

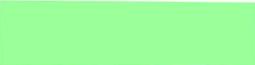
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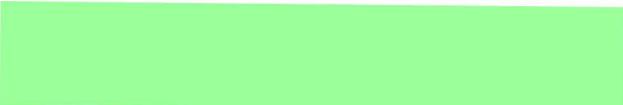
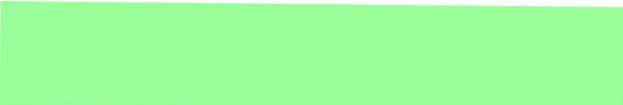
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: JUN 20 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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.

One the Form I-129 visa petition, the petitioner states that it develops hybrid and electric vehicle components such as cells, battery packs, and systems. In order to employ the beneficiary in what it designates as an advanced buyer position, the petitioner seeks 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 her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 petitioner has demonstrated that 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 particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a

specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an Advanced Buyer position, and that it corresponds to Standard Occupational Classification (SOC) code and title 17.2071, Electrical Engineers. The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in electrical and electronics engineering from [REDACTED] in India. An evaluation in the record states, without analysis, that the beneficiary's bachelor's degree is equivalent to a U.S. bachelor's degree in electrical engineering. Counsel also submitted evidence that the beneficiary has a master's degree in engineering management awarded by [REDACTED] in Michigan.

Counsel also submitted, *inter alia*, (1) a letter dated March 6, 2012, from the petitioner's Senior Human Resources Manager; and (2) a description of the proffered position;

The petitioner's March 6, 2012 letter contains the following description of the duties of the proffered position:

- Lead Advanced Purchasing in the business acquisition process to PPAP [Production Part Approval Process] approval.
- Lead the RFQ [Request for Quote] process from inception to award. (This would include gathering global requirements with SQE [Supplier Quality Engineer] and/or commodity team, formulating RFI [Request for Information] and RFQs,

- performing supplier identification, sourcing evaluation, negotiation, leading the selection process, and contracting activities.)
- Work with Strategic Purchasing Manager to help develop new global sourcing strategies.
 - Develop long-term supplier agreements and alliances.
 - Evaluate supplier processes and monitor supplier performance.
 - Responsible for managing total cost productivity and ensure supplier performance.
 - Create and implement strategic and tactical project plans to meet business sourcing objectives.
 - Manage and leverage assigned commodities by analyzing data such as historical and projected spending, purchasing practices, supply market information, customer requirements, benchmark information, etc.
 - Manage long[-]term global agreements (commodities) with suppliers and create and institute measurement standards by which suppliers will be monitored.
 - Escalate discrepancies and/or contract compliance issues. Identify potential business and enterprise risks.
 - Keep internal customers informed of industry supply chain information.
 - Mitigate business risk or exposure.

The separate description of the proffered position reiterates that list of duties. It also states that the proffered position requires a "Bachelor's degree in Business, Supply Chain Management, or Electrical/Electronics Engineering or equivalent education (MBA is a plus)."

On May 24, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation, including a more detailed description of the duties of the proffered position.

In response, counsel submitted (1) a description of the proffered position that reiterates the duties and educational requirements stated above; (2) an additional, revised, description of the duties of the proffered position; (3) counsel's own letter, dated July 24, 2012; (4) résumés of other people the petitioner employs; (5) an organizational chart of the petitioner's purchasing department; and (6) vacancy announcements placed by other companies.

The revised description of the proffered position contains the following list of duties:

- Lead Advanced Purchasing in the business acquisition process to PPAP approval.
Approximately 25% of weekly time spent
 - Purchases materials, supplies, and services by developing, soliciting, and analyzing supplier quotations.

