

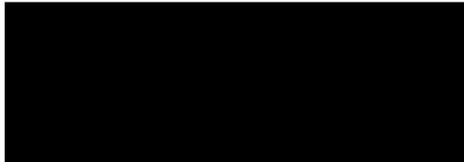
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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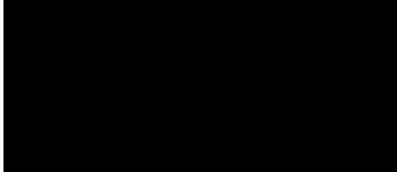


FILE: EAC 08 159 50053 Office: VERMONT SERVICE CENTER Date: **AUG 05 2010**

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center 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.

The petitioner is a dental surgery clinic with four employees. It seeks to employ the beneficiary as a Business Analyst 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 concluding that the petitioner failed to establish that: (1) the proffered position is a specialty occupation, and; (2) the beneficiary is qualified to perform services in a specialty occupation.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) counsel's response to the director's RFE; (3) the director's denial letter; and (4) Form I-290B with current counsel's brief and supporting documentation. The AAO reviewed the record in its entirety before reaching its decision.

First, the AAO will examine whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which 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 requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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. 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 professions. These occupations all require a baccalaureate degree in the specific specialty as a minimum for entry into the occupation and fairly represent the types of professions that Congress contemplated when it created the H-1B visa category.

The petitioner states that it is seeking the beneficiary's services as a Business Analyst. In the March 31, 2008, letter of support, the petitioner describes the proffered position as follows:

[A]s a Business Analyst, [the beneficiary] will develop a Business Plan and advise management on ways to increase the productivity, profitability, and efficiency of our small dental practice. She will also recommend improvements to the business processes, including human resources, payroll and billing procedures, cost control, insurance and marketing services.

The Business Analyst is responsible for gathering and organizing information on problems or inefficient procedures in our business associated with budget management, task scheduling, expense tracking and inventory control. This process requires them [sic] to review forms, reports, and procedure manuals as well as interview Personal [sic] and conduct on-site observation. Based on the data gathered from their [sic] research, the Business Analyst must analyze and develop appropriate business solutions or alternative methods of proceeding. Accordingly, the Business Analyst will design and recommend to management and staff the implementation of new systems, procedures, or

organizational changes. The Business Analyst will also be responsible for developing a Business Plan that will be a guide for the development of business expansion goals, uniformity of office procedures, and consistency of recruiting methods.

In addition, the Business Analyst will contribute to the business's growth by designing and implementing new marketing initiatives. This will involve creating new Public Relations strategies for current referral programs, building strategic alliances with other dental practices, as well as developing new media material such as Newsletters and brochures. The Business Analyst will also strive to improve cash flow and business profitability through the use of management information, systems, and technologies that will track cost and streamline administrative functions such as insurance, billing, and collections. Therefore, it is the Business analyst's responsibility to develop strategies and recommend technology and systems that will lower operational costs and maximize revenue.

The petitioner also stated that the position requires at least "[a] baccalaureate degree in Business Administration, or its equivalent. . . ."

The petitioner submitted the beneficiary's resume along with copies of her reference letters and a foreign degree certificate. However, a credential evaluation was not submitted.

The director's RFE asked for documentation to support a finding that the proffered position is a specialty occupation, including, in pertinent part, a more detailed job description, information regarding the other employees and their positions, and documentation demonstrating that it is common for other businesses similar to the petitioner to hire a full-time business analyst. The RFE also requested additional evidence that the beneficiary qualifies for a specialty occupation.

In response to the RFE, the petitioner provided a more detailed job description that categorized the duties and percentages of time to be worked in each type of duty as follows:

- 1) consulting/operations (25%): including analyzing and auditing business operations and identifying areas for improving organizational efficiency;
- 2) marketing/strategic alliances (15%): including marketing and public relations;
- 3) patient relations (10%): including developing information brochures directed at patients and handling complaints;
- 4) regulatory compliance (10%): including ensuring compliance with regulations for running a medical office; and
- 5) finance/accounting (20%): including managing relations with insurance companies, generating financial reports, and recommending and overseeing accounting functions and implementation of systems for billing and collections.

