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



U.S. Citizenship
and Immigration
Services

DATE **JUN 06 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

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

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

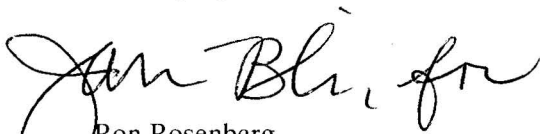
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "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.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a 24-employee "Flight school and aircraft rentals" firm established in 1998. In order to employ the beneficiary in what it designates as a "Manager Administrator of a flight school" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director 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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as 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, a proposed 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 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.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Management Administrator position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3071, Transportation, Storage, and Distribution Managers from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in sociology from the [REDACTED] in sociology. An evaluation in the record states that the beneficiary's degree is equivalent to a bachelor's degree in sociology awarded by a regionally accredited college or university in the United States. Counsel also submitted a copy of the beneficiary's résumé and evidence pertinent to training the beneficiary has received in aircraft mechanics, flight instruction, and pilot safety.

Yet further, counsel submitted descriptions of the petitioner's business and counsel's own letter, dated March 11, 2013. In her letter, counsel asserted that, if the visa petition were approved, the beneficiary would work as the Manager/Administrator of both the petitioner's flight school and the petitioner's aircraft rentals. Counsel stated that the petitioner currently has eleven employees.¹

Counsel described the following as the duties of the proffered position:

¹ The visa petition, filed on April 1, 2013, states that the petitioner has 24 employees. Counsel's letter, submitted with that visa petition, states that the petitioner has eleven employees. An organizational chart in the record indicates that the petitioner's organization has 13 positions, including three pilot positions, two of which are vacant. It identifies the petitioner's eleven current employees by name.

- Responsible for coordinating and managing the company's tours and flight instruction
- Participate in special aviation related workshops and program activities as needed
- Implements company policies and practices that affect each phase of business
- Works with senior level executive to acquire knowledge of methods, procedures, and standards for performance of duties
- Responsible for managing information related to organization, problem solving and trouble shooting
- Liaison with Japanese travel agencies in the U.S. and abroad and translate and interpret with agencies and clientele
- Japanese office representative for recruited Japanese students
- Maintain customer accounts and other administrated [sic] related activities
- Confer with executive management issues involving operations, finances, and equipment
- Conducts industry research to maintain up-to-date information
- Performs other functions as necessary

Counsel stated that the proffered position requires a "Bachelor's Degree in Aeronautics or the equivalent education and experience." Counsel also stated:

[The beneficiary's] formal training in the field of aviation includes a Certificate of Completion "Aircraft Mechanics," at the [REDACTED], in Quebec (April 2008); a Certificate of Graduation for Completion Of an FAA-Approved Flight Instructor Refresher Clinic at [REDACTED] in [REDACTED] CA in May 2000; a Certificate of Completion for a Pilot Safety Course in [REDACTED] CA in April 2003.

The evidence of record does not, however, establish that the beneficiary has a bachelor's degree in aeronautics or the equivalent in education and experience.

On April 24, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) evidence pertinent to a six-day course offered by the [REDACTED] (2) evidence pertinent to a curriculum culminating in a degree in aviation management offered by the [REDACTED] (3) seven vacancy announcements; (8) a letter, dated July 14, 2013, from a person in the aviation industry; (9) the résumé of that person; (10) an organizational chart of the petitioner's operations; and (11) counsel's own letter, dated July 11, 2013.

The evidence pertinent the [REDACTED] indicates that it offered a course in Managing the Corporate Aviation Function which ran from March 9, 2014 to March 14, 2014.

The evidence pertinent to [REDACTED] indicates that it offers a curriculum entitled Aviation Management which may lead to a position as an airport manager, an airport operations manager, or a human resources manager in an aviation setting.

The author of the July 14, 2013 letter identified himself as [REDACTED] and stated that he works for [REDACTED] LLC as a pilot. He stated that he believes the beneficiary is qualified for the proffered position and, "In recent years, all major airlines and commuter are hiring only Bachelor's or higher level for their management level and most companies state 'Aviation Degrees' is preferred." (Errors in the original.) Mr. [REDACTED]'s résumé states that he has a bachelor's degree in civil engineering.

