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



U.S. Citizenship  
and Immigration  
Services

DATE: JUN 06 2014 OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

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. The director subsequently granted a motion to reconsider, then affirmed the previous decision, denying the visa petition. 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 manufacturing company. Other evidence in the record shows that it packages and distributes food. In order to employ the beneficiary in what it designates as an advertising and promotions manager 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 the 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 an advertising and promotions manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-2011, Advertising and Promotions 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 design from [REDACTED] in Mexico. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in industrial design.

Counsel also submitted a letter, dated April 16, 2012, from the petitioner's operations manager; which states the following:

The minimum required for [the proffered position] is a Bachelor Degree in Industrial Design/Marketing. [The beneficiary] will manage all marketing initiatives and promotional activities and be responsible for all advertising and promotions output including public relations, website content and social media. The job duties will be: Develop and manage company's website and presentation material, production of signage, promotional signage, creative displays, and Point of Purchase (POP)

materials. Display and In Store support. Design and maintenance of company's new image, developing innovative and creative approaches to target end customer. Development of annual marketing plan. Supervise sales, marketing, and POP.

On May 1, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation and the employer-employee requirements."

In response, counsel provided a letter, dated May 23, 2012, in which he stated:

The Advertising and Promotions Manager duties and responsibilities include: to increase sales by developing projects to promote and market the final product through media sales, distribution, and to attract new customers in the market. This will be achieved with the creation of a website ([The petitioner's] website is under construction, we have not been able to find someone that will create it to our standards), multimedia campaigns, product launching (new and old), redesigning of logos, trademarks, packaging, set up of demos in supermarkets and retail stores by designing and installation of display stands to be also used in trade shows, vehicle design and marking, and all technical support for the correct positioning of the brand.

Counsel cited the O\*NET Internet site for the proposition that Advertising and Promotions Manager positions require a bachelor's degree. Counsel also stated, "[The petitioner] had not previously employed any individual in this position."

The director denied the petition on June 5, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

With a motion, counsel submitted (1) nine vacancy announcements; (2) evidence pertinent to degrees held by other employees of the petitioner; (3) an additional description of the proffered position; (4) a letter, dated June 21, 2012, from the owner and general manager of another company in the food packaging and distributing industry; (5) an evaluation of the proffered position, dated June 28, 2012; and (6) a brief. The vacancy announcements will be addressed below.

The evidence pertinent to the petitioner other employees shows that [REDACTED] has a bachelor of Arts degree in an unidentified subject, that [REDACTED] has an unspecified degree in mechanical engineering, and that [REDACTED] has a bachelor's degree in business administration.

The description of the proffered position provided with the motion states the following duties:

**1. Designing and Refining [the petitioner's] Company Image – i.e. "Brand Management"**

*\*40% OF PROPOSED EMPLOYEE'S TIME*

*\*SPECIFIC DUTIES*

- Creating and redesigning the company's design scheme and overall corporate image, and insuring [sic] that branding are cohesive throughout the product line and promotional materials.
- Designing the company's logo.
- Designing logos for all the product lines that the company wants to grow and develop in the future [REDACTED]. Because we want the "feel" and image of the companies to be recognizable and cohesive even after the beneficiary is gone, it is important for him to create these templates during his tenure.
- Creation of promotional visuals (banners, stands, posters, leaflets, brochures).
- Design of label templates for our food products, *including USDA mandated-information*. (This is very important to us because it gives us a bargaining chip when trying to convince larger distributors (for example, [REDACTED] to purchase our product. Having the labeling information already formatted and in place is a time and cost-saving benefit to them, which makes them more likely to choose our product.)
- Designing new packaging for existing and new products, including both individual and bulk packaging.
- Creating special one-time-use packaging for launching new products.

*\*RELEVANT BACCALAUREATE COURSEWORK*

- Design I
- Geometric Drawing I
- Technical Drawing I
- Model Shop I
- Introduction to Communications
- Design II
- Geometric Drawing II
- Technical drawing II
- Model Shop II
- Geometric Drawing III
- Technical drawing III
- Communications
- Visual Representation Techniques I
- Photography I
- Aesthetic
- Marketing
- Visual Representation Techniques II
- Computer I
- Design Theory

- Advertising
- Container and Packaging
- Visual Representation Techniques II
- Computer II
- Packaging
- Project Administration

**2. Creation and Presentation of "Sales Pitch" Material**

*\*15% OF PROPOSED EMPLOYEE'S TIME*

*\*SPECIFIC DUTIES:*

- Creating and presenting Power-Point presentations (incorporating brand image throughout) for new clients, such as larger-scale food distributors and supermarkets.
- Designing and developing a product catalog to distribute to current and potential customers.
- Designing and creating the graphic elements of other promotional material to be used now and in the future for sales presentations. This will include slideshows, corporate videos, print media announcements, social media, and online ads and promotional material for platforms such as Yelp and Facebook.

