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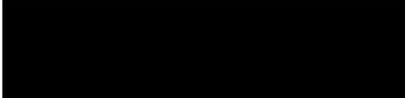


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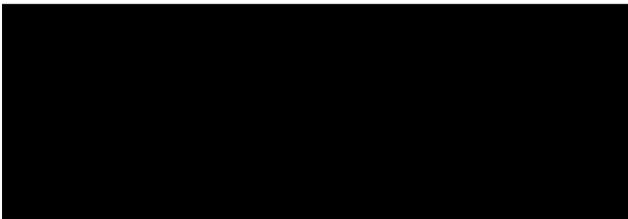


FILE: WAC 08 138 53796 Office: CALIFORNIA SERVICE CENTER Date: **JAN 27 2010**

IN RE: Petitioner: 
Beneficiary:

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

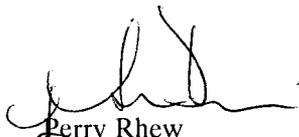
ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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 engaged in “clothes collection and wholesale.” On the Form I-129, Petition for Nonimmigrant Worker, the petitioner states that it was established in 1999, that it employs 50 persons, that it earned \$5,896,000 in gross annual income and \$587,000 in net annual income. It seeks to employ the beneficiary as a general manager – Pacific Northwest Region from October 1, 2008 to March 20, 2011. Accordingly, the petitioner endeavors to classify the beneficiary 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).

On July 30, 2008, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation. On appeal, counsel for the petitioner asserts that the proffered position is a specialty occupation and that United States Citizenship and Immigration Services (USCIS) inappropriately applied the criteria for determining whether the position qualified as a specialty occupation. Counsel submits a brief and additional documentation.

The record includes: (1) the Form I-129, Petition for a Nonimmigrant Worker and supporting documentation; (2) the director’s request for evidence (RFE); (3) prior counsel for the petitioner’s response to the director’s RFE and documentation; (4) the director’s denial decision; and, (5) the Form I-290B, counsel’s brief and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

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 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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly

specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 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. 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, to determine whether the position qualifies as a specialty occupation. *Defensor v. Meissner*, 201 F. 3d 384.

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.”

On the Form I-129, the petitioner stated that the proffered position is that of a “General Manager – Pacific Northwest Region.” The petitioner indicated that the non-technical job description is “[o]versight of the company’s growth/expansion.”

In a response to the director’s RFE, the petitioner stated that the “General Manager of the Pacific Northwest is responsible for overseeing the management of the company’s affairs in the region” and that “[s]pecifically this position ensures that the company operates profitably, maximizes its return on investment, and grows the company to utilize the full market potential in the Pacific Northwest.” The petitioner explained that it is a for-profit enterprise that conserves natural resources through recycling programs for used clothing and textiles. The petitioner indicated that it currently collects clothing at 2,500 drop-off locations in Chicago, Milwaukee, St. Louis, Minneapolis, Louisville, and Seattle for resale in the United States, Canada, Latin America, Asia, Europe, and Africa. The petitioner noted that it is expanding its network of accessible drop-off boxes for used and surplus clothing, shoes and domestic textiles.

The petitioner divided the responsibilities of the general manager into seven areas including planning, finances, marketing, operations, human resources, planning and leadership, and community outreach. The petitioner provided an overview of the tasks and responsibilities in each of the areas. The petitioner also listed the requirements and qualifications of the proffered position as follows:

1. The position of General Manager is a specialty occupation and is professional in nature. The position requires a bachelor’s degree in economics, business or a related field and extensive experience in running business with demonstrable results.

2. Successful planning and execution of business plans, including analysis of market segments, market potential, customer satisfaction and statistical analysis to evaluate existing and potential markets.
3. Ability to build and work effectively with teams and to successfully initiate projects with diverse agencies, governments, community groups, volunteers, individuals and staff. Must have experience with multi-cultural collaborations and creative partnerships that have achieved success.
4. Understanding of the critical issues facing the people serviced by the company and how all current and potential service users relate to the company's activities, objectives and goals.
5. Strong analytical and communication skills and ability to effectively articulate ideas and concepts through public speaking, written communication and individual conversations and correspondence.
6. Computer skills in Windows, MS Office, and Database Management are required.
7. Experience with international trade, export and import is a plus.
8. Experience with multiple lines of business such as production, trade, service, community involvement is a plus.
9. Personnel management; [sic] including recruiting, hiring, training, conflict resolution, disciplining, and firing.
10. Fluency in multiple languages is a plus.
11. A demonstrated commitment to waste reduction and recycling.
12. A valid driver's license.