In his July 11, 2013 letter, counsel described the petitioner's operations at length. She also provided a list of duties that is substantially the same as that provided with her May 11, 2013 letter. Counsel asserted that the proffered position requires a "Bachelor's Degree in Aeronautics or the equivalent education, experience and training." Counsel argued that the evidence submitted satisfies the requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A), but did not then assert or otherwise establish that the beneficiary has a bachelor's degree in aeronautics or the equivalent.

The director denied the petition on July 29, 2013, 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, *inter alia*, (1) a revised list of the duties of the proffered position; and (2) a brief.

The revised list of duties is as follows:

Aviation Operations

1. Aviation Operations Department 10% of duty

- Assign and schedule an appropriate pilot/instructor to conduct:
 1. Primary flight instruction under 14 CFR Part 61
 2. Air tour operations under the 91 Letter of Authorization; or
 3. Aircraft rental insurance competency evaluations.
- Verify pilot qualifications to include:
 1. Airman certifications and ratings –
 - ✓ Certificate Class – ATP, Commercial, etc.
 - ✓ Ratings – ASEL, AMEL, ASES, AMES, Rotorcraft Helicopter, etc.
 2. Instructor certificates and ratings –
 - ✓ CFI – airplane / rotorcraft
 - ✓ CFII – airplane /rotorcraft
 - ✓ MEI – airplane

3. Medical certificate classification – 1st, 2nd, or 3 class.
4. Experience and flight time in various aircraft categories and classes:
 - ✓ Airplane Single and Multi Engine Land
 - ✓ Rotorcraft Helicopter
5. Insurance Requirements: based on pilots experience and flight time
6. Currency requirements including but not limited to:
 - Flight review required by 14 CFR 61.56
 - Landing and instrument currency to serve as pilot-in-command
 - Any other requirements specified by the company:
 - Rental insurance competency evaluations

2. FAA Regulatory Compliance 10% of duty

- Maintenance
 1. Serve as a liaison between pilots and mechanics to determine the following scheduled maintenance has been completed on company aircraft:
 - ✓ Annual Inspections (to include ELT)
 - ✓ 100 hour inspections
 - ✓ Transponder, Static system, and altimeter 24 month inspections
 - ✓ Any applicable airworthiness Directive, Service Bulletin, or additional inspections specific to a particular company aircraft make, model, or type.
 2. Serve as a liaison between pilots and mechanics to determine the following unscheduled maintenance has been completed on company aircraft:
 - ✓ Resolution of documented aircraft discrepancies (i.e. pilot squawks)
 - ✓ Any additional maintenance required or is necessary before a scheduled inspection (i.e. tires, brakes, time-out components, etc.)
 3. Serve as a liaison between pilots and mechanics to determine the completion of all scheduled or un-scheduled maintenance is documented in the appropriate aircraft log by an appropriately certificated mechanic or inspector prior to returning an aircraft to service.
- Safety operations
 1. Conduct safety briefings with pilots to assist in standardization and the timely communication of any safety related information.
 2. Provide training on the location and use of:
 - ✓ fire extinguishers (in the aircraft and in the facilities)
 - ✓ life vests (use of an number required for the proposed operation)
 - ✓ life rafts (use of and number required for the proposed operation)
 3. Monitor company pilots' daily adherence to:
 - ✓ aircraft weight and balance limitations
 - ✓ fuel requirements and reserves necessary for the intended flight operation
 - ✓ any forecast or un-forecast weather that may affect the safety of the flight
- Scheduling

1. Provide oversight of aircraft scheduling to ensure the greatest utilization of company equipment.

3. Weather analysis and survey area 5% of duty

- Ensure pilots have access to area weather services by:
 1. Periodically checking the operation and internet access of all company computers made available for flight planning.
 2. Communicating any known forecast or un-forecast weather to pilots that may affect the safety of the flight
- Provide area knowledge assistance to all visiting airmen renting aircraft by:
 1. Ensuring the availability of a current Hawaiian Island VFR Sectional Chart, Pacific Chart Supplement, and IRF low altitude en-route chart for flight planning and/or purchase.