- Develops and/or assists in developing strategies and solutions to continuously improve cost levels, stable sources of supply, high quality of commodities and other governing factors.
- Develops cost database detailing all material, labor, and overhead costs of purchased products and services.
- Lead the RFQ process from inception to award. **Approximately 20% of weekly time spent**
 - Gather global requirements with SQE and/or commodity team
 - Formulate RFI and RFQs
 - Perform supplier identification, sourcing evaluation, negotiation, leading the selection process, and contracting activities.
- Responsible for managing total cost productivity and ensure supplier performance. **Approximately 20% of weekly time spent**
 - Locates new sources of supply, establishes new suppliers and coordinates order maintenance with existing suppliers. Selects and/or recommends suppliers with who [sic] orders will be placed.
 - Develop long-term supplier agreements and alliances.
 - Evaluate supplier processes and monitor supplier performance.
 - Manage long[-]term global agreements (commodities) with suppliers and create and institute measurement standards by which suppliers will be monitored.
- Work with Strategic Purchasing Manager to help develop new global sourcing strategies. **Approximately 15% of weekly time spent**
- Create and implement strategic and tactical project plans to meet business sourcing objectives. **Approximately 5% of weekly time spent**
- Manage and leverage assigned commodities by analyzing data such as historical and projected spend, purchasing practices, supply market information, customer requirements, benchmark information, etc. **Approximately 5% of weekly time spent**

- Document and maintain necessary records and files.
- Keep internal customers informed of industry supply chain information. **Approximately 5% of weekly time spent**
- Escalate discrepancies and/or contract compliance issues. Identify potential business and enterprise risks (e.g. ,IP, confidentiality, Financial risk, supplier becoming competitor..etc..). [Punctuation from the original.] **Approximately 3% of weekly time spent**
- Mitigate business risk or exposure. **Approximately 2% of weekly time spent**

In her July 24, 2012 letter, counsel referred to the evidence in the record, the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, and the Occupational Information Network (O*NET) in asserting that the proffered position had been demonstrated to be a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. The AAO observes that, although the LCA submitted states that the proffered position corresponds to an electrical engineer position as described in the SOC, counsel provided printouts of the O*NET Summary Report pertinent to Purchasing Agents, Except Wholesale, Retail, and Farm Products, and the *Handbook* chapter pertinent to Purchasing Manager, Buyers, and Purchasing Agents.

The director denied the petition on September 14, 2012, 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 provided a letter, dated September 27, 2012, on the petitioner's letterhead from [REDACTED]. Although [REDACTED] position with the petitioner is not stated in that letter, the organizational chart previously provided shows that he is the petitioner's purchasing manager. Counsel also provided a somewhat expanded description of the duties of the proffered position, which states:

- Lead Advanced Purchasing in the business acquisition process to PPAP approval. The Advanced Buyer role is a leadership position for advance technology sourcing and strategic roadmap definition. An Advanced Buyer is responsible to ensure that all engineering design records and specification requirements are properly understood by [the petitioner's] suppliers and that the process has the potential to produce products consistently and in line with engineering requirements during an actual production run at the quoted production rate. In order to ensure this, the Advanced Buyer leads Technical reviews with

engineering and ensures engineering expectations and supplier designs for manufacturability are met. **Approximately 25% of weekly time spent.**

- Purchases materials, supplies, and services by developing, soliciting, and analyzing supplier quotations. The Advanced Buyer purchases Bill of Materials parts amounting to approximately 300 – 400 engineering parts. Multiple quotations analysis requires technical knowledge to understand material composition, design and manufacturing processes to procure complex electro-mechanical and electrical components that are unique for hybrid/electric vehicles manufacturing field.
- Develops and/or assists in developing strategies and solutions to continuously improve cost levels, stable sources of supply, high quality of commodities and other governing factors. Sourcing strategies in out [sic] high technology, yet young industry require the ability to understand part engineering and the capacity to evaluate material [sic] indexes such as Steel/Copper to arrive at a sourcing strategy. [sic] This developed strategy [sic] determines cost levels with a focus on quality while achieving competitive targets for low cost sourcing.
- Develops cost database detailing all material, labor, and overhead costs of purchased products and services. In order to perform this task, the Advanced Buyer must understand the material composition of components, direct and indirect costs, equipment and tooling, and process efficiencies. Pricing is justified by utilizing manufacturing and engineering expertise [sic] gained only by experience in technical field.
- Lead the Request for Quotation (RFQ) process from inception to award, which includes gathering global requirements with Supplier Quality Engineer (SQE) and/or commodity team, formulating RFI and RFQs, performing supplier identification, sourcing evaluation, negotiation, leading the selection process, and contracting activities.) **Approximately 20% of weekly time spent.** The SQE provides the Advanced Buyer with detailed technical quality requirements to assist with finding the right supplier to source. These requirements are in line with AIAG guidelines (PPAP & APQP*). Understanding these requirements requires product knowledge of components such as Inverters/Chargers which require a strong Electrical/ Electronic Engineering Knowledge.
 - Gather global requirements with SQE and/or commodity team

