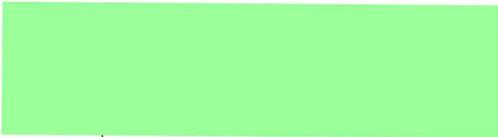


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U.S. Citizenship
and Immigration
Services



MAR 04 2013

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Office: CALIFORNIA SERVICE CENTER

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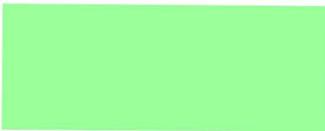
Petitioner:

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.

On the Form I-129 visa petition, the petitioner stated that it is a farm. To employ the beneficiary in what it designates as a farm manager, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed.

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 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Hog Farm Manager position, and corresponds to Standard Occupational Classification (SOC) code and title 11-9012.00, Farmers and Ranchers from the Dictionary of Occupational Titles (DOT) maintained by the United States Department of Labor (DOL).

With the visa petition, counsel submitted evidence that the beneficiary has a bachelor's degree in agriculture. Counsel also submitted, *inter alia*, an undated letter from the petitioner's president.

In her letter, the petitioner's president stated that the petitioner would value an employee in the proffered position with sensitivity for cultural and behavioral differences between the petitioner's other employees. She further stated that the petitioner is planning to develop its own artificial insemination station, and needs a manager who understands the operation of such a unit. She stated that the proffered position requires a minimum of a bachelor's degree in agriculture or agronomy.

In his letter dated December 31, 2010, counsel stated the following as the duties of the position:

Security: Oversee the maintenance and security of farm, livestock, equipment, buildings, and public safety.

Animal Husbandry: Be responsible for the daily welfare and care of livestock including feeding, watering, and management of swine herd as directed.

Record Keeping: Be responsible for keeping records: a) daily work on farm (work log), b) daily feed schedule (record grain provided to group, c) breeding assignments and farrowing schedule (sow record sheet).

Maintenance: Responsible for general maintenance and upkeep of buildings, farm equipment, tractor and implements, and generator. All farm equipment is to be used only by the farm manager or other persons legally employed on the farm.

Counsel also stated that the proffered position requires a bachelor's degree in agriculture or agronomy.

On January 20, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence to demonstrate that the petitioner would employ the beneficiary in a specialty occupation.

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In response, counsel submitted, *inter alia*, (1) two revised descriptions of the duties of the proffered position; (2) an undated letter from a doctor of veterinary science at the petitioner's former employer in Poland;¹ (3) a letter, dated January 27, 2011, from the petitioner's president, and (4) six vacancy announcements. The vacancy announcements will be addressed below.

One revised description of the duties of the proffered position includes all of the duties previously stated in counsel's December 31, 2010 letter, and the following additional duties:

Research: Assist in directing, organizing, and coordinating farming and research operation activities.

Supervision: Directly supervise employees with responsibilities such as interviewing, hiring, and training employees.

Management: Direct work of employees, appraise performance, award and discipline employees, and address and resolve complaints and problems.

The other revised description of the duties of the proffered position was stated as follows:

Specific Job Duties/Percentage of Time to be Spent on Each Duty

Maintain the security of the farm, livestock, equipment, and buildings:	5%
Feed water, and manage the swine herd:	1%
Keep a daily work log:	5%
Keep a daily feed schedule:	6%

¹ The doctor of veterinary science stated that, although small farms do not require it, a bachelor's degree in agriculture is the minimum educational requirement for managers of large farming operations. He stated that his observations of farming operations around the world support this view. The doctor of veterinary science also cited a book on farm management written by a professor at a university in India as stating, "education on at least bachelor level [sic] is an essential foundation for a farm manager in present business environment."

The AAO observes, initially, that 8 C.F.R. § 214.2(h)(4)(ii) makes clear that, for the purposes of H-1B visa petitions, a specialty occupation is one that requires a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into the position *in the United States*. The veterinary doctor in Poland did not indicate whether his experience in various countries includes experience in the United States. Further, the professor in India did not make clear whether his apparently universal assertion includes United States operations. Further still, although the quote from the professor in India indicates that farm manager positions require a bachelor's degree, that quote contains no indication that they require a bachelor's degree *in any specific specialty*.

