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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

[Redacted]

FILE: [Redacted] Office: [Redacted] Date: **APR 05 2011**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:

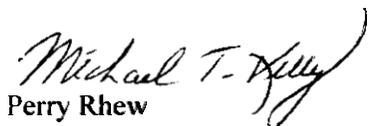
[Redacted]

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,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, [REDACTED] Service Center, denied the nonimmigrant visa petition. 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 [REDACTED] that was established in 2001 and currently has four employees. It seeks to employ the beneficiary as a [REDACTED]. 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). The director denied the petition, determining that the proffered position was not a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's April 22, 2009 request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's July 17, 2009 denial letter; and (5) the Form I-290B, with counsel's brief and accompanying evidence. The AAO reviewed the record in its entirety before issuing its decision.

The issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The 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), 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.

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. *Cf. 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 petitioner claims to seek the beneficiary's services as a [REDACTED]. In a letter of support dated December 24, 2008, counsel for the petitioner stated that the petitioner is a non-profit organization seeking the beneficiary's services as a [REDACTED]. Counsel described the proffered employment of the beneficiary as follows:

The position requires, as a minimum prerequisite, that the applicant have a Bachelor's Degree in [REDACTED] as the [REDACTED] is responsible for managing his area responsibilities according to the [REDACTED] policies. This includes knowledge of [REDACTED]

The [REDACTED] must be able to review and interpret complicated written materials and prepare periodic reports regarding his area of responsibility. The position requires the [REDACTED] to exercise concise, professional judgment in the context of various tasks, examples of which are outlined below.

Like any other professional position, the [REDACTED] must have excellent time management skills, strong [REDACTED] and accurate reporting abilities. He must also be able to intelligently and effectively evaluate the [REDACTED] and outlook of the assigned area of the [REDACTED].

* * *

The duties to be carried out by the [REDACTED] are to include:

- Prepare, examine, or analyze [REDACTED] records, [REDACTED] or other [REDACTED] to assess accuracy, completeness, and conformance to reporting and procedural standards.
- Compute [REDACTED] and prepare [REDACTED] ensuring compliance with [REDACTED] reporting or other [REDACTED] requirements.
- Analyze [REDACTED] and obligations, to project future [REDACTED] or to provide advice.
- Report to management regarding the [REDACTED]
- Establish tables of [REDACTED] and assign [REDACTED]
- Develop, maintain, and analyze [REDACTED] preparing periodic reports that compare [REDACTED]
- Develop, implement, modify, and document [REDACTED] making use of current computer technology.
- Prepare forms and manuals for [REDACTED] and direct their work activities.
- Survey operations to ascertain [REDACTED] needs and to recommend, develop, or maintain solutions to [REDACTED] problems.

- Advise management about issues such as resource utilization, tax strategies, and the assumptions underlying budget forecasts.

The petitioner further claimed that the beneficiary possessed a bachelor's degree in business administration with a major in [REDACTED]

In the RFE dated April 22, 2009, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed evidence demonstrating that the proffered position was a specialty occupation, including but not limited to information pertaining to the petitioner's business, its hiring practices, its accounting system, and its organizational chart. The director also requested evidence from industry-related professional associations, as well as firms or individuals in the industry, which regularly employed and/or recruited accounts, and requested evidence in the form of job postings or advertisements from similar churches in the industry to demonstrate that the employment of a degreed accountant was an industry-wide standard.

In response, counsel for the petitioner submitted a letter dated June 2, 2009, in which the director's queries were addressed. Numerous documents were submitted, including an organizational chart and an overview of the petitioner's accounting policies and procedures. Counsel indicated that the petitioner had not previously employed an accountant, and submitted a letter dated May 29, 2009 from [REDACTED], attesting to this fact. Counsel also submitted a letter from [REDACTED] at [REDACTED] who claimed that, as part of its full-time staff of four persons, the center employed an [REDACTED]. The letter further provided a generic statement of the [REDACTED] duties performed by the center's [REDACTED] and further indicated that the center's membership totaled approximately 250 people. Counsel also submitted a letter from the petitioner dated May 27, 2009, in which it claimed that the beneficiary would be employed as an [REDACTED]. The petitioner cited tasks of both a [REDACTED] as set forth on www.monster.com, yet provided no additional information or evidence to demonstrate how the duties of each position cited either supported or contradicted the duties of the proffered position.

On July 17, 2009, the director denied the petition. The director found that, upon review of the duties of the proffered position in relation to the size and scope of the petitioner's entity, the position appeared to be more akin to that of a [REDACTED]. The director further noted that the evidence of record failed to demonstrate that the proffered position was that of an [REDACTED] or that the petitioner's enterprise required the services of a full-time [REDACTED]. The director concluded that the petitioner had not established the proffered position as a specialty occupation.

On appeal, the petitioner asserts that the director's denial was erroneous. Specifically, the petitioner contends that the position is in fact an [REDACTED] position, and submits new documentary evidence in support of this contention.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position.

Factors considered by the AAO when determining this criterion include whether the Department of Labor's (DOL) *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.

