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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 27 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 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. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as an international trade for-profit enterprise with 13 employees,¹ established in 2009. In order to employ the beneficiary in what it designates as a full-time international sales manager position at a salary of \$58,000 per year,² 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 found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on August 5, 2013. Within the RFE, the director outlined the specialty occupation regulatory criteria and requested specific documentation to establish that the proffered position qualifies for classification as a specialty occupation. The director denied the petition, concluding that the evidence of record failed to establish that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the evidence of record fails to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 541990, "All Other Professional, Scientific, and Technical Services." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, 541990 "All Other Professional, Scientific, and Technical Services," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 11, 2014). The AAO also notes that the petitioner represented on its 1120S U.S. Income Tax Return for an S Corporation that its NAICS code of 113310, "Logging" [https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=113310&search=2012 NAICS Search](https://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=113310&search=2012%20NAICS%20Search).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Administrative Services Managers" occupational classification, SOC (O*NET/OES) Code 11-3011, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

Beyond the decision of the director, the AAO finds that the petitioner submitted a supporting Labor Condition Application (LCA) for this petition which does not correspond to the proffered position, and that the LCA establishes that the petitioner will not pay the beneficiary an adequate salary.³

II. THE PROFFERED POSITION AND ITS CONSTITUENT DUTIES

As indicated above, the petitioner seeks to employ the beneficiary in a position that it describes as an "International Sales Manager" on a full-time basis. The petitioner presented substantially the same core duties in its initial H-1B support letter and in its response to the director's RFE. In response to the RFE, the petitioner stated that the duties of the proffered position would include the following:

1. Plan, direct and coordinate international sales by analyzing current sales, identify and evaluate the existing customers' needs and potential for large amount [of] supplies and improve the sales; this function [is approximately] 25% of the beneficiary's total work load.
2. Support global agents with technical, project and marketing information on [product] quality and availability. Based on the feedback of the agents, adjust the supplies of [the] products; this function [is approximately] 15% of the beneficiary's total work load.
3. Travel to China to meet with buyers directly negotiating sales prices and terms of contracts [sic]; [supervising] the local team[; and] initiating and devising sales campaigns targeted at specific vertical and product markets with the optimal overall capital and operating cost[;] this function [is approximately] 15% of the beneficiary's total work load.
4. Develop key relationships with international customers and build a solid direct sales pipeline and develop opportunities to boom [sic] the sales; this function [is approximately] 15% of the beneficiary's total work load.
5. Work closely with the global and regional sales agent[s] and suppliers to form a [team] to ensure the customer requirements are met on a timely basis; this function [is approximately] 10% of the beneficiary's total work load.
6. Evaluate the sources of supplies for different requirements of customers and coordinate with sales agents on the information of new supplies and qualities; this function [is approximately] 10% of the beneficiary's total work load.

³ The AAO conducts appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this issue.

7. Oversee the performance of the global and regional sales agents' performance, participate in their efforts to initial [sic] new sales, adjust the employment of agents as necessary; this function [is approximately] 10% of the beneficiary's total work load.

The petitioner stated in the RFE response letter that the beneficiary would report directly to the petitioner's president, and that he would supervise three professionals: an international sales specialist, a purchase specialist who works with product suppliers, and an individual who prepares detailed sales arrangements. As described by the petitioner, the international sales manager role is a critical professional position that is essential for growing the petitioner's business, directing and planning international sales, controlling the sales campaign, and developing market strategies and new sales accounts. The petitioner asserted that performing the proffered position's duties requires a minimum of a bachelor's degree in international business or a trade-related field, with some international marketing and sales experience.⁴ Additionally, the petitioner through counsel stated in an October 18, 2013 letter that "it is well established that the profession of International Sales Manager is a specialty occupation, which requires a minimum of a [b]achelor's degree." This assertion notwithstanding, it is unclear how the international sales manager duties described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

III. THE LCA SUBMITTED BY THE PETITIONER IN SUPPORT OF THE PETITION

Before addressing the director's determination that the proffered position is not a specialty occupation, the AAO will first address the supplemental finding it has made on appeal, which independently precludes approval of this petition, namely, our finding that the LCA submitted by the petitioner in support of this petition does not correspond to the petition.

