brief; and a description of the proffered position.

The letter from [REDACTED] owner is dated May 25, 2011. The owner stated that [REDACTED] employs sales/promotions managers and provided a description of duties

similar to the duties attributed to the proffered position. That letter states that it requires a four-year degree in tourism management or a related field for those positions. The letter states that [REDACTED] now has only "two agents," but does not state how many sales/promotions managers it now employs. That letter further states that [REDACTED] previously employed as many as 20 travel agents, but not how many sales/promotions managers it then employed.

In the appeal brief, counsel asserted that the evidence submitted demonstrates that the instant visa petition should be approved.

As a preliminary matter, it is noted that the petitioner provided inconsistent educational requirements for the proffered position. As noted above, in the September 9, 2010 letter submitted with the petition, the petitioner's vice president stated that the proffered position "requires an individual with at least a Bachelor's degree, or the equivalent, in tourism, marketing, or a related field . . . ." However, the petitioner subsequently submitted descriptions of the proffered position which state that a "[b]achelor's degree in Tourism, Marketing, or a related field is *preferred*." (emphasis added). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Furthermore, a preference for a candidate with a bachelor's degree is not a requirement that the individual have such a degree to qualify for the position. Therefore, the petitioner's inconsistent claims regarding the educational requirements of the proffered position are inadequate to establish that the proposed position qualifies as a specialty occupation. The assertion that a bachelor's degree is only *preferred*, as opposed to being required, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if a baccalaureate or higher degree, in a specific specialty, or its equivalent, 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)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

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.

As noted above, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Sale Managers." The *Handbook* describes the occupation of "Sales Manager" as follows:

### **What Sales Managers Do**

Sales managers direct organizations' sales teams. They set sales goals, analyze data, and develop training programs for the organization's sales representatives.

### **Duties**

Sales managers typically do the following:

- Oversee regional and local sales managers and their staffs
- Resolve customer complaints regarding sales and service
- Prepare budgets and approve budget expenditures
- Monitor customer preferences to determine the focus of sales efforts
- Analyze sales statistics
- Project sales and determine the profitability of products and services
- Determine discount rates or special pricing plans
- Plan and coordinate training programs for sales staff

Sales managers' responsibilities vary with the size of the organization they work for. However, most sales managers direct the distribution of goods and services by assigning sales territories, setting sales goals, and establishing training programs for the organization's sales representatives.

In some cases, they recruit, hire, and train new members of the sales staff. For more information about sales workers, see the profiles on retail sales workers and wholesale and manufacturing sales representatives.

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<sup>1</sup> 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.

Sales managers advise sales representatives on ways to improve their sales performance. In large multiproduct organizations, they oversee regional and local sales managers and their staffs.

Sales managers also stay in contact with dealers and distributors. They analyze sales statistics that their staff gathers, both to determine the sales potential and inventory requirements of products and stores and to monitor customers' preferences.

Sales managers work closely with managers from other departments. For example, the marketing department identifies new customers that the sales department can target. The relationship between these two departments is critical to helping an organization expand its client base. Because sales managers monitor customers' preferences and stores' and organizations' inventory needs, they work closely with research and design departments and warehousing departments.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Sales Managers," <http://www.bls.gov/ooh/management/sales-managers.htm#tab-2> (last visited February 4, 2013).

Many of the duties attributed to the proffered position are consistent with the duties of sales managers as described in the *Handbook*. The duties of planning and booking itineraries, of course, constitute a glaring exception, and suggest that the beneficiary would perform the ordinary duties of a travel agent, a position for which the LCA submitted is not approved, and a position which likely would not qualify as a specialty occupation position. However, the AAO will assume, *arguendo*, that the proffered position is a sales manager position, as asserted by the petitioner.

The *Handbook* does not indicate that sales managers constitute an occupational group for which normally the minimum requirement for entry is a specialty occupation level of education, that is, at least a U.S. bachelor's degree *in a specific specialty*, or its equivalent. This is also evident from the discussion in the "How to Become a Sales Manager" section of its chapter "Sales Managers."

### **How to Become a Sales Manager**

Most sales managers have a bachelor's degree and work experience as a sales representative.

### **Education**

Most sales managers have a bachelor's degree, although some have a master's degree. Educational requirements are less strict for job candidates who have significant experience as a sales representative. Courses in business law, management, economics, accounting, finance, mathematics, marketing, and statistics are advantageous.

### **Work Experience**

Work experience is typically required for someone to become a sales manager. The preferred duration varies, but employers usually seek candidates who have at least 1 to 5 years of experience.

Sales managers typically enter the occupation from other sales and related occupations, such as sales representatives or purchasing agents. In small organizations, the number of sales manager positions is often limited, so advancement for sales workers usually comes slowly. In large organizations, promotion may occur more quickly.

### **Important Qualities**

**Analytical skills.** Sales managers must collect and interpret complex data to target the most promising areas and determine the most effective sales strategies.

**Communication skills.** Sales managers need to work with people in other departments and with customers, so they must be able to communicate clearly.

**Customer-service skills.** When helping to make a sale, sales managers must listen and respond to the customer's needs.

**Managerial skills.** Sales managers must be able to evaluate how sales staff perform and develop ways for struggling members to improve.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Sales Managers," <http://www.bls.gov/ooh/management/sales-managers.htm#tab-4> (last visited February 4, 2013).