Research and operation activities:	8%
Supervise employees:	30%
Interview, hire, and train employees:	Varied % depending on need
Plan, assist, and direct work:	25%
Reward and discipline employees:	10%
Address complaints and resolve problems:	<u>10%</u>
TOTAL:	100%

In her January 27, 2011 letter, the petitioner's president stated the following additional duties of the proffered position:²

- 1) Assist in directing[,] organizing and coordinating farming and research activities to ensure maximum output from our sows.
- 2) Directly supervising employees with responsibilities including interviewing, hiring, and training employees.
- 3) Planning, assisting, and directing work.
- 4) Appraising performance.
- 5) Rewarding and discipline [sic] employees.
- 6) Addressing complaints and resolving problems.

The petitioner's president also stated:

The majority of [the beneficiary's] day will be spent overseeing employees and directing farm operations. With 50+ employees this job requires a person with training and skill in not only farming, but more importantly in employee management. Skills that undoubtedly require additional training including a bachelor's degree.

The director denied the petition on February 14, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

² The author of that letter, [REDACTED], is identified in that letter as the petitioner's CEO, but elsewhere in the record as the petitioner's president. For simplicity's sake, the AAO will refer to her as the petitioner's president throughout this decision.

On appeal, counsel asserted:

[The petitioner] has indicated in no uncertain terms that it needs a manager with at least a bachelor's degree in agriculture or agronomy to act as the manager of its sophisticated, multimillion-dollar farm operation. *Please see Exhibit "G."* [The petitioner] also has established the complexity of its job requirements, and its past, present and future need for a manager with a baccalaureate degree in the specialty occupation. It is also readily apparent that this petitioner is not unique or even unusual in its insistence upon a baccalaureate degree in this specialty occupation. *Please see Exhibit "L."*

Exhibit G is the petitioner's president's undated letter, submitted with the visa petition. Exhibit L is a description of the proffered position submitted with the visa petition on counsel's letterhead. The same description appears in counsel's December 31, 2010 letter.

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

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty, is normally the minimum requirement for entry into the particular position. The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The petitioner claims in the LCA that the proffered position falls under the occupational category "Farmers and Ranchers."

In the "Farmers, Ranchers, and Other Agricultural Managers" chapter, the *Handbook* provides the following description of the duties of those positions:

- Farmers, ranchers, and other agricultural managers typically do the following:
- Supervise all steps of the crop production and ranging process, including planting, fertilizing, harvesting, and herding
 - Determine how to raise crops or livestock according to factors such as market conditions, federal program availability, and soil conditions
 - Select and purchase supplies, such as seed, fertilizers, and farm machinery
 - Operate and repair farm machinery so it cultivates, harvests, and hauls crops
 - Adapt what they do as needed for weather and where the crop is in its growing cycle

³ 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.

- Maintain farm facilities, including its water pipes, hoses, fences, and animal shelters
- Serve as the sales agent for livestock and crops
- Keep financial, tax, production, and employee records

American farmers, ranchers, and other agricultural managers produce enough food and fiber to meet the needs of the United States and for export. However, farm output and income are strongly influenced by weather, disease, fluctuations in prices, and federal farm programs.

Farmers, ranchers, and other agricultural managers monitor the constantly changing prices for their product. They use different strategies to protect themselves from unpredictable changes in the markets.

Many farmers carefully plan the combination of crops that they grow, so if the price of one crop drops, they will have enough income from another crop to make up the loss. When farmers and ranchers plan ahead, they may be able to store their crops or keep their livestock to take advantage of higher prices later in the year.

Most farm output goes to food-processing companies. However, some farmers now choose to sell their goods directly to consumers through farmer's markets or use cooperatives to reduce their financial risk and gain a larger share of the final price of their goods. In community-supported agriculture, cooperatives sell shares of a harvest to consumers before the planting season to ensure a market for the farm's produce.