The AAO finds that the LCA submitted by the petitioner does not correspond to the petition, because the proposed duties, as described in the record of proceeding, do not comprise the type of position designated in the LCA. More specifically, the petitioner selected the Occupational Information Network (O*NET) OnLine occupational code classification of "Administrative Services Managers," but the duties presented in the petition are more akin to those associated with positions within the "Sales Managers" occupational classification.

The O*NET OnLine Details Report for the occupational category "Administrative Services Managers" summarizes that occupation as follows:

⁴ The AAO notes that the petitioner presented another iteration of the minimum requirements in its initial filing, requiring candidates to possess a bachelor's degree in business management or a closely related field and extensive knowledge in the company's wood products. Although this discrepancy is not outcome determinative, it demonstrates a factual inconsistency that raises a question about the true minimum requirements.

Plan, direct, or coordinate one or more administrative services of an organization, such as records and information management, mail distribution, facilities planning and maintenance, custodial operations, and other office support services.

See Employment & Training Administration, U.S. Dep't of Labor, O*NET OnLine, Summary Report for Administrative Services Managers, <http://www.onetonline.org/link/summary/11-3011.00> (last visited June 11, 2014).

The O*NET OnLine Details Report also lists the following "core tasks" that are performed by administrative services managers:

- Direct or coordinate the supportive services department of a business, agency, or organization.
- Prepare and review operational reports and schedules to ensure accuracy and efficiency.
- Set goals and deadlines for the department.
- Acquire, distribute and store supplies.
- Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes or the disposal of records.
- Plan, administer and control budgets for contracts, equipment and supplies.
- Monitor the facility to ensure that it remains safe, secure, and well-maintained.
- Hire and terminate clerical and administrative personnel.
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems.
- Oversee construction and renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations.

Id.

These duties associated with the Administrative Services Managers occupational classification do not correspond to the duties of the proffered position as described in the record of proceeding. While it does appear as though the beneficiary would perform a few of the tasks defined as "core" ones by DOL, the majority of these core tasks do not fall within those proposed for him. For example, the beneficiary would not direct or coordinate the supportive services department; prepare and review operational reports and schedules to ensure accuracy and efficiency; acquire, distribute

and store supplies; monitor the facility to ensure that it remains safe, secure, and well-maintained; hire and terminate clerical and administrative personnel; oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems; or oversee construction and renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations.

As such, the beneficiary would perform very few of the core tasks listed by O*NET OnLine as among those normally performed by administrative services managers, and the AAO finds that the evidence of record indicates that the proffered position is not substantially similar to an occupation that would reasonably be associated with the Administrative Services Managers occupational classification.

DOL guidance specifies that when ascertaining the proper occupational classification, a determination should be made by "consider[ing] the particulars of the employer's job offer and compar[ing] the full description to the tasks, knowledge, and work activities generally associated with an O*NET-SOC occupation to insure the most relevant occupational code has been selected." 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. In this case, the petitioner has provided no explanation of its apparently erroneous claim that the position's primary and essential tasks, knowledge, and work activities are those generally associated with the occupational category of "Administrative Services Managers" as depicted by O*NET OnLine. As such, it has not established that this LCA actually corresponds to this petition.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

IV. SPECIALTY OCCUPATION

The AAO will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director that the evidence does not establish that the position as described constitutes a specialty occupation.

Law

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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.

Analysis

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

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the instant petition.

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵

As discussed above, the AAO does not agree with the petitioner that the duties of the proffered position align with those of administrative services managers, the occupation category for which the LCA was certified. Instead, the AAO finds that the duties of the proffered position more closely align with those of positions falling within the "Sales Managers" occupational category.⁶

In relevant part, the *Handbook* summarizes the duties typically performed by Sales Managers as follows:

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

Duties

Sales Managers typically do the following:

- Resolve customer complaints regarding sales and service
- Prepare budgets and approve expenditures
- Monitor customer preferences to determine the focus of sales efforts
- Analyze sales statistics
- Project sales and determine the profitability of products and services
- Determine discount rates or special pricing plans

⁵ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2014-15 edition available online.

⁶ It is noted that the petitioner through counsel refers to the proffered position as a sales manager position and provided a print-out of the O*NET OnLine summary report for Sales Managers.

