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FILE: WAC 09 139 50567 Office: CALIFORNIA SERVICE CENTER Date: APR 01 2011

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:

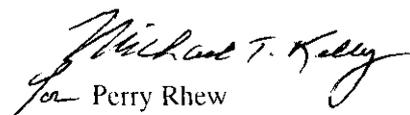


INSTRUCTIONS:

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 \$630. 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,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a freight forwarding firm with 27 employees. To employ the beneficiary in what it designates as a business analyst position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

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 a particular position 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 (5<sup>th</sup> 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), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its

equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

With the petition, counsel submitted a letter, dated March 20, 2009, from the petitioner's CEO. That letter states the duties of the proffered position as follows:

1. Review and analyze business conditions of the freight forwarding market in relation to internal accounting and marketing to determine budget, cash flow projections, and strategic marketing in aid to achieve high performance management of company's business;
2. Interpret accounting and financial information such as contracts, orders, and vouchers, analyze data concerning financial status, accounting procedures, source and application of funds;
3. Document internal accounting controls dealing with cash flow and working capital in relation to company finance;
4. Review operational effectiveness of policies and management systems and confer with personnel concerned to assure smooth functioning of newly implemented systems or procedures; and
5. Prepare forecast of future market trends and recommendations to vendors, suppliers, and manufacturers for new services to meet market demands.

That letter also states:

Owing to the advanced nature of the job duties and of the activities of this company, the position of Business Analyst is a complex and professional position, which, by its very nature, requires professional training and specialized qualifications. [The beneficiary] holds a Master of Business Administration from City University in Seattle, WA. We are confident that [the beneficiary] possesses the academic qualifications and skills required for the professional position of Business Analyst and that it will contribute to her future accomplishment of all of the tasks.

The petitioner's CEO did not state that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty, or, if it does, what specific specialty the requisite degree must be in.

Counsel also provided evidence, including a diploma and transcript, sufficient to show that the beneficiary does, in fact, have a Master of Business Administration (MBA) from City University of Seattle, Washington.

Because the evidence submitted was insufficient to show that the proffered position qualifies as a position in a specialty occupation, the service center, on April 27, 2009, issued an RFE in this matter. The service center requested, *inter alia*, evidence that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

In response, counsel submitted a letter, dated June 1, 2009, in which he asserted that the description of the duties of the proffered position demonstrates that the proffered position requires independent decision-making abilities, research, and analytical skills, and that the position is therefore manifestly different from clerical positions. Counsel stated, "All of these responsibilities are so specialized that the employer normally requires at a minimum a bachelor's degree in business administration or a closely related field."

Counsel further observed that, to enter the United States to perform work as a management consultant pursuant to the North American Free Trade Agreement (NAFTA), an applicant must possess a bachelor's degree or five years of experience in the profession.<sup>1</sup> Counsel conceded that outside of the context of NAFTA, that requirement is not binding. The AAO notes, in addition, that regulation does not require that the degree be in any specific specialty. Yet further, that regulation permits the admission under the NAFTA of a management consultant with five years of experience and no degree. Counsel made no argument that five years of experience should be considered equivalent to a bachelor's degree.

Counsel stated that five of the petitioner's 27 employees were willing to reveal their educational credentials, and that all of them had bachelor's degrees. Counsel did not state whether any of those employees are in positions similar to the proffered position. Counsel did not indicate that any of the petitioner's remaining employees have bachelor's degrees. That five of the petitioner's employees have bachelor's degrees in various subjects provides no apparent support for the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

Counsel stated that one of those employees, [REDACTED] has a bachelor's degree in business administration and is currently the petitioner's sales and marketing manager, having been promoted from the position of business analyst. Counsel provided no evidence to support any of those assertions.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The director denied the visa petition on July 17, 2009 finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. On appeal, counsel submitted an evaluation of the proffered position, dated August 24, 2009, which was produced by a professor of management at the University of Georgia. That evaluation is discussed below.