The petitioner also provided copies of its Internet advertisements for an operations manager in Minnesota and in Dallas. The advertisements listed similar duties to the petitioner's description of the duties of the proffered position and listed a bachelor's degree in the education field. The advertisements did not indicate whether a bachelor's degree was preferred or required and did not identify a specific discipline for the bachelor's degree. The petitioner also provided a job posting for a director of development for a nonprofit business to raise awareness and obtain donations for the deaf and hard of hearing. The advertisement listed a four-year degree in the education field but did not indicate whether the degree was preferred or required and did not identify a specific discipline for the four-year degree. The record also includes a July 8, 2008 evaluation of the beneficiary's work experience as well as an evaluation of the petitioner's general manager position, prepared by [REDACTED], Professor of Management and Information Systems, Former Dean of the School of Business & Economics Seattle Pacific University. [REDACTED] repeats the duties of the position as set out by the petitioner and opines: "[t]hese duties are specialized and require professional theoretical knowledge in the areas of business covered in the course work of a U.S. bachelor's degree in Business Administration or equivalent" and further that "theoretical knowledge is required in academic areas including: marketing, system analysis, operations, economics, human resources, supervision, accounting principles, organizational dynamics, sales, finance, information system, data analysis, financial analysis, marketing research,, [sic] strategic planning, business process analysis, and negotiations."

Upon review of the information in the record, the director denied the petition. The director found that the duties of the proposed position are similar to the duties of a general manager listed in the

Department of Labor's *Occupational Outlook Handbook (Handbook)* under the title of top executives. The director correctly observed that the *Handbook* reported many paths to obtaining a position as a general or operations manager and thus did not identify a required degree in a specific discipline to obtain entry into such a position. The director did not find evidence in the record sufficient to establish an industry-wide standard for the occupation of a general manager and did not find evidence to establish that the duties of the proffered position were complex or unique thus requiring a degree in a specific specialty to perform the duties. The director determined that the record did not include information substantiating that the petitioner normally requires a degree in a specific discipline for the proffered position. The director similarly determined that the record did not demonstrate that the duties of the proffered position were more complex or specialized than any other general manager's job.

On appeal, counsel for the petitioner asserts that the director misconstrued the information in the *Handbook* in order to support a denial decision and that when looking at the *Handbook* and the Department of Labor's *Online O*NET (O*NET)* classification for general and operations managers as well as Washington State's website regarding occupations, the educational and training requirements for the occupation most commonly is a bachelor's or higher degree. Counsel notes the *Handbook's* discussion regarding management specialties and the indication that the type of degree is often based on the type of industry the employer is in or the type of position filled. Counsel notes further that the *Handbook* reports that many top executives have at least a bachelor's degree or graduate degree in business administration, liberal arts, or a more specialized discipline. Counsel contends that the *Handbook's* guidance is in accordance with the petitioner's hiring standard for a bachelor's degree in business administration or its equivalent in the proffered position and thus is a standard industry requirement. Counsel also submits additional Internet job postings from other companies and asserts that these further reflect that a bachelor's degree is the industry standard. The Internet job postings are from a number of companies including nonprofit organizations that collect clothes, and companies that recycle metal, recycle electronics, shred documents, and collect and market recovered fiber. The position descriptions for each of the advertised positions are general and vary widely. Some of the advertisers indicate that a bachelor's degree in a non-specific discipline is preferred and some indicate a general degree is required. Other of the job postings list a bachelor's degree in fields as varied as business, marketing, engineering, operation management, technical disciplines such as industrial or manufacturing engineering, accounting, finance, or economics. Counsel also references the petitioner's past employment practices, as demonstrated by its job postings for similar positions that list a bachelor's degree. Counsel asserts that the petitioner's "management and development of a highly specialized internationally oriented business with 50 employees and annual revenue over \$5.8 million requires sophisticated knowledge of business administration and management." Counsel claims that the upper level employees of such a business would necessarily need to possess a high level of knowledge of product quality, customer markets and industry specifics.