The petitioner also stated that its other positions include a scheduling coordinator, a senior surgical assistant, a surgical assistant, and an infection control specialist. The senior surgical assistant, surgical assistant, and infection control specialist all appear to be focused on patient care, oversight of inventory for medical equipment, or office hygiene. The scheduling coordinator's position, which is filled by a person who has a Business Associate's degree, is described as follows: "[T]he Scheduling Coordinator answers phones, schedules appointments, takes patients' insurance information, files charts, greets patients, enters patient information into our database, and schedules lunch meetings for [the dentist], among other administrative duties."

The petitioner also provided letters from two Oral and Maxillofacial Surgeons and a Periodontist, whom counsel states have similar practices to that of the petitioner and have hired individuals to perform duties similar to those proffered.

The first letter, from [REDACTED] states that he employs a Business Administrator who "[m]anages employees, oversees collections and negotiations with insurance companies, addresses patient concerns, handles office accounting, controls marketing initiatives, overviews schedule. . . ." as well as "[e]nsures the office complies with regulatory standards and follows OSHA guidelines."

The second letter, from [REDACTED] states that he employs a Practice Administrator who "[m]anages the needs of my offices, employees (HR), collections, insurance company negotiations, organizational changes, implementation of new systems, development of solutions or alternative methods of operations, and maintaining all local, State and Federal codes, licenses and guidelines, including OSHA. . . ." [REDACTED] also states that the duties "[i]nclude analyzing business procedures to maximize efficiency, making recommendations based on analysis regarding budget management, inventory, and scheduling. . . ." as well as "[r]ecommends cost effective technologies and business systems and oversees the office implementation of such systems. . . [, and] manages human resource functions and is the primary contact for employee concerns, question[s], and complaints."

The third letter, from [REDACTED] states that he employs an Administrative Manager who "[o]versees business operations of a medical practice and constantly analyzes operations to determine areas of improvement. In smaller offices, such as mine, the Administrative Manager is in charge of all or most administrative duties. . . [s]uch as hiring and training staff, working with vendors who sell equipment and supplies, contracting for cleaning services and the removal of medical waste, ensuring compliance with various regulatory agencies, and renewing any licenses required for the personnel and office." Dr. Rubin goes on to say that, "[I] am aware of the job duties of a Business Analyst that [the beneficiary] will perform at [the petitioner's] office. I can confirm these duties are on par with the duties of an Administrative Manager in my office. Moreover, the job duties are so complex such that only an individual with a bachelor degree or the equivalent in business administration would be qualified to perform them."

None of the letter writers provide information about the degree held by the person filling the described position in their respective offices.

Additionally, the petitioner submitted advertisements for practice administrators and office managers as well as a credential evaluation that states the beneficiary's experience is equivalent to a U.S. bachelor's degree in

Management.

In response to the RFE, prior counsel for the petitioner stated that the proffered position is a hybrid between a Management Analyst, an Administrative Services Manager, and a Medical and Health Service Manager. Prior counsel further argued that all three of these occupations are specialty occupations and, therefore, the proffered position is also a specialty occupation.

The petitioner provides no explanation of who has performed each of the proffered duties up until this point and why whomever currently performs the proffered duties can no longer perform them.

The director denied the petition finding that the proffered position is not a specialty occupation and that the beneficiary is not qualified to perform the services of a specialty occupation.

On appeal, current counsel for the petitioner argues that the proffered position is a specialty occupation and that the director erred in classifying the majority of the proffered duties as being similar to those performed by an administrative services manager, despite prior counsel's inclusion of the *Handbook's* section on administrative service managers. Moreover, counsel argues that the director incorrectly found that an administrative services manager is not a specialty occupation. Counsel asserts that it appears that the director incorrectly assumed that: (1) a small business could not support the services of a management analyst; and 2) a medical and health services manager is not a specialty occupation because smaller companies are unlikely to hire people with at least a bachelor's degree or equivalent experience. Counsel concludes that:

[b]ecause the proffered position is a combination of jobs, *it does not readily lend itself to a specific degree*. Rather, as the Handbook reports, the position calls for, at a minimum, a bachelor's degree in management or a related field or its equivalent. In short, the position is properly recognized as a specialty occupation because the nature of the duties are such that only a person with such a degree or its equivalent would be capable of performing the required duties. . . .

[Emphasis added.] Therefore, counsel indicates that the proffered position does not require a degree in a *specific specialty*.

Preliminarily and contrary to counsel's assertion, the AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position.

To make its determination whether the employment qualifies as a specialty occupation, the AAO first turns to the 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 the normal 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 *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)).