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<sup>1</sup> Counsel misidentified the regulation where that stipulation is located. It may be found at 8 C.F.R. § 214.6(c).

The AAO notes, initially, that the petitioner's CEO has never claimed that the proffered position requires a degree in any specific specialty. Rather, he stated that the position requires a degree and that the beneficiary has a degree in business administration. That the petitioner has never even claimed that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is sufficient reason, in itself, to dismiss the visa petition.

Counsel has claimed that the proffered position requires a bachelor's degree in business administration. Counsel's basis for that assertion is unclear. Even if counsel were arguing from the evidence, however, he would not be arguing that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

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 correlation 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).

In stating that the proffered position requires a degree in business administration, counsel has not demonstrated, nor even effectively alleged, that the proffered position qualifies as a position in a specialty occupation. Again, this is sufficient reason, in itself, to dismiss the visa petition. However, the AAO will continue its analysis of the specialty occupation issue.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> The *Handbook* section that describes positions with duties most similar to those attributed to the proffered position by the petitioner's CEO is the section pertinent to management analysts. The *Handbook* describes the duties of management analyst positions as follows:

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

As business becomes more complex, firms are continually faced with new challenges. They increasingly rely on *management analysts* to help them remain competitive amidst these changes. Management 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. (For information on computer specialists working in consulting, see the following statements elsewhere in the *Handbook*: computer software engineers and computer programmers; computer systems analysts; and computer scientists.)

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.

That section of the *Handbook* appears to imply that businesses typically retain a management consultant, who is an employee of a management consultancy, as a contractor, rather than hiring their own full-time management consultants. In other respects, though, the duties of the proffered position as described by the petitioner's CEO are consistent with the duties of management analyst positions as described in the *Handbook*. The AAO will assume, *arguendo*, that the proffered position is a management analyst position within the meaning of the *Handbook*.

The *Handbook* describes the educational requirements of management analyst positions as follows:

Educational requirements for entry-level jobs in this field vary between private industry and government. Many employers in private industry generally seek individuals with a master's degree in business administration or a related discipline. Some employers also require additional years of experience in the field or industry in which the worker plans to consult. Other firms hire workers with a bachelor's degree as research analysts or associates and promote them to consultants after several years. Some government agencies require experience, graduate education, or both, but many also hire people with a bachelor's degree and little work experience for entry-level management analyst positions.

Few universities or colleges offer formal programs in management consulting; however, many fields of study provide a suitable educational background for this occupation because of the wide range of areas addressed by management analysts. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, or engineering. Most analysts also have years of experience in management, human resources, information technology, or other specialties. Analysts also routinely attend conferences to keep abreast of current developments in their field.

That section of the *Handbook* indicates that the requirements for entry-level management analyst positions vary widely. Many require MBA degrees. As was explained above, pursuant to *Matter of Michael Hertz Associates and Royal Siam Corp. v. Chertoff*, *supra*, those positions would not qualify

as specialty occupation positions. Many of the remaining management analyst positions require a bachelor's degree, but the *Handbook* appears to indicate that a degree business, management, accounting, marketing, economics, statistics, computer and information science, or engineering might suffice. Those positions would also not qualify as specialty occupation positions, as accounting, marketing, economics, statistics, computer and information science, and engineering do not delineate a single specific specialty. Such a wide range of acceptable majors or academic concentrations is not indicative of a position requiring the theoretical and practical application of a distinct body of highly specialized knowledge in a specific specialty, as required by section 214(i)(1) of the Act and its implementing regulation at 8 C.F.R. § 214.2(h).

The *Handbook* does not support the proposition that management analyst positions require a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no other evidence pertinent to management analyst positions in general. The petitioner has not, therefore, demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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.