- Develop plans to acquire new customers or clients, through direct sales techniques, cold calling, and business-to-business marketing visits
- Assign sales territories and set sales quotas
- Plan and coordinate training programs for sales staff

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

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

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

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

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Sales Managers," <http://www.bls.gov/ooh/management/sales-managers.htm#tab-2> (last visited June 11, 2014).

However, the *Handbook* does not indicate that normally the minimum requirement for entry into sales manager positions is at least a bachelor's degree *in a specific specialty*, or its equivalent. This is evident from the discussion in the subchapter of the *Handbook* entitled "How to Become a Sales Manager," which states the following about this occupational category:

Education

Most sales managers have a bachelor's degree: some have a master's degree. Educational requirements are less strict for job candidates who have significant experience as a sales representative. Courses in business law, management,

economics, accounting, finance, mathematics, marketing, and statistics are advantageous.

Work Experience in a Related Occupation

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

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

Id. at <http://www.bls.gov/ooh/management/sales-managers.htm#tab-4> (last visited June 11, 2014).

While the *Handbook* states that "[m]ost sales managers have a bachelor's degree," the AAO notes that "most" is a rather indefinite adjective which the *Handbook* does not refine with any quantifying data.⁷ Therefore, the *Handbook's* statement that "most" sales managers have a bachelor's degree does not equate to a statement that a bachelor's degree is a normal entry requirement for the Sales Managers occupational classification, let alone for any particular position within that classification.

Further, as clearly evident in the sections on Education and Work Experience in a Related Occupation quoted above, the *Handbook's* information indicates that, even for those positions within the Sales Managers occupational classification that are held by persons who "have a bachelor's degree," there is no normal requirement that the degree be in a specific specialty.

In addition, the tenor of those Education and Work Experience sections on Sales Managers is that employers put a premium on related work experience when recruiting and hiring sales managers, even to the extent that "[e]ducational requirements are less strict for job candidates who have significant experience as a sales representative." It is important to note the following aspect of the *Handbook's*

⁷ The first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of sales managers positions were to require at least a bachelor's degree in a specific specialty it could be said that "most" sales managers positions require such a degree. (Of course, this is a hypothetical example, as the record of proceeding contains no authoritative, empirically supported statement as to the percentage of sales managers who possess such degrees.) It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

discussion on the factor of related-work experience: the *Handbook* does not state, suggest, or otherwise indicate that the work-experience must be equivalent to any particular level of educational attainment in any specific specialty; and, further, the *Handbook* does not indicate that related work-experience is normally subjected to any objective evaluation standards so as to determine or require that the experience is equivalent to the attainment of any particular level of U.S. educational attainment in any specific specialty.⁸

Accordingly, the *Handbook* indicates that working as a sales manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. 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 the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such a 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. This the petitioner has not done. 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)). It therefore follows that the proffered position's inclusion within the Sales Managers occupational classification is not in itself sufficient to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As noted above, the petitioner submitted the O*NET OnLine Summary Report for: 11-2022.00 – "Sales Managers," to support its assertion that the proffered position qualifies as a specialty occupation. The AAO reviewed the O*NET OnLine Summary Report but finds that the petitioner's reliance on the Job Zone rating is misplaced. That is, O*NET OnLine assigns this occupation a Job Zone Four rating, which groups it among occupations that are described as follows: "[m]ost of these occupations require a four-year bachelor's degree, *but some do not* (emphasis added)." See O*NET OnLine Summary

⁸ It is noted that, even if the proffered position were established as being that of administrative services manager (the occupational classification certified on the submitted LCA), a review of the *Handbook* does not indicate that, simply by virtue of its occupational classification, such a position qualifies as a specialty occupation. More specifically, the information on the educational requirements in the "Administrative Services Managers" chapter of the 2014-2015 edition of the *Handbook* indicates at most that a bachelor's or higher degree in computer science, information systems, or management information systems may be a common preference, but not a standard occupational, entry requirement. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 edition, "Administrative Services Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4> (last visited June 11, 2014). In fact, this chapter indicates that a high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. See *id.* As such, absent evidence that the position would be an administrative services manager and that it would satisfy one of the alternative criteria available under 8 C.F.R. § 214.2(h)(4)(iii)(A), the instant petition could not be approved for this additional reason.