4. Day to day planning 30% of duty

- Primary duties include ensuring:
 1. Aircraft and personnel are available for the flight operations intended
 2. Adherence to the proposed daily schedule is continued
 3. The rescheduling, as necessary, or any operations that are cancelled or delayed as the result of
 - ✓ Aircraft maintenance
 - ✓ Weather
 - ✓ Any other condition internal or external
- Collateral duties include serving as the primary customer service liaison when:
 1. Booking reservations
 2. Arranging local ground transportation of clientele to the airport (if necessary)
 3. Coordinating clientele's arrival at the company facility
 4. Coordinating the completion of administrative paperwork to include:
 - ✓ The completion and signing of any necessary waivers; and
 - ✓ Completion of payment for services
 5. Briefing the route of flight, safety related items, and answer any questions
 6. Coordinating the flight details with the assigned pilot
 7. Arranging local ground transportation of clientele from the airport (if necessary)

5. Business development 15% of duty

- Primary Duty
 1. To serve as a company liaison to increase Japanese tour customers or flight school students by:
 - ✓ Ensuring a fluent Japanese speaking person is available to assist Japanese customer walk-ins and phone calls
 - ✓ Coordinating the development and maintenance of a company internet web-site in Japanese.
 - ✓ Establishing a relationship with a travel agency to promote:
 - Marketing to Japanese clients

- Reservation assistance; and
- Customer follow-up assistance

6. Customer service and reliability 30% of duty

- Ensuring a professional image and strong safety culture are the company's highest priorities and that these commitments are projected at all times to the general public.
- Ensuring the customer is notified in a timely manner of any actual or projected delays in operations.
- Ensuring the necessary customer paperwork is efficiently processed and filed before initiating any flight operation.
- Ensuring the rescheduling of flights or processing of refunds is completed in a professional manner with a strong commitment to exceptional customer service.

[Errors in original]

In his appeal brief, counsel provided the following description of the duties of the proffered position:

Responsible for coordinating and managing the company's tours and flight instruction, this requires [sic] Aviation Operations experience along with assigning and scheduling pilots that are experienced and licensed.

Beneficiary will participate in special aviation related workshops and program activities as needed to provide the company continued qualified and expanded services to its clientele.

Beneficiary will implement company policies and practices that affect each phase of the business by providing knowledge assistance to all visiting airman renting the aircraft, periodically checking the operation and internet access of all company computers made available for flight planning, communicating any known forecast weather to pilots that affect safety of the flight(s), he also ensure the availability of current Hawaii Island VFR sectional chart, Pacific Chart supplement, and IFR low altitude en-route chart for flight planning and/or purchase.

Beneficiary's [d]ay to day planning duties is [sic] to ensure Aircraft and personnel are available for the flight operations. He also adheres to the proposed daily schedules and [they are] followed by personnel involved in flight operations. In addition, Beneficiary will need his knowledge and experience currency requirement along with in flight review as required by 14 CFR 61.58. He also verifies certification Class and ratings for pilots: ATP, Commercial, ASEL, AMEL, AMES, Rotorcraft Helicopter, etc. of each the company pilots.

Beneficiary will work [sic] with senior level executive to acquire knowledge of methods, procedures, and standards for performance duties. This will require the

beneficiary to ensure a professional image and strong safety culture as the highest priorities and that these commitments are provided at all times to the general public.

Beneficiary is responsible for managing information related to the organization, problem solving and trouble shooting. To ensure [these] duties the Beneficiary is expected the customer [sic] is notified in a timely manner of any actual or projected delays in operations, ensure the necessary customer paperwork is efficiently processed and filed before initiating any flight operations, ensure the rescheduling of flights or processing of refunds is completed in a professional matter with strong commitment to exceptional customer service.

Beneficiary will also serve as liaison to increase Japanese tour customers or flight school student[s] by: Ensuring a fluent Japanese speaking person available to assist Japanese customer walk-ins and phone calls, Coordinating the development and maintenance of a company internet web-site in Japanese and establishing a relationship with a travel agency to promote: **marketing to Japanese clients, reservation assistance; and customer follow-up assistance.**

Beneficiary will prepare maintenance reports by serving as liaison between pilots and mechanic to determine the following scheduled maintenance: **FAA Regulatory Compliance; Annual Inspection (to include ELT), 100 hour inspections, Transponder State system, and altimeter 24 months inspections specific to a particular company aircraft make, model, or type.** Further, Beneficiary while serving as a liaison between pilots and mechanic will also determine the following unscheduled maintenance has been completed in company aircraft: **Resolution of document aircraft discrepancies (i.e. pilot squawks) and any additional maintenance required or is necessary before a scheduled inspection. (i.e. tires, brakes, time-out components, etc)**

Beneficiary will determine the completion of all scheduled or un-scheduled maintenance by: documenting the appropriate aircraft log and documentation is documented by certified mechanic or inspector prior to returning an aircraft to service.