*\*RELEVANT BACCALAUREATE COURSEWORK:*

- Design I
- Introduction to Communications
- Design II
- Communications
- Aesthetic
- Marketing
- Computer I
- Advertising
- Computer II
- Project Administration
- Professional Accreditation Seminar

**3. Creation and Management of Company's Website**

*\*20% OF PROPOSED EMPLOYEE'S TIME*

*\*SPECIFIC DUTIES*

- Development, design and maintenance of corporate web site, incorporating a branding design that is cohesive with our packaging and promotional materials.
- Web development of an environment for product sales and online catalogues.
- Implementation of online videos and recipes (including images and visuals)
- Maintaining the website's domain and administration.

- Training other staff members to continue with website content and technical maintenance after beneficiary's tenure has ended.

*\*RELEVANT BACCALAUREATE COURSEWORK*

- Design I
- Geometric Drawing I
- Technical Drawing I
- Introduction to Communications
- Design II
- Geometric Drawing II
- Technical Drawing II
- Geometric Drawing III
- Technical drawing III
- Photography I
- Aesthetic
- Marketing
- Visual Representation Techniques II
- Computer I
- Advertising
- Computer II
- Project Administration

**4. Production of Signage**

*\*10% OF PROPOSED EMPLOYEE'S TIME*

*\*SPECIFIC DUTIES:*

- Indoor and outdoor signage: Interior signage means any kind of sign that the plant will need to have posted. This could be on the equipment, factory walls, utensil storage area, or anywhere certain guidelines need to be followed. Outdoor/exterior signage means those in supermarkets, at tradeshow, on our vans, on the outside of our business, etc, to display to the customer and promote our products. This could include cardboard cutouts, printed banners, vinyl and all sorts of different types of displays for supermarkets, shops, outdoor markets, and restaurants.
- Ensuring that all interior signage within the plant conforms with guidelines given to us by the USDA, which includes displaying all safety signage in English and Spanish.

*\*RELEVANT BACCALAUREATE COURSEWORK:*

- Design I
- Geometric Drawing I
- Technical Drawing I
- Model Shop I

- Design II
- Geometric Drawing II
- Technical Drawing II
- Model Shop II
- Geometric Drawing III
- Technical drawing III
- Visual Representation Techniques I
- Photography I
- Aesthetic
- Visual Representation Techniques II
- Computer I
- Design Theory
- Visual Representation Techniques II
- Computer II
- Model Shop I, II, III, & IV

**5. Creation of Promotional Print Material and Creative Display**

*\*15% OF PROPOSED EMPLOYEE'S TIME*

*\*SPECIFIC DUTIES*

- Design, development, production and assembly of display and accessories for stores, supermarkets, trade fairs, expos, tradeshow, and exhibitions.
- Development of display & sample counters in order to introduce product to new supermarkets, stores.
- Development of counters and display for food demos (to be conducted by company chefs).
- Coordination of people who will work the demos or launches of product to supermarket.
- Maintain our presence in trade shows with stands, displays, banners, etc. These events will be designed and supervised entirely from the beneficiary's design department.
- Monitoring and making changes to product positioning in supermarkets, so that our products are displayed in a visible and appealing way. (This involves sales-type interactions with supermarket managers, as well as creation and distribution of image banners, displays, and print and visual media to place in the stores).

*\*RELEVANT BACCALAUREATE COURSEWORK:*

- Aesthetic
- Marketing
- Advertising
- Design I
- Geometric Drawing I
- Technical Drawing I

- Model Shop I
- Design II
- Technical Drawing II
- Model Shop II
- Geometric Drawing III
- Technical drawing III
- Visual Representation Techniques I
- Photography I
- Visual Representation Techniques II

The industry letter provided is from the owner and general manager of [REDACTED] LLC. As to the Advertising/Promotion/Brand Manager position with that other firm, he stated:

Because of the complexity of the position and the integral role the employee plays in our business' success, we would not consider hiring a person without a Bachelor's degree in a field that is directly relevant to the position.

The evaluation of the proffered position was prepared by an Associate Professor of Transmedia, College of Visual and Performing Arts, [REDACTED] and states:

[I]t is standard for a company such as [the petitioner] to hire an Advertising and Promotions Manager and require that individual to have attained at least a Bachelor's degree in Graphic Design, Advertising, or a related area, or its equivalent.