Farmers, ranchers, and other agricultural managers also negotiate with banks and other credit lenders to get financing because they must buy seed, livestock, and equipment before they have products to sell.

Farmers and ranchers own and operate mainly family-owned farms. They also may lease land from a landowner and operate it as a working farm.

The size of the farm or range determines which tasks farmers and ranchers handle. Those who operate small farms or ranges usually do all tasks. In addition to growing crops and raising animals, they keep records, service machinery, and maintain buildings.

Those who operate large farms, however, have employees—including agricultural workers— who help with physical work. Some employees of large farms are in nonfarm occupations, working as truck drivers, sales representatives, bookkeepers, and IT specialists.

Both farmers and ranchers operate machinery and maintain their equipment and facilities. They track technological improvements in animal breeding and seeds, choosing new products that might improve output.

Agricultural managers take care of the day-to-day operation of one or more farms, ranches, nurseries, timber tracts, greenhouses, or other agricultural establishments for corporations, farmers, or owners who do not live and work on their farm or ranch.

Agricultural managers usually do not do production activities themselves. Instead, they hire and supervise farm and livestock workers to do most daily production tasks.

Managers may determine budgets. They may decide how to store and transport the crops. They oversee proper maintenance of equipment and property.

The following are some types of farmers, ranchers, and other agricultural managers:

Crop farmers and managers—those who grow grain, fruits and vegetables, and other crops—are responsible for all steps of plant growth. After a harvest, they make sure that the crops are properly packaged and stored.

Livestock, dairy, and poultry farmers, ranchers, and managers feed and care for animals. They keep livestock in barns, pens, and other well-maintained farm buildings. These workers also oversee breeding and marketing.

Horticultural specialty farmers and managers oversee the production of fruits, vegetables, flowers, and plants (including turf) used for landscaping. They also grow grapes, berries, and nuts used in making wine.

Aquaculture farmers and managers raise fish and shellfish in ponds, floating net pens, raceways, or recirculating systems. They stock, feed, protect, and maintain aquatic life used for food and for recreational fishing.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Farmers, Ranchers, and Other Agricultural Managers," <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-2>. (last visited Feb. 20, 2013).

The duties the petitioner's president attributed to the proffered position are consistent with the duties of farmers, ranchers, and other agricultural managers as described in the *Handbook*. The AAO finds that the proffered position is such a position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of farmers, ranchers, and other agricultural manager positions:

Farmers, ranchers, and other agricultural managers typically gain skills through work experience and usually have at least a high school diploma. Traditionally, experience growing up on or working on a family farm or ranch was the most common way farmers and ranchers learn their trade.

However, as farm and land management has grown more complex, more farmers, ranchers, and other agricultural managers now have a bachelor's degree in agriculture or a related field. In addition, a number of government programs help new farmers get training.

Education

Most farmers, ranchers, and other agricultural managers have a high school diploma. Completing a degree at a college of agriculture is becoming important for workers who want to make a living from this occupation.

All state university systems have at least one land-grant college or university with a school of agriculture. Common programs of study include business with a concentration in agriculture, farm management, agronomy, dairy science, and agricultural economics.

At an agricultural college, students learn about crops, growing conditions, and plant diseases.

Prospective ranchers and dairy farmers, on the other hand, learn basics of veterinary science, including how pesticides can affect livestock.

Id. at <http://www.bls.gov/ooh/management/farmers-ranchers-and-other-agricultural-managers.htm#tab-4> (last visited Feb. 20, 2013).

While the *Handbook* indicates that a bachelor's degree in agriculture is becoming more common among farmers, ranchers, and agricultural managers, it does not suggest, however, that such a degree is a minimum requirement for entry into such positions in the United States.

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 swine production and farm management, 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, 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.

As stated earlier, 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 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 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 only letter from an individual with another organization in the petitioner's industry is the letter from the veterinary doctor in Poland. As was noted above, that letter contains no indication that its writer is familiar with the educational requirements of hog farm manager positions in the United States. Further, even if that letter stated that parallel hog farm manager positions in operations similar to the petitioner in the United States required a minimum of a bachelor's degree in a specific specialty or its equivalent, the letter of a single veterinarian would not credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

As was noted above, in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of six vacancy announcements, which are described below.