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

The AAO will first turn to the *Handbook's* (2010-11 online edition) description of administrative services managers, which provides as follows:

Administrative services managers coordinate and direct the many support services that allow organizations to operate efficiently. They perform a broad range of duties. They might, for example, oversee secretarial and reception services, administration, payroll, conference planning and travel, information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, parking, energy consumption and personal property procurement, supply, recycling and disposal. They manage support services for organizations as diverse as insurance companies, computer manufacturers, and government offices.

Specific duties for these managers vary by degree of responsibility and authority. First-line administrative services managers directly supervise a staff that performs various support services. Mid-level managers, on the other hand, develop departmental plans, set goals and deadlines, implement procedures to improve productivity and customer service, and define the responsibilities of supervisory-level managers. . . .

In small organizations, a single administrative services manager may oversee all support services. . . .

The nature of managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as contract administrators oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services. In addition, some administrative services managers acquire, distribute, and

store supplies, while others dispose of surplus property or oversee the disposal of unclaimed property. . . .

Although some of the proffered position's duties entail implementing procedures to improve productivity and customer service, the AAO agrees with current counsel that the majority of duties do not best fit under the *Handbook's* section on administrative services managers because more than 50% of the proffered duties entail accounting functions together with regulatory compliance and marketing functions as well as overseeing business operations.

However, although the AAO agrees with counsel that the proffered position is not primarily that of an administrative services manager, the AAO does not find that the proffered position comes under the *Handbook's* section on management analysts. The *Handbook's* description of management analysts is as follows:

[M]anagement analysts, often referred to as management consultants in private industry, analyze and propose ways to improve an organization's structure, efficiency, or profits. For example, a small but rapidly growing company might employ a consultant who is an expert in just-in-time inventory management to help improve its inventory-control system. In another case, a large company that has recently acquired a new division may hire management analysts to help reorganize the corporate structure and eliminate duplicate or nonessential jobs. In recent years, information technology and electronic commerce have provided new opportunities for management analysts. Companies hire consultants to develop strategies for entering and remaining competitive in the new electronic marketplace. . . .

Management analysts might be single practitioners or part of large international organizations employing thousands of other consultants. Some analysts and consultants specialize in a specific industry, such as healthcare or telecommunications, while others specialize by type of business function, such as human resources, marketing, logistics, or information systems. In government, management analysts tend to specialize by type of agency. The work of management analysts and consultants varies with each client or employer and from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the organization's managers. In all cases, analysts and consultants collect, review, and analyze information in order to make recommendations to managers.

Both public and private organizations use consultants for a variety of reasons. Some lack the internal resources needed to handle a project, while others need a consultant's expertise to determine what resources will be required and what problems may be encountered if they pursue a particular opportunity. To retain a consultant, a company first solicits proposals from a number of consulting firms specializing in the area in which it needs assistance. These proposals include the estimated cost and scope of the project, staffing requirements, references from previous clients, and a completion deadline. The company then selects the proposal that best suits its needs. Some firms, however, employ internal management consulting groups rather than hiring outside consultants.

After obtaining an assignment or contract, management analysts first define the nature and extent of the problem that they have been asked to solve. During this phase, they analyze relevant data—which may include annual revenues, employment, or expenditures—and interview managers and employees while observing their operations. The analysts or consultants then develop solutions to the problem. While preparing their recommendations, they take into account the nature of the organization, the relationship it has with others in the industry, and its internal organization and culture. Insight into the problem often is gained by building and solving mathematical models, such as one that shows how inventory levels affect costs and product delivery times.

Once they have decided on a course of action, consultants report their findings and recommendations to the client. Their suggestions usually are submitted in writing, but oral presentations regarding findings are also common. For some projects, management analysts are retained to help implement their suggestions.

Although a small percentage of the proffered duties entail auditing business operations and identifying areas for improving organizational efficiency, this is not the same as identifying the nature of a problem through analyzing data and then developing solutions using mathematical models or other methodologies, which is a primary role of a Management Analyst as described in the *Handbook*. The AAO agrees with counsel that there may be circumstances under which a small business might require the services of a Management Analyst. However, the petitioner has not sufficiently demonstrated that it has a problem that needs to be identified through data and solved through mathematical models or other methodologies by a Management Analyst. Moreover, the response to the RFE indicates that the analysis of business operations and identification of areas for improving organizational efficiency are only a small part of the overall proffered duties.

Additionally, the AAO does not find that the proffered position comes under the *Handbook's* section on medical and health service managers as it does not appear that the beneficiary will “[p]lan, direct, coordinate, and supervise the delivery of healthcare. . . .”