The evaluation further states:

[T]he industry standard for a position such as Advertising and Promotions Manager for [the petitioner] is to be filled through recruiting a college graduate with the minimum of a Bachelor's Degree in Graphic Design, Advertising, or a related area, or its equivalent.

In the brief submitted with the motion, counsel discussed the evidence submitted and stated that it shows that the proffered position qualifies as a specialty occupation position.

On March 18, 2013 the director granted the motion, and denied the petition, finding that the petitioner still had not demonstrated that the proffered position is a specialty occupation position.

On appeal, counsel submitted no brief and no additional evidence. Counsel's statement on appeal was contained in one paragraph on the Form I-290B appeal, and reads:

Petitioner respectfully requests denovo review of the denial below as per *Abdur-Rahman v Napolitano*, 814 F. Supp. 2d 1098 (W.D. Was h 2011, and, *Louisiana Philharmonic Orchestra v INS*, 2000 WL 282785 (E.D. La. Mar. 15, 2000 On Motion

to Reopen and Reconsider (MTRR) CIS reopened by denied with a brief one paragraph response which petitioner believes is in error, and did not properly and fully address the extensive additional evidence, including an expert opinion, case law, legal authority and legal arguments submitted with MTRR which support petitioner's claim that the position offered is so complex as to be a "specialty occupation."

[Errors in the original.]

#### IV. ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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. Department of Labor's *Occupational Outlook Handbook (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)(I): 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.<sup>1</sup> The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-2011.00, Advertising and Promotions Managers from O\*NET. The *Handbook* describes the duties of "Advertising and Promotions Managers" as follows:

##### **What Advertising, Promotions, and Marketing Managers Do**

Advertising managers can be found in advertising agencies that put together advertising campaigns for clients, in media firms that sell advertising space or time, and in companies that advertise heavily.

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

Advertising, promotions, and marketing managers plan programs to generate interest in a product or service. They work with art directors, sales agents, and financial staff members.

### **Duties**

Advertising, promotions, and marketing managers typically do the following:

- Work with department heads or staff to discuss topics such as budgets and contracts, marketing plans, and the selection of advertising media
- Plan advertising and promotional campaigns
- Plan advertising, including which media to advertise in, such as radio, television, print, online media, and billboards
- Negotiate advertising contracts
- Evaluate the look and feel of websites used in campaigns or layouts, which are sketches or plans for an advertisement
- Initiate market research studies and analyze their findings to understand customer and market opportunities for businesses
- Develop pricing strategies for products or services marketed to the target customers of a firm
- Meet with clients to provide marketing or technical advice
- Direct the hiring of advertising, promotions, and marketing staff and oversee their daily activities

**Advertising managers** create interest among potential buyers of a product or service for a department, for an entire organization, or on a project basis (account). They work in advertising agencies that put together advertising campaigns for clients, in media firms that sell advertising space or time, and in organizations that advertise heavily.

Advertising managers work with sales staff and others to generate ideas for an advertising campaign. They oversee the staff that develops the advertising. They work with the finance department to prepare a budget and cost estimates for the advertising campaign.

Often, advertising managers serve as liaisons between the client requiring the advertising and an advertising or promotion agency that develops and places the ads. In larger organizations with an extensive advertising department, different advertising managers may oversee in-house accounts and creative and media services departments.

In addition, some advertising managers specialize in a particular field or type of advertising. For example, *media directors* determine the way in which an advertising campaign reaches customers. They can use any or all of various media, including radio, television, newspapers, magazines, the Internet, and outdoor signs.

Advertising managers known as *account executives* manage clients' accounts, but they are not responsible for developing or supervising the creation or presentation of the advertising. That task becomes the work of the creative services department.

**Promotions managers** direct programs that combine advertising with purchasing incentives to increase sales. Often, the programs use direct mail, inserts in newspapers, Internet advertisements, in-store displays, product endorsements, or special events to target customers. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, or contests.

**Marketing managers** estimate the demand for products and services that an organization and its competitors offer. They identify potential markets for the organization's products.

Marketing managers also develop pricing strategies to help organizations maximize their profits and market share while ensuring that the organizations' customers are satisfied. They work with sales, public relations, and product development staff.

For example, a marketing manager may monitor trends that indicate the need for a new product or service. Then they oversee the development of that product or service. For more information on sales or public relations, see the profiles on sales managers, public relations and fundraising managers, public relations specialists, and market research analysts.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Advertising, Promotions, and Marketing Managers," <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-2> (last visited May 14, 2014).

The description of the duties of the proffered position contained in the April 16, 2012 letter from the petitioner's operations manager states that the beneficiary would manage marketing initiatives and promotional activities, and would be responsible for advertising. Those duties are clearly consistent with the duties of an advertising, promotions, or marketing manager position as described in the *Handbook*.