That "most" sales managers have a bachelor's degree does not indicate that a bachelor's degree is a minimum requirement for such positions. Further, the *Handbook* suggests that a bachelor's degree may not be required for sales manager positions if the candidate has experience as a sales representative, although experience as a sales representative is not necessarily equivalent to a bachelor's degree. Further, the *Handbook* does not suggest that a sales manager position requires a minimum of a bachelor's degree in any specific specialty or its equivalent. The *Handbook* does not support the proposition that sales manager positions as a category require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, show that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for the proffered position in the instant case.

Further still, 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 the travel industry, but do not establish any particular level of formal 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, 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 single letter submitted from the owner of [REDACTED] as was noted above, provides no indication of the number of sales/promotions managers that company has employed in the past, no indication of the number of such managers it presently employs, does not identify any of those managers by name, and is not accompanied by evidence to corroborate the assertion made in that letter that all of that other travel agency's sales/promotions managers have, or have had, bachelor's degrees in tourism management, or that they possessed any degrees at all. That letter provides very little support for the proposition that, because the proffered position is similar to the sales/promotions manager positions, past and present, at that other travel agency, the proffered position must require a minimum of a bachelor's degree in a specific specialty or its equivalent.

As was noted above, counsel provided five vacancy announcements. The vacancy announcements submitted are for positions entitled Sales Manager – Texas, New Mexico, Colorado; District Sales Manager; Corporate Travel Agent; Travel Operations & E-Commerce Manager; and Sales Coordinator. None of the descriptions of the duties of those positions are sufficiently detailed and sufficiently similar to the duties attributed to the proffered position to demonstrate that the positions

they announce are parallel to the proffered position and would necessarily require the same education.

Three of the positions announced are for travel agencies. One position is with a firm that states that it owns and operates AAA clubs in six regional territories across eight states. That position may be with a travel agency operated by that company. Another position, as its job title implies, is a corporate travel agent position. The corporation for which that agent would work and its industry are unidentified.

The first announcement that the position it announces requires a college degree. It does not state that the degree must be a minimum of a bachelor's degree, or that the degree must be in any specific specialty. For both reasons, that announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The second announcement states that the position it announces requires a bachelor's degree, but not that the degree must be in any specific specialty.

The third announcement states that a bachelor's degree, or "three to five year's [sic] related experience and/or training; or a combination of education or experience," is preferred for the position it announces. The AAO observes that the stated preference may be satisfied by three years' experience, which is not equivalent to a bachelor's degree, and that the degree that would, in the alternative, satisfy that preference need not be in any specific specialty. Further, a preference is not a minimum requirement. For all of those reasons, that announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The fourth announcement provided states that a bachelor's degree in business administration, marketing, sales, travel, liberal arts, finance, or a related field, and/or a Certified Travel Counselor (CTC) designation is preferred for the position it announces. The AAO observes that an educational requirement that may be satisfied by a degree in any of that wide array of subjects is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration or liberal arts is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Further still, the educational preference of that position may be satisfied by CTC designation, and the record contains no indication that a CTC designation is equivalent to a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, a preference for one of those qualifications is not a minimum requirement. For all of those reasons, 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.

The final announcement states, "Licensure, Certification, College Degree preferred." Whether that announcement was meant to indicate that all three are preferred, or one of the three, is unclear. In

any event, however, it does not state that the position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or that it requires any bachelor's degree at all, as it does not state that a bachelor's degree, rather than an associate's degree is preferred. As noted above, a preference for a candidate with a degree is not a requirement that the individual have such a degree to qualify for the position.

Further, even if all of the vacancy announcements were for positions in the petitioner's industry, which has not been demonstrated, and for positions parallel to the proffered position, which has not been demonstrated, and even if all five stated unequivocally that the positions they announced required a minimum of a bachelor's degree in a specific specialty or its equivalent, which none of them do, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>2</sup>

Yet further, 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 basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty, the petitioner would be obliged to demonstrate that other Level I sales manager positions with travel agencies, i.e., entry-level positions requiring only a basic understanding of sales management as it pertains to the operations of a travel agency, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

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

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<sup>2</sup> 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 five job postings with regard to determining the common educational requirements for entry into parallel positions in similar travel agencies. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of sales and promotions manager for a travel agency required a bachelor's or higher degree in a specific specialty or its equivalent, and even if the petitioner had demonstrated that the proffered position is a sales manager position, rather than a position for a travel agent, it still could not be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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 the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains very little evidence that would differentiate the work of the proffered position as more complex or unique than the work of other sales manager positions in the travel industry. The duties of the proffered position (such as representing the petitioner before travel marketing suppliers; maintaining an extensive knowledge in cruises, tours, hotels, cars and rail product lines; providing leadership to marketing and sales initiatives) have not been shown to be more complex or unique than the duties of other sales manager positions, some of which, the *Handbook* indicates, may not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the LCA submitted to support the visa petition is approved for a Level I sales manager position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of sales 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, especially as the *Handbook* suggests that some sales manager positions may not require such a degree.

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

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>3</sup>

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

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<sup>3</sup> 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").

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. The proposed duties, including representing the petitioner before travel marketing suppliers; maintaining an extensive knowledge of cruises, tours, hotels, car rentals and rail product lines; providing leadership to marketing and sales initiatives, etc., have not been described with sufficient specificity to show that they are more specialized and complex than sales 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 sales manager position, a position with only a basic understanding of sales management. This does not support the proposition that the duties of the position are 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, especially as the *Handbook* indicates that sales manager positions require no such degree.

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.

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.