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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The *Handbook*, as was noted above, does not support the position a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to management analyst positions. The record contains no evidence that a management analysts' professional association requires a bachelor's degree in a specific specialty for admission. The record contains no letters or affidavits from management analysts or management analyst firms. The record contains no vacancy announcements from firms seeking management analysts and specifying their educational requirements for the proffered position. The record contains no evidence pertinent to the requirements other firms impose on management analysts. The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of the first clause of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will also consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This alternative requirement would be satisfied if the petitioner demonstrated that, although other marketing analyst positions may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the position proffered in the instant case is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty.

The evaluation of the proffered position by the professor at the University of Georgia indicates that the professor analyzed the duties of the proffered position as provided to him by the petitioner and reached the decision that the proffered position requires a minimum of a bachelor's degree in business administration, marketing, or a related field. The AAO notes, again, that if a degree in business administration, without further specification, is a sufficient educational qualification for the proffered position, then the proffered position is not a position in a specialty occupation.

The record contains no other evidence to suggest that, notwithstanding that other management analyst positions may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty. Therefore, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Counsel asserted that [REDACTED] has a bachelor's degree in business administration and previously worked as the petitioner's business analyst. Counsel's basis in making those statements is unclear to the AAO. The record contains no evidence that [REDACTED] has a bachelor's degree in business administration. The record contains no evidence that [REDACTED] previously worked as the petitioner's business analyst.<sup>3</sup> Again, as per *Matter of Laureano*, and *Matter of Ramirez-Sanchez*, *supra*, counsel's assertions are not evidence and are insufficient to sustain the burden of proof. Further, as repeatedly stated in this decision, a requirement for a generalized bachelor's degree in business administration without a specific academic concentration does not establish a position as a specialty occupation. *Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

Further, even if counsel's assertion were taken as true, the record contains no evidence of the total number of people who worked in the proffered position and the number of them who had a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to anyone the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore demonstrated that it normally requires a degree for the proffered position and that the position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>4</sup>

<sup>3</sup> The AAO observes, as a minor point, that even if the evidence demonstrated that [REDACTED] previously worked as the petitioner's business analyst and now has a degree, that would be insufficient. To support the assertion that the degree is a prerequisite for entry into the position, the petitioner would be obliged to show that Evi Samsudin had that degree *before* entering into the position.

<sup>4</sup> The petitioner's creation of a position with a perfunctory bachelor's degree requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the ultimate employment of the

The final consideration pertinent to 8 C.F.R. § 214.2(h)(4)(iii)(A) is the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). This criterion is satisfied if the petitioner demonstrates that 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 in a specific specialty.

The description of the duties of the proffered position is so abstract that whether those duties might require a minimum of a bachelor's degree or the equivalent in a specific specialty cannot be readily determined. For instance, whether a degree in any specific specialty is required in order to "Review and analyze business conditions . . ." is unclear, absent evidence of the complexity of the business conditions to be reviewed and analyzed. The other duties ascribed to the proffered position are similarly resistant to analysis absent additional information.

Notwithstanding those duties' resistance to analysis, however, the August 24, 2009 evaluation of the proffered position, provided by the professor at the University of Georgia, purports to evaluate the proffered position and to find that it requires a minimum of a bachelor's degree in business administration, marketing, or a related field. Similarly, the petitioner's CEO stated, in his March 30, 2009 letter, that he is confident that the beneficiary, with her master of business administration degree, will be able to perform in the proffered position.

Again, a degree in business administration is not a degree in a specific specialty. If a degree in business administration, without further specificity, is a sufficient academic qualification for the proffered position, then, as was stated above, the position does not qualify as a position in a specialty occupation. The petitioner provided no evidence that the nature of the specific duties is so specialized and complex that knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The petitioner has not, therefore, demonstrated that the proffered position qualifies as a position in a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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alien, and determine whether the position qualifies as a specialty occupation. *Cf. Defensor v. Meissner*, 201 F. 3d 384, 388. The critical element is not the title of the position or 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. To interpret the regulations any other way would lead to absurd results: if USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a menial, non-professional, or an otherwise non-specialty occupation, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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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. The appeal will be dismissed and the petition denied.

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