1. An announcement for an agricultural farm manager, placed by [REDACTED] in Sebring, Florida, which states: "BS degree in Agriculture, Farm Management, Crop Science, Horticulture, or related degree *preferred*." [Emphasis supplied.]
2. An announcement for a Swine Farm Manager-in-Training, placed by an unidentified firm in Lima, Ohio, states that the position requires a degree in animal science:

3. An announcement placed by [REDACTED], of Florida, for a Farm Manager, states, "BS degree preferred."
4. An announcement placed by [REDACTED], of Ventura, California, for a Farm Manager, states, "four[-]year degree in a Ag[-]related field is highly desired."
5. An announcement placed by [REDACTED] for an Assistant Farm Manager (Vegetables Division) to work at its Woodland, California research station states, in the Qualifications section, "BS in Agronomy, Horticulture, Crop Science or related field of study."
6. An announcement placed by an unidentified company for a Sow Farm Manager for a 2,300-sow unit states, "Position Requirements: B.S. Degree in Animal Science or equivalent education/work experience"

While the second and fifth announcements respectively state that the advertised positions require a degree in animal science and a BS in Agronomy, Horticulture, Crop Science or related field of study, the petitioner has not demonstrated that the advertised positions are parallel positions. Specifically, while the second announcement is for a position at a swine farm, it is for a manager "in-Training" position whereas the proffered position is a manager position. The fifth advertisement is for a position with [REDACTED], a company that has not been demonstrated to be similar to the petitioner in terms of its size and the type and level of services provided such that they could be found to be similar organizations. As such, the record lacks sufficient evidence demonstrating that the advertised positions are parallel positions.

The first announcement speaks of a degree in agriculture, farm management, crop science, horticulture, or a related area, but indicates that the degree is "preferred." Similarly, the third and fourth announcements only state a preference, rather than a minimum requirement. 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.

The sixth announcement refers to a degree in animal science; however, it also indicates that some amount of experience and/or education would be deemed equivalent to such a degree and accepted in lieu of a degree in animal science. What work experience the hiring authority would consider to be equivalent to a bachelor's degree in animal science is unknown to the AAO. As such, that vacancy announcement does not make clear that the position it describes requires a minimum of a bachelor's degree in a specific specialty or its equivalent within the meaning of the salient regulations (*C.f.* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)), and the AAO is unable to make an independent determination that it does.

Thus, for the reasons discussed above, the documentation provided does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.⁴

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

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

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which may be 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 little evidence that would differentiate the work of the proffered position from the work of swine farm manager positions or agricultural manager positions in general. The duties of the proffered position (such as overseeing maintenance and security; being responsible for the care of swine; being responsible for keeping records; and being responsible for general maintenance) are described in terms of generalized farm manager duties, and so have not been shown to be more complex or unique than the duties of other swine farm manager positions, or other agricultural manager positions, which the *Handbook* indicates may not require a minimum of a bachelor's degree in a specific specialty or its equivalent. Moreover, counsel and the petitioner's president did not specifically identify any specific tasks that are so complex or unique that only a specifically degreed individual could perform them. Thus, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

⁴ 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 swine production facilities. 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 farm manager for a swine producer 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 may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The AAO will next address the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁵ On appeal, counsel asserted that the petitioner had established its past need for a manager with a specialized degree. Elsewhere, the record appears to indicate that the petitioner has never previously filled the proffered position. In any event, 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).

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 of the position 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. Overseeing farm security; being responsible for the care of livestock; being responsible for keeping records; and being responsible for general farm maintenance are positions normally within the scope of the duties of typical farm manager or other agricultural manager positions. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than farmer, rancher, and other agricultural manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

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

⁵ 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").

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

As a final matter, it is noted that counsel refers to an unpublished decision in which the AAO determined that the position of "Dairy Management Specialist" proffered in that matter qualified as a specialty occupation. Counsel has furnished no evidence, however, to establish that the facts of the instant petition are analogous to those in the unpublished decision. Further, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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