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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 08 155 53744 Office: VERMONT SERVICE CENTER Date: **MAY 28 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:

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 hotel with over 35 employees. It seeks to employ the beneficiary as a Business Manager 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 the proffered position is 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.

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 Manager. In the March 7, 2008, letter of support, the petitioner describes the proffered position as follows:

[The beneficiary] is being offered temporary employment in the position of a Business Manager for [the petitioner]. In order to perform the duties of a Business Manager for [the petitioner] a person must have a Master's Degree in Business Administration or an equivalent, plus work experience in business. [The beneficiary] will be independently responsible for the business management of the property. He will supervise staff and manage all financial and administrative functions of the hotel. [The beneficiary] will analyze, plan, supervise, and evaluate the workflow of employees. He will provide equipment and facilities management, negotiate and manage vendor agreements, provide analysis of ad revenue trends, as well as develop short-, mid-, and long-term business, marketing and advertising strategies to achieve revenue targets.

The petitioner submitted a copy of the beneficiary's foreign degrees along with an education evaluation that found he has the equivalent of a Master of Business Administration degree from an accredited institution in the United States.

The director's RFE asked for documentation to support a finding that the proffered position is a specialty occupation, including, in part, a more detailed job description, an organizational chart, a list regarding the other employees, and an explanation regarding how the beneficiary's coursework relates to the proffered duties.

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) financial analysis (25%): including evaluating and streamlining vendor agreements, conducting cost analysis on utilities consumption, conducting an annual audit of the revenue management process, and performing analysis and re-design of financial processes;
- 2) directing hotel operations (25%): including managing team members, handling local media inquiries, staff development, performance reviews, and communication with franchise representatives;
- 3) procedure development and implementation (20%): including improving operational processes and systems, ensuring proper hiring procedures are followed, and developing hotel best practices;
- 4) revenue management (15%): including identifying revenue management and e-commerce strategies, and outlining guestroom rates; and
- 5) financial and overall performance reporting (15%): providing analysis of sales and marketing initiatives, preparing month profit and loss review packages, preparing documents for internal and external audits, conducting quarterly associate file audit and evaluations, and preparing monthly financial reports.

In response to the RFE, the petitioner also provided an organization chart, which indicates that the beneficiary will supervise the hotel General Manager, who in turn supervises the rest of the hotel staff, including a Director of Sales & Marketing, an Engineering Manager, a Housekeeping Manager, and a Front Desk Supervisor. The beneficiary would report directly to the President/Owner of the hotel, who does not have a degree, as well as the Director of Finance & Analysis of Baywood Hotels, who has an MBA. ██████████ Hotels is a hotel management company, which provides management support to the petitioner, but which has no ownership interest in the hotel, according to the petitioner.

The petitioner also submitted an explanation of which courses taken by the beneficiary apply to the proffered duties. Most of the coursework listed appears to be related to the proffered duties in financial analysis as well as directing hotel operations.

Additionally, the President/Owner of the hotel submitted a letter in response to the RFE, which states as follows:

This letter is to inform you that I, [name and title of President/Owner of the petitioning hotel], currently perform the duties of the Business Manager of the hotel. I do not possess a four-year degree in Business Administration or Finance, and the complexity of the job duties related to this position of Business Manager makes it hard for me to

perform this job. In order to relieve myself of these duties, I would like to hire an individual who possesses at least a Bachelor's Degree in Business Administration, Finance or equivalent for the position of Business Manager for our hotel.¹ Please note that the position requires use of highly specialized knowledge of business administration and/or Finance, as Business Manager of our hotel is independently responsible for the management of all financial and administrative functions of the property, as well as supervision of staff of 33 employees. This is a complex and sophisticated managerial position, and is not likely to be performed successfully by a person who does not possess at least a four-year degree in Business Administration or Finance or equivalent.

The petitioner provides no explanation of why, after being in business for approximately seven years at the time the petition was filed, the proffered duties have become so complex that the President/Owner, who does not possess a Bachelor's Degree in Business Administration, Finance, or its equivalent, can no longer perform them.

In response to the RFE, the petitioner also submitted a copy of the job advertisement it ran for the proffered position. This ad states that the proffered position requires at least a bachelor's degree in finance, accounting, business administration, or a related discipline from an accredited college or university.

The director denied the petition finding that the proffered position is not a specialty occupation.

On appeal, counsel for the petitioner argues that the proffered position is a specialty occupation and that the director erred in classifying the proffered position as that of an administrative services manager. Counsel asserts that the petitioner already employs a full-time general manager who provides administrative supervision and that the proffered position entails more complex job duties, including revenue management, financial analysis and reporting, which more accurately classifies the proffered position as that of a financial manager. Counsel includes a number of job advertisements for finance managers from other companies.