- Formulate RFI and RFQs
- Perform supplier identification, sourcing evaluation, negotiation, leading the selection process, and contracting activities.
- Responsible for managing total cost productivity and ensure supplier performance. **Approximately 20% of weekly time spent**
 - Locates new sources of supply, establishes new suppliers and coordinates order maintenance with existing suppliers. Selects and/or recommends suppliers with who [sic] orders will be placed.
 - Develop long-term supplier agreements and alliances.
 - Evaluate supplier processes and monitor supplier performance.
 - Manage long[-]term global agreements (commodities) with suppliers and create and institute measurement standards by which suppliers will be monitored.
- Work with Strategic Purchasing Manager to help develop new global sourcing strategies. **Approximately 15% of weekly time spent**
- Create and implement strategic and tactical project plans to meet business sourcing objectives. **Approximately 5% of weekly time spent**
- Manage and leverage assigned commodities by analyzing data such as historical and projected spend, purchasing practices, supply market information, customer requirements, benchmark information, etc. **Approximately 5% of weekly time spent**
 - Document and maintain necessary records and files.
- Keep internal customers informed of industry supply chain information. **Approximately 5% of weekly time spent**
- Escalate discrepancies and/or contract compliance issues. Identify potential business and enterprise risks (e.g. ,IP, confidentiality, Financial risk, supplier becoming competitor..etc..). [Punctuation from the original.] **Approximately 3% of weekly time spent**
- Mitigate business risk or exposure. **Approximately 2% of weekly time spent**

The body of the September 27, 2012 letter from [REDACTED] states, in its entirety:

I am writing this letter on behalf of [the beneficiary] who worked for me as an Advanced Buyer from December 2011 through September 2012. Her responsibilities included procuring Mechanical, Electrical, and Electro-mechanical parts for electric and hybrid electric vehicles.

The Electric Vehicle and Hybrid Electric Vehicle (EV/HEV) Buyer position is much different than a typical commodity based buyer position. The EV/HEV Buyer is responsible to understand electrical commodities such as resistors, capacitors, inductors, printed circuit boards, electromagnetic compatibility reducing chokes, etc. A Buyer such as [the beneficiary] who has a highly technical background in engineering and manufacturing makes her an ideal EV/HEV buyer.

The EV/HEV buyer also has to understand materials and cost structures in order to ensure suppliers in a new industry provide the lowest possible prices. A major challenge in this industry is improving the pricing of EV/HEV's so more consumers find them attractive as compared to internal combustion options. Buyers who understand materials such as rare earth metals, semiconductors, and different grades of steel, aluminum, and copper are better equipped to drive pricing down to levels that will eventually be attractive to consumers. An EV/HEV Buyer understand [sic] multiple manufacturing processes to ensure pricing is correct and low as possible. Manufacturing processes such as capacitor film winding, transformer winding, printed circuit board etching, silk screening, high pot testing, potting, etc.

In the automotive industry, Buyers with a strong technical background improves the buyer's abilities to excel in their position. "This is even truer [sic] for an EV/HEV Buyer. A highly technical background allows the buyer to better understand the requirements, expectations, and give them more of a chance to keep pricing as low as possible. Understanding the highly technical nuances to pricing, manufacturing, and advances in the EV/HEV market is critical to EVs and HEVs success in the market, in hopes to result in our country being less dependent on international oil and reduction to emissions from typical internal combustion alternatives.

It is noted that [REDACTED] letter explains why a technical background is a desirable characteristic for a person in the proffered position, and why it would make him or her an ideal candidate for such a position. He asserted that knowledge of the properties of various materials would enable a buyer to keep costs down. He did not, however, assert that the proffered position requires *a minimum* of a bachelor's degree in a specific specialty or its equivalent.