Beneficiary's collateral duties: serving as the primary customer service liaison when: will include: **Booking reservations, arranging local ground transportation of clientele to the airport (if necessary), coordinating the completion of administrative paperwork to include;**

- **The completion and signing of any necessary waivers; and**
- **Completion of payment for services**

Beneficiary's [sic] will develop and maintain good business relations with key industry personnel, pilots, maintenance workers, administrative workers, media, FAA inspectors and audit, advertisers and vendors to ensure company goals are met.

As to the beneficiary's qualifications for the proffered position, counsel stated:

[USCIS] should also reconsider the Beneficiary's Resume, Aviation Certifications, and Aviation Licenses from Canada and the United States. Although the Beneficiary is a graduate of Sociology his work experience in the field of Aviation span[s] several years. [USCIS] failed to the Beneficiary [sic] attained a Diploma, 2 Certifications along with FAA Licenses from Canada and the United States.

Beneficiary's Sociology degree, Aviation diploma, certifications, licenses and work experience in the Aviation industry satisfies the CFR 101(a)(15)(H)(1)(b) [sic] and INA 214(i)(i): [sic].

The Beneficiary has more than a bachelor's degree in the professional field including education and training in the Aviation Industry. Granted, Beneficiary graduated with a degree in Sociology, the Petitioner also considered his education and training in Aviation along with his FAA Licenses as the proffered position is so specialized, unique and complex. 8 C.F.R. 214(h)(4)(iii)(A)(2).

Although the director did not raise the issue of the beneficiary's qualifications in the decision of denial, that issue will nonetheless be discussed below.

IV. SPECIALTY OCCUPATION ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the supplemental criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and

educational requirements of the wide variety of occupations that it addresses.² The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-3071, Transportation, Storage, and Distribution Managers from O*NET. The *Handbook* does not contain a chapter dedicated to those positions, but it describes the work of positions falling within the "Administrative Services Managers" occupational category as follows:

What Administrative Services Managers Do

Administrative services managers plan, direct, and coordinate supportive services of an organization. Their specific responsibilities vary by the type of organization and may include keeping records, distributing mail, and planning and maintaining facilities. In a small organization, they may direct all support services and may be called the *business office manager*. Large organizations may have several layers of administrative managers who specialize in different areas.

Duties

Administrative services managers typically do the following:

- Buy, store, and distribute supplies
- Supervise clerical and administrative personnel
- Set goals and deadlines for the department
- Develop, manage, and monitor records
- Recommend changes to policies or procedures in order to improve operations, such as changing what supplies are kept or how to improve recordkeeping
- Plan budgets for contracts, equipment, and supplies
- Monitor the facility to ensure that it remains safe, secure, and well maintained
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems
- Ensure that facilities meet environmental, health, and security standards and comply with government regulations

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. An organization may have several managers who oversee activities that meet the needs of multiple departments, such as mail, printing and copying, recordkeeping, security, building maintenance, and recycling.

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 2014 – 2015 edition available online.

The work of administrative services managers can make a difference in employees' productivity and satisfaction. For example, an administrative services manager might be responsible for making sure that the organization has the supplies and services it needs. In addition, an administrative services manager who is responsible for coordinating space allocation might take into account employee morale and available funds when determining the best way to arrange a given physical space.

Administrative services managers also ensure that the organization honors its contracts and follows government regulations and safety standards.

Administrative services managers may examine energy consumption patterns, technology usage, and office equipment. For example, managers may recommend buying new or different equipment or supplies in order to lower energy costs or improve indoor air quality.

Administrative services managers also plan for maintenance and the future replacement of equipment, such as computers. A timely replacement of equipment can help save money for the organization, because eventually the cost of upgrading and maintaining equipment becomes higher than the cost of buying new equipment.

The following are examples of types of administrative services managers:

Contract administrators handle buying, storing, and distributing equipment and supplies. They also oversee getting rid of surplus or unclaimed property.

Facility managers oversee buildings, grounds, equipment, and supplies. Their duties fall into several categories, including overseeing operations and maintenance, planning and managing projects, and dealing with environmental factors.

Facility managers may oversee renovation projects to improve efficiency or ensure that facilities meet government regulations and environmental, health, and security standards. For example, they may influence building renovation projects by recommending energy-saving alternatives or efficiencies that reduce waste. In addition, facility managers continually monitor the facility to ensure that it remains safe, secure, and well maintained. Facility managers also are responsible for directing staff, including maintenance, grounds, and custodial workers.