Report for "Sales Managers" - SOC (ONET/OES Code) 11-2022, available on the Internet at <http://www.onetonline.org/link/summary/11-2022.00> (last visited June 11, 2014). O*NET OnLine does not report that for those occupations with an academic degree requirement, that such a degree must be in a *specific specialty* directly related to the occupation. As previously discussed, 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 duties and responsibilities of the position. Notably, O*NET OnLine indicates that some of these occupations do not require a four-year bachelor's degree.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or another authoritative source,⁹ indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common (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 such a common degree requirement, factors often considered by

⁹ The petitioner submitted internet print-outs regarding international sales managers from the websites [REDACTED] and [REDACTED] in support of its assertion that working as a sales manager normally requires at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. The [REDACTED] print-out states that most international sales managers need at least a bachelor's degree in marketing, with an emphasis on courses in advertising, business, administration, economics, communications and perhaps foreign language. The [REDACTED] print out indicates that international sales managers are required to graduate with at least a bachelor's degree in business administration or a related field. The AAO finds this evidence unpersuasive because together they do not indicate that a requirement of at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Moreover, the [REDACTED] print out states that the duties of international sales managers can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, the instant petition could not be approved for this additional reason.

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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry (export of wood products) in parallel positions among similar organizations, the petitioner submitted copies of fourteen advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in its industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree in a *specific specialty* or its equivalent. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the record of proceeding is insufficient to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry.

The AAO agrees with the director's assessment that not one of the job postings showed, nor did counsel assert, that the advertisements were from similar organizations, i.e. organizations engaged in the export of wood products, as specified in the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), and thus the AAO will not analyze each of the job postings herein. Correctly, the director pointed out that the job postings represented a wide array of industries, including communications, food wholesale, healthcare diagnostics, manufacturing, biotechnology, among other industries. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

Again, simply 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. at 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).¹⁰

¹⁰ 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." *Matter of 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 has not demonstrated what inferences, if any, can be drawn from these job postings with regard to determining the common educational requirements for entry

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

Next, the AAO finds that the evidence of record does not satisfy 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."

In the instant case, the evidence of record does not credibly demonstrate relative complexity or uniqueness as aspects of the proffered position. Specifically, it is unclear how the international sales manager position, as described, necessitates the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. Rather, the AAO finds, that the evidence does not distinguish the proffered position from other positions falling within the "Sales Managers" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree, in a specific specialty, or its equivalent to enter those positions.

The AAO observes that the petitioner has indicated that the beneficiary's experience will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. Although the petitioner did submit documentation describing the wood product industry, its growth, and characterizes the nature of exporting as complex, it does not establish relative unique specialization and complexity as distinguishing dimensions of this particular position, let alone as dimensions elevating the position above sales manager positions that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as the petitioner does not demonstrate how the proffered position is so complex or unique relative to other sales manager positions 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).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

into parallel positions in similar organizations in the same industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position at issue. Additionally, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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").

The petitioner states in its October 5, 2013 letter that it has only hired contractors to perform the duties associated with the proffered position, as supported by sales contracts and shipping documents. In addition, the petitioner stated in this letter that it requires all of its employees to be highly educated, commensurate with the specialized duties associated with international wood product exportation. Moreover, the record indicates that the petitioner has never employed an international sales manager. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

Upon review of the record, the AAO finds that the petitioner has not provided any evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent.

The AAO finds that the petitioner has not sufficiently developed the relative specialization and complexity as aspects of the proffered position's duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than sales manager positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty.

The AAO acknowledges that the petitioner believes its proffered position involves specialized and complex duties. However, upon review of the record, there is insufficient evidence to establish that the duties of the proffered position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel asserts on appeal that the projected business growth and the complicated nature of international exporting qualify the position as one that involves specialized and complex duties. Here, counsel did not take the opportunity to evidence that accomplishing such duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. 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 Obaighena*, 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).

For all of these reasons, the evidence in the record of proceeding does not establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

V. CONCLUSION AND ORDER

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 145 (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.

The petition must be denied for the above stated reasons, with each considered as an independent and alternate 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; *see e.g., 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.