On appeal, counsel asserts that the evidence provided demonstrates that the proffered position is a specialty occupation position. Counsel also cites a U.S. District Court case for the proffered position

that, to qualify as a specialty occupation position, a position need not require a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

As a preliminary matter, the petitioner's claim that a bachelor's degree in "business" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business. This assertion 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.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. §

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

214.2(h)(4)(iii)(A). To reach this conclusion, the AAO first turned to 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 *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

As noted above, the petitioner stated on the LCA that the proffered position is an Advanced Buyer position, but that it corresponds to the occupational title Electrical Engineer as described in the SOC. In the "Electrical and Electronics Engineers" chapter, the *Handbook* provides the following description of the duties of those positions:

Electrical engineers design, develop, test, and supervise the manufacturing of electrical equipment such as electric motors, radar and navigation systems, communications systems, or power generation equipment. Electrical engineers also design the electrical systems of automobiles and aircraft.

Electronics engineers design and develop electronic equipment such as broadcast and communications systems, from portable music players to global positioning systems (GPS). Many also work in areas closely related to computer hardware.

Duties

Electronics engineers typically do the following:

- Design electronic components, software, products, or systems for commercial, industrial, medical, military, or scientific applications
- Analyze electrical system requirements, capacity, cost, and customer needs and then develop a system plan
- Develop maintenance and testing procedures for electronic components and equipment
- Evaluate systems and recommend repair or design modifications
- Inspect electronic equipment, instruments, and systems to make sure they meet safety standards and applicable regulations
- Plan and develop applications and modifications for electronic properties used in parts and systems to improve technical performance

Electronics engineers who work for the federal government research, develop, and evaluate electronic devices used in diverse technologies, such as aviation, computing,

² 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.

transportation, and manufacturing. They work on federal electronic devices and systems, including satellites, flight systems, radar and sonar systems, and communications systems.

The work of electrical engineers and electronics engineers is often similar. Both use engineering and design software and equipment to do engineering tasks. Both types of engineers must also work with other engineers to discuss existing products and possibilities for engineering projects.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Electrical and Electronics Engineers," <http://www.bls.gov/ooh/architecture-and-engineering/electrical-and-electronics-engineers.htm#tab-2> (last visited June 19, 2013).

The duties of the proffered position do not appear to be very closely related to the duties of an electrical or electronics engineer. On the other hand, in the "Purchasing Managers, Buyers, and Purchasing Agents" chapter, the *Handbook* provides the following description of the duties of those positions:

Purchasing managers, buyers, and purchasing agents buy products for organizations to use or resell. They evaluate suppliers, negotiate contracts, and review product quality.

Duties

Purchasing managers, buyers, and purchasing agents typically do the following:

- Evaluate suppliers based on price, quality, and delivery speed
- Interview vendors and visit suppliers' plants and distribution centers to examine and learn about products, services, and prices
- Attend meetings, trade shows, and conferences to learn about new industry trends and make contacts with suppliers
- Analyze price proposals, financial reports, and other information to determine reasonable prices
- Negotiate contracts on behalf of their organization
- Work out policies with suppliers, such as when products will be delivered
- Meet with staff and vendors to discuss defective or unacceptable goods or services and determine corrective action
- Evaluate and monitor contracts to be sure that vendors and supplies comply with the terms and conditions of the contract and to determine need for changes
- Maintain and review records of items bought, costs, deliveries, product performance, and inventories

Purchasing managers, buyers, and purchasing agents buy farm products, durable and nondurable goods, and services for organizations and institutions. They try to get the best deal for their organization—the highest quality goods and services at the lowest cost. They do this by studying sales records and inventory levels of current stock, identifying foreign and domestic suppliers, and keeping up to date with changes affecting both the supply of, and demand for, products and materials.

Purchasing agents and buyers consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. To be effective, purchasing agents and buyers must have a working technical knowledge of the goods or services to be bought.

Evaluating suppliers is one of the most critical functions of a purchasing manager, buyer, or purchasing agent. Many organizations now run on a lean manufacturing schedule and use just-in-time inventories, so any delays in the supply chain can shut down production and potentially cost the organization customers.

Purchasing managers, buyers, and purchasing agents use many resources to find out all they can about potential suppliers. They attend meetings, trade shows, and conferences to learn about new industry trends and make contacts with suppliers.