Records and information managers develop, monitor, and manage an organization's records. They provide information to executive management, and they ensure that employees throughout the organization follow information and records management guidelines.

The duties attributed to the proffered position, in the various duty descriptions provided, are consistent with the duties of Administrative Services Managers as described in the *Handbook*. On the balance, the AAO finds that the proffered position is an Administrative Services Manager position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of positions falling within the Administrative Services Managers occupational category:

How to Become an Administrative Services Manager

Educational requirements vary by the type of organization and the work they do. They must have related work experience.

Education

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, some administrative services managers need at least a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

Licenses, Certifications, and Registrations

The International Facility Management Association offers a competency-based professional certification program for administrative services managers. Completing this program may give prospective job candidates an advantage. The program has two levels: the Facilities Management Professional (FMP) certification and the Certified Facility Manager (CFM) certification. People entering the profession can get the FMP as a steppingstone to the CFM. For the CFM, applicants must meet certain educational and experience requirements.

Work Experience

Administrative services managers must have related work experience reflecting managerial and leadership abilities. For example, contract administrators need experience in purchasing and sales, as well as knowledge of the variety of supplies, machinery, and equipment that the organization uses. Managers who are concerned with supply, inventory, and distribution should be experienced in receiving, warehousing, packaging, shipping, transportation, and related operations.

Advancement

Advancement of facility managers is based on the practices and size of individual organizations. Some facility managers transfer among departments within an organization or work their way up from technical positions. Others advance through a progression of facility management positions that offer additional responsibilities. Advancement is easier in large organizations that employ several levels and types of administrative services managers.

A master's degree in business administration or a related field can enhance a manager's opportunities to advance to higher level positions, such as director of administrative services. Some experienced managers may join or establish a management consulting firm to provide administrative management services to other organizations on a contract basis.

Important Qualities

Analytical skills. Administrative services managers must be able to review an organization's procedures and find ways to improve efficiency.

Communication skills. Much of an administrative services manager's time is spent working with other people. Therefore, communication is a key quality.

Detail oriented. Administrative services managers must pay attention to details. This quality is necessary across a range of tasks, from ensuring that the organization complies with building codes to managing the process of buying equipment.

Leadership skills. In managing workers and coordinating administrative duties, administrative services managers must be able to motivate employees and deal with issues that may arise.

Id. at <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4> (last visited Apr. 30, 2014).

The *Handbook* makes clear that not all positions falling within the administrative services manager occupational category require a minimum of a bachelor's degree in a specific specialty or the equivalent, as it indicates that a high school diploma is sufficient for some positions. Further, even as to those administrative services manager positions that may require a bachelor's degree, the *Handbook* does not indicate that the degree must be in any specific specialty, as it indicates that a degree in business, engineering, or facility management may suffice.³

³ As will be explained in more detail below, 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. *Cf. Matter of Michael Hertz Associates*, 19 I&N

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

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

To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Finally, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of

Dec. 558 (Comm'r 1988). Further, as will also be explained, the field of engineering is so broad a category that it cannot be said to constitute a specific specialty.

knowledge, 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 evidence of record does not satisfy 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 (1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

In his July 14, 2013 letter, [REDACTED] stated that he works as a helicopter pilot, and claimed that major airlines and commuter airlines have recently hired only bachelor's-degree individuals in managerial positions and have expressed a preference for applicants with degrees in aviation. However, Mr. [REDACTED] did not state the basis for his assertions. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Further, Mr. [REDACTED] did not address the petitioner's industry, as the petitioner appears to be neither a major airline nor a commuter airline. Further still, although he indicated that those airlines prefer candidates with a degree in a specific specialty, a preference is not a minimum requirement. For all of those reasons, Mr. [REDACTED]'s letter does not support the assertion 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 parallel to the proffered position; and located in organizations that are similar to the petitioner.