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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and

¹ The President/Owner's statement that the proffered position requires at least a bachelor's degree conflicts with the support letter submitted with the initial petition, which states that the proffered position requires at least an MBA. However, on appeal, counsel clarifies that the requirement of an MBA was an inadvertent error and that the petitioner requires at least a bachelor's degree in Business Administration, Finance or equivalent. The AAO finds no reason to doubt counsel's explanation for the discrepancy.

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.

Administrative services managers who work as facility managers plan, design, and manage buildings, grounds, equipment, and supplies, in addition to people. This task

requires integrating the principals of business administration, information technology, architecture, engineering, and behavioral science. Although the specific tasks assigned to facility managers vary substantially depending on the organization, the duties fall into several categories, relating to operations and maintenance, real estate, project planning and management, leadership and communication, finance, quality assessment, facility function, technology integration, and management of human and environmental factors. Tasks within these broad categories may include space and workplace planning, budgeting, purchase and sale of real estate, lease management, renovations, or architectural planning and design. Facility managers may suggest and oversee renovation projects for a variety of reasons, ranging from improving efficiency to ensuring that facilities meet government regulations and environmental, health, and security standards. . . . Additionally, facility managers continually monitor the facility to ensure that it remains safe, secure and well-maintained. Often, the facility manager is responsible for directing staff, including maintenance, grounds, and custodial workers.

Although some of the proffered position's duties entail facilities and organization management, the AAO agrees with counsel that the proffered position does not best fit under the *Handbook's* section on administrative services managers because: 1) the organization chart indicates that the petitioner already has other employees who are more likely to perform the duties outlined in this section; 2) 40% of the proffered duties entail financial analysis or sales; and 3) the proffered position oversees nearly all of the hotel staff, including the general manager.

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

Almost every firm, government agency, and other type of organization employs one or more financial managers. Financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Managers also develop strategies and implement the long-term goals of their organization.

The duties of financial managers vary with their specific titles, which include controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking. Controllers direct the preparation of financial reports, such as income statements, balance sheets, and analyses of future earnings or expenses, that summarize and forecast the organization's financial position. Controllers also are in charge of preparing special reports required by regulatory authorities. Often, controllers oversee the accounting, audit, and budget departments. Treasurers and finance officers direct their organization's budgets to meet its financial goals. They oversee the investment of funds, manage associated risks, supervise cash management activities, execute capital-raising strategies to support the firm's expansion, and deal with mergers and acquisitions. Credit managers oversee the firm's issuance of credit, establishing credit-rating criteria, determining credit ceilings, and monitoring the collections of past-due accounts.

firms contract out all their accounting and financial functions to companies that provide such services.

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to produce financial reports. Technological improvements have made it easier to produce financial reports, and, as a consequence, financial managers now perform more data analysis that allows them to offer senior managers profit-maximizing ideas. They often work on teams, acting as business advisors to top management.

Only 25% of the proffered duties entail financial analysis and 15% entail performance reporting. According to the petitioner's job description provided in response to the RFE, 45% of the proffered duties entail managing hotel operations and 15% entail maximizing sales, which involve a different skill set from the other financial-based duties. Moreover, the *Handbook* indicates that financial managers encompass the following occupations, none of which are appropriate classifications for the proffered position: controller, treasurer or finance officer, credit manager, cash manager, risk and insurance manager, and manager of international banking.

Instead, it appears that the proffered position comes under the *Handbook's* section on lodging managers. The *Handbook* section on lodging managers describes the nature of this work as follows:

A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for both vacationing families and business travelers. *Lodging managers* make sure that these conveniences are provided, while also ensuring that the establishments are run efficiently and profitably. Most lodging managers work in traditional hotels and motels, but some work in other lodging establishments, such as recreational camps and RV parks, inns, boardinghouses, and youth hostels.

Lodging establishments can vary significantly in size and in the number of services they provide, which can range from supplying a simple in-room television and a continental breakfast to operating a casino and accommodating conventions. These factors affect the number and type of lodging managers employed at each property.

The one person who oversees all lodging operations at a property is usually called a *general manager*. At larger hotels with several departments and multiple layers of management, the general manager and multiple *assistant managers* coordinate the activities of separate departments. . . . In smaller limited-service hotels—mainly those without food and beverage service—one lodging manager may direct all the activities of the property.

Lodging managers have overall responsibility for the operation and profitability of the hotel. Depending on the hotel and the size of its staff, lodging managers may either perform or direct housekeeping, personnel, office administration, marketing and sales, purchasing, security, maintenance, oversight of recreation facilities, and other activities. They may hire and train staff, set schedules, and lend a hand when needed.

Within guidelines established by the owners of the hotel or executives of the hotel chain, lodging managers set room rates, allocate funds to departments, approve expenditures, and ensure that standards for guest service, decor, housekeeping, food quality, and banquet operations are met. Increasingly, lodging managers also are responsible for ensuring that the information technology common in today's hotels is operational. Some lodging managers, often called *revenue managers*, work in financial management, monitoring room sales and reservations, overseeing accounting and cash-flow matters at the hotel, projecting occupancy levels, and deciding which rooms to discount and when to offer rate specials.