Upon review of the evidence in the record and counsel's assertions on appeal, the AAO does not find the evidence of record persuasive in establishing that the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As counsel noted, the AAO routinely consults the *Handbook* for information about the duties and educational requirements of particular occupations as one method to determine whether a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into a particular position. The 2010-2011 edition of the *Handbook* discusses the occupation of “general manager” under the heading “top executives.” The *Handbook* reports:

General and operations managers plan, direct, or coordinate the operations of companies and other public- or private-sector organizations. Their duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources that are too diverse and general in nature to be classified into any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the tasks of general and operations managers may overlap those of chief executive officers.

Regarding the education and training of top executives, the *Handbook* reports:

The formal education and experience required by top executives vary as extensively as their responsibilities do, but many of these workers have at least a bachelor's degree and considerable experience.

Education and training. Many top executives have a bachelor's or master's degree in business administration, liberal arts, or a more specialized discipline. The specific type and level of education required often depends on the type of organization for which top executives work. College presidents and school superintendents, for example, typically have a doctoral degree in the field in which they originally taught or in education administration.

* * *

Other qualifications. Top executives must have highly developed personal qualities and be able to communicate clearly and persuasively. An analytical mind, the ability to analyze large amounts of information and data quickly, and the ability to evaluate the relationships among numerous factors, also are important qualities. For managers to succeed, they need other important qualities as well, including leadership, self-confidence, motivation, decisiveness, flexibility, sound business judgment, and determination.

Upon review of the petitioner's description of the proffered position, the AAO finds that the position corresponds generally with the *Handbook's* statements regarding the occupation of a general manager. Particularly, the AAO notes that the duties of the proffered position are too diverse and general in nature to be classified into any one area of management or administration. The AAO acknowledges that the proffered position requires broadly-based skills and includes basic management tasks. The AAO has reviewed the *Handbook* and counsel's interpretation of the *Handbook's* report on the occupation of a general manager and observes that although the *Handbook* notes that many top executives have a bachelor's or master's degree in business administration, liberal arts, or a more specialized discipline, the *Handbook* does not identify a specific discipline for

a general manager of clothes collector and recycler. The *Handbook* also references a variety of methods to attain a position as a general manager, from promotion within a company to obtaining a general degree. Thus, the *Handbook* does not assist in establishing the specific proffered position as a specialty occupation. Moreover, the *Handbook* recognizes that general bachelor's degrees in liberal arts and business, or less, will suffice as the proper background for a general manager position. When a job, like that of a general manager, may be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). As observed above, 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 the *Handbook* indicates that courses in a variety of disciplines may be advantageous but does not list a specific course of study leading to a specific degree in the field, as required, the *Handbook* does not indicate that a general manager position would categorically qualify under the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) as read in the context of the statutory and regulatory definitions of specialty occupation. It is incumbent on the petitioner to establish that its particular position 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. This, the petitioner has failed to do.

The AAO notes counsel's reference to the *O*NET* regarding the occupation of a general manager. However, the AAO does not consider the *O*NET* to be a persuasive source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. *O*NET* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP or Job Zone rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Again, the record does not demonstrate that the occupation of a general manager would require the beneficiary to have attained a bachelor's degree or its equivalent in a specific specialty.

The AAO has also reviewed the opinion of [REDACTED] and finds that [REDACTED] although repeating the description of duties of the proffered position, does not provide an analysis of the duties as it relates to the coursework he espouses would be usual in the study for a degree in the general field of business. He does not include the results of formal surveys, research, statistics, or any other objective quantifying information to substantiate his opinion. There is thus an inadequate factual foundation established to support his opinion. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The *Handbook*, which offers an overview of national hiring practices, draws on personal interviews with individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. [REDACTED] opinion, not only is insufficient to overcome the *Handbook's* report that there are a variety of methods to attain a

position in the field of general management, but also fails to establish that a general degree like that of business qualifies as a degree that provides the specificity necessary to comprise the characteristics of a specialty occupation. The petitioner has not presented evidence and the *Handbook* does not assist in establishing that the proffered position is a specialty occupation under the first criterion.