The petitioner did submit seven 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. Aviation Business Program Manager for the City of Phoenix requiring a bachelor's degree in public or business administration, airport/aviation management, commercial property management, or a closely related field and "Five years of directly related professional experience in managing aviation business & properties[,] commercial airline/general aviation tenant relations, monitoring commercial contracts and/or leases, developing and negotiating airport property/terminal leases, property management, and contract compliance administration[,] AND Two years of this experience involving decision making responsibility for projects and programs;
2. Station Manager for Signature Flight Support stating, "Bachelor's Degree in Business, Aviation Management or related field preferred" and stating an a requirement of three years or more of management experience in aviation or a related field;
3. Manager – Maintenance Planning for Hawaiian Airlines requiring a minimum of a bachelor's degree in aviation management, industrial engineering, business administration, accounting, "or relevant field," and five years of experience in a supervisory position including three to five years of aircraft maintenance planning experience;
4. Regional Sales Account Manager – Aviation Sales for CAE Simuflite requiring a four-year "Degree in Business, Aviation Management or related field, or equivalent experience," and a minimum of three years' experience in business aviation sales;
5. Quality Manager for GE Aviation requiring "Bachelor's Degree from an accredited College or University (or a High School Diploma/GED with at least 4 years of experience in quality control systems and quality improvement methods for a manufacturing environment, and a "Minimum 5 additional years of experience in a quality control, improvement, or engineering role that provides leadership to cross-functional teams in the quality/process improvement environment";
6. Sub-Section Manager for GE Aviation requiring a bachelor's degree in engineering, physics, chemistry, mathematics, or computer science and a minimum of six years of experience in a program or project leadership role within an engineering department; and
7. Business Development Manager for BRPH Architects and Engineers requiring a "Bachelor's degree with 6 to 10 years of experience," or "Without a degree, 10 to 15 years of relevant [architecture, engineering, or construction] experience required."

The first, second, third, and fourth vacancy announcements indicate that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the positions they announce. However, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'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. For this reason, none of the first four vacancy announcements state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the fifth and seventh vacancy announcements do not indicate a requirement of a degree in a specific specialty. Nor do they indicate that a minimum of a bachelor's degree or its equivalent, within the meaning of the salient regulation, is required for those positions. That is, the fifth vacancy announcement indicates that four years of experience may be substituted for the otherwise requisite degree, and the seventh vacancy announcement indicates that four or five years of experience may be substituted. Four or five years of experience is not considered equivalent to a bachelor's degree pursuant to the salient regulation, which requires a minimum of three years of specialized training and/or work experience, and various other conditions, for each year of college-level training the alien lacks. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). For both reasons, the fifth and seventh vacancy announcements do not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, the sixth vacancy announcement states a requirement of a bachelor's degree in engineering, physics, chemistry, mathematics, or computer science. 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 either of two disparate fields, such as chemistry and computer science, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added).

Yet further, the sixth vacancy announcement indicates that an otherwise unspecified degree in engineering would be a sufficient educational qualification for the proffered position. 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., nuclear engineering and aerospace engineering. 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 engineering, without further specification, is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Even if the sixth vacancy announcement required a degree in engineering, with no alternatives, that would not be a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

For both reasons, the sixth vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Additionally, to satisfy the alternative requirement of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) the petitioner must also show that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for *parallel positions in the petitioner's industry in organizations similar to the petitioner*.

To demonstrate that one of the companies that placed those vacancy announcements is "similar" to the petitioner, the petitioner would be obliged to submit evidence sufficient to demonstrate that the petitioner and the other organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). As none of the vacancy announcements have been shown to have been placed by organizations similar to the petitioner, they are not persuasive evidence for the proposition that parallel positions in organizations similar to the petitioner and in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even further, the seventh vacancy announcement does not appear to have been placed by a company in the petitioner's industry.

Furthermore, although each of the vacancy announcements provided contains some indication of the duties to be performed in the positions announced, none is sufficiently described to demonstrate that it is truly for a position parallel to the proffered position.

Moreover, all of the advertised positions require experience, and some require considerable experience, whereas the petitioner has designated the proffered position to be a Level I position, that is, an entry level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. This distinction suggests that the positions announced in the vacancy announcements provided are not positions parallel to the proffered position, and that the requirements of the positions announced in

the vacancy announcements provided are not directly relevant to the requirements of the proffered position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and 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 seven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

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 parallel positions in organizations that are in the petitioner's industry and otherwise 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 petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, although counsel submitted information about relevant courses of study leading to a specialty degree, counsel did not establish how a degree in such a curriculum is necessary to perform the duties of the proffered position, or why a degree in an unrelated specialty would not also provide adequate preparation. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I position, an indication that the proffered position is an entry-level position for an employee

⁴ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

who has only a basic understanding of such positions. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some similarly classified positions do not require such a degree.