They often interview prospective suppliers and visit their plants and distribution centers to assess their capabilities. For example, they may discuss the design of products with design engineers, quality concerns with production supervisors, or shipping issues with managers in the receiving department.

They must make certain that the supplier can deliver the desired goods or services on time, in the correct quantities, and without sacrificing quality. Once they have gathered information on suppliers, they sign contracts with suppliers who meet the organization's needs, and they place orders.

Buyers who purchase items to resell to customers largely determine which products their organization will sell. They need to be able to predict what will appeal to their customers. If they are wrong, they could jeopardize the profits and reputation of their organization.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Purchasing Managers, Buyers, and Purchasing Agents," <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-2> (last visited June 19, 2013).

The various descriptions provided of the duties of the proffered position are consistent with the duties of purchasing manager, buyer, or purchasing agent positions as described in the *Handbook*.

The AAO finds that the proffered position is a purchasing manager, buyer, or purchasing agent position as described in the *Handbook*.

Counsel cited O*NET as evidence that the proffered position qualifies as a specialty occupation position. The O*NET Summary Report pertinent to Purchasing Agents, Except Wholesale, Retail, and Farm Products, provided by counsel, does not state that such positions require a bachelor's degree in a specific specialty. Rather, it groups such positions in Job Zone Four and SVP Range 7.0 to < 8.0. Inclusion of such position Job Zone Four groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the O*NET information is not probative of the proffered position being a specialty occupation.

The *Handbook*, also cited by counsel, states the following about the educational requirements of Purchasing Manager, Buyer, and Purchasing Agent positions:

Educational requirements usually vary with the size of the organization. A high school diploma is enough at many organizations for entry into the purchasing agent occupation, although large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

Purchasing managers usually have at least a bachelor's degree and some work experience in the field. A master's degree may be required for advancement to some top-level purchasing manager jobs.

Id. at <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited June 19, 2013).

Although the *Handbook* indicates that some upper level purchasing manager, buyer, or purchasing agent positions require a bachelor's degree or even a master's degree, it does not suggest that any such positions require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. That information is entirely consistent with the assertion on the position description provided with the visa petition, which assertion was reiterated in a position description submitted in response to the RFE, that the proffered position requires a bachelor's degree in business, supply chain management, or electrical/electronics engineering, or an equivalent education, which does not indicate a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, 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 business and purchasing, but do not establish any particular level of formal,

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

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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 a standard 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, individuals, or similar firms 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 petitioner did submit six vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Buyer/SR Buyer – Advanced Sourcing for an unidentified company in Grass Lake, Michigan requiring a "Bachelor's degree in [Global Supply Chain Management], Engineering or technical discipline" and "Minimum 5-7 years experience in Supply Chain Management or related work environment;
2. Program Buyer for [redacted] requiring a "Bachelor's degree in Purchasing, Business, or Engineering" and "5-10 years' experience in commodity or production applications preferably in the automotive industry";

3. Buyer for [REDACTED] requiring "Bachelor's degree/Materials Logistics Management (MLM) OR Business Administration or equivalent, 2 to 3 years' experience in a relevant [REDACTED] position OR equivalent external work experience."
4. Automotive Buyer for [REDACTED] requiring "Bachelors Degree (Supply Chain Management, Finance, Economics – preferred fields of study)";
5. Buyer, Advanced Purchasing for an unidentified company in Indianapolis, Indiana requiring "Bachelor's degree and equivalent work experience" [sic];
6. Advanced Buyer for [REDACTED] requiring a "Bachelor's degree."

The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but that a bachelor's degree or the equivalent in a *specific specialty* is not.

Specifically, the first and second vacancy announcements indicate that a bachelor's degree in any branch of engineering would be a sufficient educational preparation for the positions announced. The field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. An educational requirement that may be satisfied by a bachelor's degree in any branch of engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the third vacancy announcement indicates that the educational requirement of the position announced would be satisfied by an otherwise undifferentiated bachelor's degree in business administration. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The fourth vacancy announcement indicates that the position it announces requires a bachelor's degree, and that a bachelor's degree in supply chain management, finance, or economics is preferred for the position. A preference, however, is not a minimum requirement. That vacancy announcement indicates that the position announced does not *require* a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the fifth and sixth vacancy announcements state that the positions require a bachelor's degree, but not that the requisite degrees must be in any specific specialty. They do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

As was noted above, the vacancy announcements provided establish at best that a bachelor's degree may be required for some positions but, even then, the degree or its equivalent does not have to be *in a specific specialty*.

Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from six announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

Thus, based upon a complete review of the record, the petitioner has not established 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. The petitioner 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 descriptions of the duties of the proffered position suggests that the proffered position requires some technical knowledge, which suggests that it is more complex than other purchasing manager, buyer, or purchasing agent positions. As was observed above, however, the evidence submitted is insufficient to show that those duties can only be performed by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, two of the descriptions of the proffered position explicitly state that a degree in business, supply chain management, or electrical/electronics engineering; or an equivalent education, would be a sufficient qualification for the proffered position, which makes clear that the positions is not 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.

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just six job postings with regard to determining the common educational requirements for entry into parallel positions in similar home care organizations. *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 advanced buyer for a company in the petitioner's industry and otherwise similar to the petitioner 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 may 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.

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

The petitioner provided the résumés of three of its employees. One of those employees is the petitioner's Senior Supply Chain Manager, who according to his resume, received a bachelor's degree in business administration and an MBA specializing in business and finance. Another employee is the petitioner's purchasing manager, [REDACTED] who, according to his resume, has a bachelor's degree in engineering and a master's degree in manufacturing engineering. The third employee holds a position titled "Buyer" on the organizational chart. This employee, according to his resume, has a bachelor's degree in engineering management.

All three of those positions are shown on the organizational chart provided. They do not appear, however, to be the same as the position offered in the instant matter, and no reason exists to assume that they have the same educational requirements as the proffered position.

The organizational chart provided shows that the petitioner has filled two Advanced Buyer positions. The beneficiary is in one of those positions. The organizational chart shows that the other Advanced Buyer position is held by [REDACTED] and that he has a bachelor's degree in business communications, administration, and marketing. The AAO observes that, if the proffered position requires a minimum of a bachelor's degree in business communications, administration, and marketing, or a closely-related specialty, then the beneficiary, whose degrees are in electrical engineering and in engineering management, would not qualify for the proffered position.

It is noted that there is insufficient evidence in the record corroborating that any of the employees discussed above have the claimed degrees and that they are employed by the petitioner in the claimed positions. The evidence provided is insufficient to show that the petitioner normally

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a 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").

requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation position pursuant to 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. For instance, whether "Lead[ing] Advanced Purchasing in the business acquisition process" is so specialized and complex that it requires knowledge usually associated with a specialized degree cannot be determined, absent a more concrete description of the duties the beneficiary would perform. The petitioner subsequently explained:

The Advanced Buyer role is a leadership position for advance technology sourcing and strategic roadmap definition. An Advanced Buyer is responsible to ensure that all engineering design records and specification requirements are properly understood by [the petitioner's] suppliers and that the process has the potential to produce products consistently and in line with engineering requirements during an actual production run at the quoted production rate. In order to ensure this, the Advanced Buyer leads Technical reviews with engineering and ensures engineering expectations and supplier designs for manufacturability are met.

This explanation, although somewhat more concrete, still does not reveal what about that duty, if anything, is so specialized and complex that it requires a specialized degree or the equivalent.

[L]eading the [Request for Quote] process . . . includ[ing] gathering global requirements the [Supplier Quality Engineer] and/or commodity team, formulating the [Requests for Information] and [Requests for Quotes], performing supplier identification, sourcing evaluation, negotiation, leading the selection process, and contracting activities" contains no indication that the duties described could not be performed without a specialized degree or the equivalent.

Similarly, "help[ing] to develop new global sourcing strategies," "Develop[ing] long-term supplier agreements and alliances," "Evaluat[ing] supplier processes," "monitor[ing] supplier performance," "managing total cost productivity," "ensur[ing] supplier performance," "creating and implementing strategic and tactical project plans," etc., are too abstractly stated for the AAO to determine that they require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Further, the petitioner revealed, in the two descriptions of the proffered position that state an educational requirement, that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

Finally, the AAO notes that counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.⁵ The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

⁵ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.

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 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 whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. 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.