Instead, given the diverse and varied nature of the proffered duties, the AAO does not find that any one section of the *Handbook* demonstrates that the proffered position is a specialty occupation. Moreover, even if the petitioner could establish that the proffered position best fits under one of the three sections of the *Handbook* previously described, the AAO notes that none of these sections establish that the proffered position requires at least a bachelor’s degree or the equivalent in a *specific specialty*. According to the *Handbook*, education and experience requirements for administrative service managers “[v]ary widely . . . ,” “[e]ntry requirements for management analysts vary. . . .,” and medical and health service managers degrees may be “[i]n one of a number of fields” while “on-the-job experience may substitute for formal education.” Under Section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), it is not sufficient to demonstrate that a position is a specialty occupation merely by requiring at least a bachelor’s degree or equivalent experience. The petitioner must also show that the requisite bachelor’s degree or its equivalent is in a *specific specialty*.

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 closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong assigns specialty occupation status to a proffered position with a requirement for at least a bachelor's degree, in a specific specialty, that is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Again, in determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty.

The advertisements from other businesses submitted in response to the RFE are primarily for practice administrators or office managers and do not appear to entail a hybrid of duties as described by the petitioner. Therefore, the positions in the advertisements are not similar to the proffered position. Additionally, the advertisements, which require a variety of degrees (including a bachelor's in healthcare administration, a bachelor's degree without a specific field being described, a bachelor's degree in business management, and no degree at all – just a preference for one) and experience, do not establish that the proffered position requires at least a bachelor's degree or its equivalent in a *specific specialty*. Therefore, the petitioner does not provide any job-vacancy advertisements evidencing a common degree-in-a-specific-specialty requirement in positions that are parallel to the proffered position.

Additionally, the three letters from the two Oral and Maxillofacial Surgeons and the Periodontist do not specifically describe the degrees held by the employees whom they state perform duties similar to those proffered. Instead, the letter from [REDACTED] simply makes an unsupported claim that his Business Administrator possesses the equivalent of a bachelor's degree in business administration. The letter from [REDACTED] likewise indicates without corroborating evidence that his Practice Administrator possesses the equivalent of a bachelor's degree in business administration. [REDACTED] only states that "the job duties [of his administrative manager] are so complex . . . that only an individual with a bachelor[s] degree or the equivalent in business administration would be qualified to perform them."

Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the

required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Therefore, these letters do not establish an industry-wide requirement for at least a bachelor's degree in a specific specialty.

The petitioner 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.” The evidence of record does not refute the evidence that there is a spectrum of degrees acceptable for the proffered position. Moreover, as mentioned previously, 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 a specialty degree or its equivalent, particularly in parallel positions in organizations similar to the petitioner.

Next, as the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree or its equivalent in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The proposed duties do not indicate that they are more specialized and complex than those of positions that are not usually associated with a degree in a *specific specialty*.

Therefore, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). For this reason, the petition will be denied.

Second, the AAO will review the director's finding that the petitioner failed to establish that the beneficiary is qualified to perform services in a specialty occupation. On appeal, counsel submits a second credential evaluation written by a different evaluator in an attempt to meet the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(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.

The AAO finds that this second evaluation submitted on appeal, which finds that the beneficiary has the equivalent of a bachelor's degree in business administration with a concentration in management from an accredited college or university in the United States through a combination of vocational training, education, and experience, is also insufficient to demonstrate that the beneficiary has the U.S. equivalent of a bachelor's degree in business administration. Both the evaluation from [REDACTED] as well as the letter from Transylvania University's registrar fail to state that [REDACTED] has the "authority to grant college-level credit for training and/or experience in the specialty." Instead, they only indicate that [REDACTED] is authorized to recommend credit, not grant it.

Nevertheless, the AAO notes that a degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm. 1968). However, as discussed previously, the petitioner's description of the proffered duties indicate that they are too varied for the AAO to make an assessment of whether the beneficiary obtained knowledge equivalent to at least a bachelor's degree in a specific specialty required by the particular occupation in which she will be employed. The petitioner makes no reference to nor draws a nexus between a concentration in the beneficiary's knowledge and the widely varying duties of the proffered position. Therefore, the petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation, and the petition must be denied for this additional reason. Therefore, the petitioner has not established that the beneficiary is qualified to perform services in a specialty occupation.

Accordingly, the AAO shall not disturb the director's denial of the petition.

The appeal will be dismissed and the petition denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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