The description of duties contained in counsel's May 23, 2012 letter indicates that the beneficiary would develop projects to promote and market the petitioner's products. This, too, is consistent with the duties of an advertising, promotions, or marketing manager position as described in the *Handbook*.

However, the duties of the proffered position, as set out in the job description provided with the motion, by far the most detailed of the descriptions, contain no indication that the beneficiary, in the proffered position, would plan advertising or promotional campaigns, determine which medium to use, initiate market research studies and analyze their findings, develop pricing strategies, or direct the hiring of advertising, promotions, or marketing staff and directing their work, the basic duties of an advertising, promotions, or marketing manager position as described in the *Handbook*.

Further, the duties the *Handbook* attributes to advertising, promotions, and marketing managers do not include graphic design. In contrast, the duties of the proffered position, as set out in the job description provided with the motion, include designing the petitioner's logo; designing logos for all of the petitioner's product lines; creation of banners, stands, posters, leaflets, and brochures; designing food product labels; designing product packaging; designing the petitioner's catalog; designing the graphic elements of promotional material; designing the petitioner's web site; designing displays to be used in stores and at trade shows; and designing signs. In fact, the majority of the duties of the proffered position appear to be design duties. The job description provided with the motion suggests that the proffered position is not, in fact, an advertising or promotions manager position.

On the other hand, the *Handbook* describes the duties of Graphic Designer positions as follows:

### **What Graphic Designers Do**

Graphic designers create visual concepts, by hand or using computer software, to communicate ideas that inspire, inform, or captivate consumers. They develop the overall layout and production design for advertisements, brochures, magazines, and corporate reports.

### **Duties**

Graphic designers typically do the following:

- Meet with clients or the art director to determine the scope of a project
- Advise clients on strategies to reach a particular audience
- Determine the message the design should portray
- Create images that identify a product or convey a message
- Develop graphics for product illustrations, logos, and websites
- Select colors, images, text style, and layout
- Present the design to clients or the art director
- Incorporate changes recommended by the clients into the final design
- Review designs for errors before printing or publishing them

Graphic designers combine art and technology to communicate ideas through images and the layout of websites and printed pages. They may use a variety of design elements to achieve artistic or decorative effects.

Graphic designers work with both text and images. They often select the type, font, size, color, and line length of headlines, headings, and text. Graphic designers also decide how images and text will go together on a print or webpage, including how much space each will have. When using text in layouts, graphic designers collaborate closely with writers who choose the words and decide whether the words will be put into paragraphs, lists, or tables. Through the use of images, text, and color, graphic designers can transform statistical data into visual graphics and diagrams, which can make complex ideas more accessible.

Graphic design is important in the sales and marketing of products, and is a critical component of brochures and logos. Therefore, graphic designers, also referred to as graphic artists or communication designers, often work closely with people in advertising and promotions, public relations, and marketing.

Frequently, designers specialize in a particular category or type of client. For example, some create the graphics used in packaging for various types of retail products, while others may work on the visual design used on a book jacket.

Graphic designers also need to keep up to date with the latest software and computer technologies to remain competitive.

Some individuals with a background in graphic design teach in design schools, colleges, and universities. For more information, see the profile on postsecondary teachers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Graphic Designers," <http://www.bls.gov/ooh/arts-and-design/graphic-designers.htm#tab-2> (last visited May 14, 2014).

In the brief submitted with the motion, counsel stated:

[The petitioner] does not have the budget to hire an outside advertising/marketing company, web designer, and package and label graphic designer. However, all of these responsibilities are essential to the company's continued growth, and can be met in-house if they are able to employ the right person. That person is [the beneficiary].

Thus, counsel asserts that the proffered position is a composite of three job types, advertising and marketing manager, web designer, and graphic designer.

However, this does not explain why the job description provided with the motion, the most detailed description of the three provided, contains no indication of any duties that would characterize an advertising, promotions, or marketing manager position. Whether the proffered position qualifies as an advertising, promotions, or marketing manager position depends on which of the duty descriptions provided, if any, is presumed to be accurate. Pursuant to the first and second definitions provided, the proffered position appears to be correctly characterized on the LCA as an advertising and marketing manager position. Pursuant to the third description provided, it appears to be a graphic designer position.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 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 record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition. An examination of the various descriptions of the duties of the proffered position suggests that those duties might be closely related to advertising and marketing, web design, and/or graphic design. The beneficiary's degree, however, has been evaluated as equivalent to a bachelor's degree in industrial design.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered

position qualifies as a specialty occupation position is dispositive, the AAO need not reach the issue of the beneficiary's qualifications.

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

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. The petition is denied.