Front office managers, a category of lodging manager, coordinate reservations and room assignments and train and direct the hotel's front desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. At some hotels, they may greet the guests personally and provide them individual attention to see their needs are met. Any adjustments to bills often are referred to front office managers for resolution.

Convention services managers coordinate the activities of various departments to accommodate meetings, conventions, and special events. They meet with representatives of groups or organizations to plan the number of conference rooms to reserve, the configuration of the meeting space, and determine what other services the group will need, such as catering or banquets and audio, visual, or other electronic requirements. During the meeting or event, they resolve unexpected problems and monitor activities to ensure that hotel operations conform to the group's expectations.

Lodging managers may work with hotel sales and marketing directors and public relations directors to manage and coordinate the advertising and promotion of the hotel. They help develop lodging and dining specials and coordinate special events, such as holiday or seasonal specials. They may direct their staff to purchase advertising and to market their property to organizations or groups seeking a venue for conferences, conventions, business meetings, trade shows, and special events.

Lodging managers who oversee the personnel functions of a hotel or serve as human resource directors ensure that all accounting, payroll, and employee relations matters are handled in compliance with hotel policy and applicable laws. They also oversee hiring practices and standards and ensure that training and promotion programs reflect appropriate employee development guidelines.

Computers are used extensively by lodging managers and their assistants to keep track of guests' bills, reservations, room assignments, meetings, and special events. In addition, computers are used to order food, beverages, and supplies, as well as to prepare reports for hotel owners and top-level managers. Many hotels also provide extensive information technology services for their guests. Managers work with computer specialists and other

information technology specialists to ensure that the hotel's computer systems, Internet, and communications networks function properly.

Although the petitioner indicates in the organization chart that it employs a General Manager who will work directly under the Business Manager, because the petitioner does not provide a detailed description of duties for its General Manager position, it is not clear how the duties of the proffered position can be distinguished from those of the General Manager. However, the AAO notes that it is possible to have more than one lodging manager at a hotel and the *Handbook's* description of Revenue Managers, as provided in the section on lodging managers, appears to entail similar duties to those proffered in the present petition.

Under the section on Training, Other Qualifications, and Advancement, the *Handbook* states that:

[m]ost large, full-service hotel chains usually hire people who have a bachelor's degree in business, hotel, or hospitality management for management trainee positions; however, a liberal arts degree coupled with experience in the hospitality field may be sufficient. *At other hotels, especially those with fewer services, employers look for applicants with an associate degree or certificate in hotel, restaurant, or hospitality management along with experience.*

[Emphasis added.]

According to the petitioner's support letter, the petitioner offers 89 suites with a deluxe continental breakfast and a weekly manager reception. Despite counsel's characterization of the petitioner as a full-service hotel by counsel, it does not appear that the petitioner has a regular food and beverage service, which, according to the *Handbook*, means that the petitioner is a smaller limited-service hotel. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has not provided evidence that it is part of a full-service hotel chain. Because the *Handbook* indicates that working as a lodging manager at a hotel that is not part of a large full-service chain does not normally require at least a bachelor's degree in a specific specialty, the *Handbook* does not support the proffered position as being a specialty occupation.

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.

As stated previously, the advertisements from other companies submitted on appeal are for finance or revenue managers. Because the AAO has determined the proffered position is not a finance manager, the petitioner has not provided any job-vacancy advertisements evidencing a common degree-in-a-specific-specialty requirement in positions that are both: (1) parallel to the proffered position; and (2) located in organizations similar to the petitioner.

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 *Handbook's* information to the effect that there is a spectrum of degrees acceptable for lodging manager positions. Moreover, as mentioned previously, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than lodging manager 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 in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). In fact, the President/Owner who currently performs the proffered duties does not hold a bachelor's degree or its equivalent in a specific specialty. As such, even though the petitioner's ad states that the proffered position requires at least a bachelor's degree in finance, accounting, business administration or a related discipline from an accredited college or university, this requirement is negated by the fact that the person who has performed the proffered duties previously does not have a bachelor's degree or its equivalent in a specific specialty.

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 lodging manager 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.

For the reasons related in the preceding discussion, 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). Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has failed to establish whether it has made a bona fide offer of employment to the beneficiary based on the evidence of record or that the petitioner will have and maintain an employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). As discussed above, in addition to the President/Owner of the hotel, the beneficiary would report directly to the Director of Finance & Analysis at Baywood Hotels, which the petitioner indicates does not have an ownership interest in the petitioner's hotel. The petitioner and counsel do not clarify whether the Director of Finance & Analysis would control the beneficiary's work and/or employment status. No offer letter or employment contract was submitted. It is not clear for which company the beneficiary will ultimately perform the proffered duties. Therefore, the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The petition will be denied and the appeal dismissed 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.