The AAO now turns to consider whether the petitioner may qualify the proffered position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree. 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; 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

A review of the evidence of record finds it insufficient to establish the proposed duties comprise a position that is identifiable with an industry-wide educational standard, or is distinguishable, by its unique nature or complexity, from a similar but non-degree-requiring position. As observed above, the *Handbook* does not list a degree in a specific discipline as necessary to perform the duties of a general manager's position. The AAO has reviewed the Internet job postings provided by the petitioner and finds the majority of the advertisements while generally being in the recycling industry do not provide sufficient information to demonstrate that they are similar to the petitioner's organizational structure. The Planet Aid advertisement, which appears may be similar in structure to the petitioner, lists a bachelor's degree in the education field but does not require this degree in the body of the advertisement, indicating only that it requires five years of management experience. The Goodwill advertisement lists a general bachelor's degree in business, marketing or a related field but does not indicate if the degree is preferred or required. In addition, none of the advertisements provide information regarding the advertising firms' size, number of employees, or level of business. The job postings from a variety of companies that include a variety of job titles and descriptions are insufficient to establish that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. The petitioner has not established the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner in this matter has also failed to establish the second prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) which requires that the proffered position be of such complexity or uniqueness that it can be distinguished from other general managing positions within the same industry. The record does not include evidence detailing what duties of the general manager's position require the attainment of a baccalaureate or higher degree in a specific discipline. The AAO has again reviewed the opinion of [REDACTED] and again observes that [REDACTED] does not identify particular duties that elevate the petitioner's general manager position to one that requires a bachelor's or higher degree in a specialized field. The record lacks evidence or analysis establishing that particular duties of the proffered position differ from the routine duties of a skilled general manager. The petitioner has not provided evidence to establish the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record also fails to demonstrate that the petitioner has a history of recruiting and hiring candidates with a specific degree for the proffered position. To determine whether the petitioner has fulfilled the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. Although the petitioner has provided its own Internet job postings for its general manager position in other locales, the petitioner does not specify that the successful candidate must have a degree in a specific field. In addition, the petitioner has not provided evidence that it routinely hires only individuals with degrees in specific fields that relate directly to its business of collecting, reselling, and recycling clothes and textiles. The AAO also observes that a petitioner's self-imposed employment requirements may not always establish that a position is a specialty occupation, as self-imposed employment requirements without additional information, would allow any alien with a bachelor's degree to be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. The record in this matter does not establish that the petitioner has satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now turns to the fourth criterion and whether the petitioner has established that the duties of the proffered position are sufficiently specialized and complex to require knowledge usually associated with the attainment of a baccalaureate degree in a specific discipline and, therefore, establish the proffered position as a specialty occupation under the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). The duties of the proffered position show that the tasks described are varied and general as are the routine tasks of any general manager. The petitioner has not provided evidence or argument that any particular tasks are so specialized or complex that only an individual with a bachelor's degree in a specific discipline could perform the tasks.¹ Although the position may require skill and experience, the petitioner has not established that such skill may be attained only through the specialized coursework attendant to a four-year university level education in a specific discipline. The AAO has again reviewed the opinion letter of [REDACTED] and reiterates that [REDACTED] does not provide substantive evidence in support of his opinion that the petitioner's position requires even a generalized degree. The petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4).

The petition will be denied and the appeal dismissed for the above stated reason. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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

¹ The AAO observes that the beneficiary of this petition has a high school education and twelve years of management experience. Although the AAO will not further discuss the deficiencies of the evaluations discussing the beneficiary's work experience, the AAO notes that the petitioner's willingness to hire an individual without a degree or its equivalent in a specific discipline undermines its claim that the position qualifies as a specialty occupation.