To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Therefore, the evidence of record does not establish that this position is significantly different from other positions within the occupational category such that it refutes the *Handbook's* information to the effect that there is a spectrum of educational requirements for such positions. Some require only a high school diploma and some may require a degree but not a degree in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Although the petitioner was established in 1998, 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).⁵

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.

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 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 section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as maintaining liaison with Japanese travel agencies, ensuring that a Japanese-speaking representative is available to speak with Japanese customers, developing and maintaining a website, scheduling pilots and instructors, verifying pilot qualifications, coordinating paperwork, rescheduling operations as necessary and notifying customers of delays, serving as a liaison between pilots and mechanics, providing safety training, and monitoring pilot adherence to safety requirements, have not been shown to be of a nature 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. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of administrative services manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I position, a position for a beginning level employee with only a basic understanding of such positions. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty directly related to the proffered position, or its equivalent, especially as the *Handbook* indicates that some administrative services manager positions require no such degree.

For all of the reasons above, the proposed duties of the proffered position have not been shown to be of a nature so specialized and complex that they are usually associated with at least a bachelor's degree in a specific specialty or its equivalent, and the evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Finally, the AAO does not find persuasive the petitioner's claim that the proffered position requires work experience in order to perform its duties. In other words, the petitioner's imposition of a work experience requirement does not establish the proffered position as a specialty occupation under any of the criteria discussed above.

The AAO notes that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. See *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). The AAO does not find, however, that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner. Instead, USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. Furthermore, the AAO does not find (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when

there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. at 560 ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Second, in promulgating the H-1B regulations, the former Immigration and Naturalization Service (INS) made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

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

IV. ADDITIONAL BASIS FOR DENIAL

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

Counsel asserted, in her March 11, 2013 letter, that the proffered position requires a "Bachelor's Degree in Aeronautics or the equivalent education, experience and training." The evidence indicates that the beneficiary has a bachelor's degree in sociology, considerable training pertinent to aeronautics, and several years of relevant experience. An evaluation in the record states that the beneficiary's degree is equivalent to a bachelor's degree in sociology awarded by a regionally accredited college of university in the United States. Counsel asserted, further, that the beneficiary's education, training, and experience are "more than a bachelor's degree in the professional field." However, counsel did not provide any evidence to corroborate his assertion that the beneficiary has the equivalent of a minimum of a bachelor's degree in aeronautics or explain by what objective standard she has deemed that training, education, and experience equivalent to such a degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec.

533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Because the beneficiary does not have a bachelor's degree in aeronautics, counsel seeks to show that the beneficiary has the equivalent of such a degree. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) indicates that demonstrating that equivalence requires one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁶
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

Counsel has not provided an evaluation as described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), indicating that the beneficiary's education, combined with his training and/or employment experience, is equivalent to a minimum of a bachelor's degree in aeronautics.

Nor has counsel provided any of the evidence described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(2).

The evaluation described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is an evaluation of education only, not including other pertinent training or employment experience. The record contains no such evaluation of education alone that indicates that the beneficiary has the equivalent of a minimum of a bachelor's degree in aeronautics.

⁶ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training or experience.

The record contains none of the evidence described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(4).

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which allows recognition of a beneficiary's qualification by a USCIS determination that his or her training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty. This criterion provides that, for each year of college-level training the alien lacks:

[I]t must be clearly demonstrated [1] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [2] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [3] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁷;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The record contains the beneficiary's résumé, which indicates that he has worked as a pilot and as a flight school recruiter. The beneficiary's uncorroborated assertion is insufficient to sustain the burden of proof in this matter.⁸ Further, the record contains none of the five types of documentation

⁷ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

⁸ The evidentiary weight of a résumé is insignificant. It represents a claim made by the beneficiary rather than evidence to support that claim, and the record of proceeding lacks documentary evidence to establish or corroborate the claims regarding the beneficiary's education and professional experience made in his résumé. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

described immediately above, nor anything similar. As such, the petitioner has not satisfied the alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

If the proffered position had been shown to require a minimum of a bachelor's degree in aeronautics or its equivalent, as counsel asserted, the petitioner would be obliged to demonstrate that the beneficiary had such a degree or equivalent. The evidence in the record is insufficient for that purpose. Therefore, even if the proffered position had been shown to be a specialty occupation position by virtue of requiring such a degree, the visa petition would not be approved as the petitioner would not, in that event, have demonstrated that the beneficiary is qualified for the proffered position. The visa petition will be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

V. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.