The petitioner has stated that the proffered position is that of a [REDACTED]. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of management accountants, the category of accounting most closely aligned to the vague and general duties described by the petitioner. As stated by the *Handbook*, management accountants:

[r]ecord and analyze the [REDACTED] information of the companies for which they work. Among their other responsibilities are [REDACTED] and [REDACTED]. . . . They analyze and interpret the [REDACTED] that corporate executives need in order to make sound business decisions. They also prepare [REDACTED] reports for other groups, including [REDACTED] authorities. Within [REDACTED] departments, [REDACTED] may work in various areas, including [REDACTED].¹

The AAO finds the above discussion to be generally reflected in the petitioner's description of the duties of the proffered position and agrees that the petitioner's employment would more likely than not require the beneficiary to have an understanding of [REDACTED] principles. However, degreed [REDACTED] do not perform all types of employment that require the use of [REDACTED] principles. Thus, the performance of duties requiring [REDACTED] knowledge does not establish the proffered position as that of an [REDACTED]. The question is not whether the petitioner's position requires knowledge of [REDACTED] principles, which it apparently does, but rather whether it is one that normally requires the level of [REDACTED] knowledge that is signified by at least a bachelor's degree, or its equivalent, in [REDACTED].

The *Handbook's* discussion of the occupation of [REDACTED] clearly indicates that accounting positions may be filled by individuals holding associate degrees or certificates, or who have acquired their [REDACTED] expertise through experience:

Some graduates of junior colleges or business or correspondence schools, as well as [REDACTED] who meet the education and experience requirements set by their employers, can obtain junior [REDACTED] positions and advance to [REDACTED] positions by demonstrating their [REDACTED] skills on the job.

Most beginning [REDACTED] and [REDACTED] may work under supervision or closely with an experienced [REDACTED] or [REDACTED] before gaining more independence and responsibility.

The *Handbook* also notes in its description of the work performed by [REDACTED] clerks that:

¹ *Occupational Outlook Handbook*, 2010-2011 Edition, at www.bls.gov/oco/ocos001.htm

Clerks who can carry out a wider range of [REDACTED] activities will be in greater demand than specialized clerks. For example, demand for full-charge [REDACTED] is expected to increase, because they can perform a wider variety of [REDACTED] including [REDACTED] and those with several years of [REDACTED] experience who have demonstrated that they can handle a range of tasks will have the best job prospects.²

To determine whether the [REDACTED] knowledge required by the proffered position exceeds that which may be acquired through the attainment of less than a bachelor's degree, or the equivalent, in [REDACTED] the AAO turns to the record for information regarding the nature of the petitioner's business operations. While the size of a petitioner's business is normally not a factor in determining the nature of a proffered position, both level of income and organizational structure are appropriately reviewed when a petitioner seeks to employ an H-1B worker as an [REDACTED] as correctly noted by the director. The AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. See *EG Enterprises, Inc. d/b/a Mexican Wholesale Grocery v. Department of Homeland Security*, 467 F. Supp. 728 (E.D. Mich. 2006). In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in an accounting position requiring a level of [REDACTED] knowledge that may be obtained only through a baccalaureate degree or higher in [REDACTED] or its equivalent.

At the time of filing, the petitioner stated that it commenced operations as a [REDACTED] in 2001 and currently employed four persons. It further claimed to be a non-profit entity with a gross annual income of [REDACTED]. In support of the petition, the petitioner repeatedly states that it requires the services of the beneficiary as a [REDACTED] to oversee its expansion, and further indicates that its current outside [REDACTED] is no longer able to perform such services at the previously-offered discounted rate. However, the petitioner has failed to submit evidence of its claimed expansion, and further submits no evidence to demonstrate that the beneficiary will actually serve as a [REDACTED] over a dedicated [REDACTED] department. It is noted that the organizational chart submitted in response to the RFE claims that the beneficiary will oversee a department of 10 volunteers. Moreover, while the AAO notes that the petitioner may not actually employ these persons, merely claiming that their volunteer status creates a department, without evidence to support the contention, is insufficient for evidentiary purposes in this matter. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, it is somewhat unclear as to why none of the ten volunteer members of the [REDACTED] department for the petitioner's [REDACTED] are able to perform the proposed [REDACTED] duties of the beneficiary. Since the [REDACTED] is a non-profit entity with only four full-time employees, it is unclear how (1) the need for a full-time [REDACTED] is warranted; and (2) none of its current volunteers are able to perform these functions, either individually or collectively as a group. Doubt cast on any aspect of the petitioner's proof may, of course, lead

² *Occupational Outlook Handbook*, 2010-2011 Edition, at www.bls.gov/oco/ocos144.htm.

to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner indicates that it has plans for further expansion and that it is the rapid and continuing growth of its membership that necessitates a full-time [REDACTED]. The AAO acknowledges that the process of expanding a business's operations could potentially establish [REDACTED] and operational complexities that would require a degreed [REDACTED]. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its [REDACTED] structure and operations, to determine whether the [REDACTED] employment described by the petitioner would impose such a degree requirement on the beneficiary. Based on the unsupported assertions of the petitioner, such as the existence of a legitimate [REDACTED] department and the fact that an independent [REDACTED] has been able to perform the basic [REDACTED] duties of the [REDACTED] in the past, it appears that the proffered position's duties will more likely than not be those of a [REDACTED]. However, regardless of the occupational class to which the proffered position properly belongs, the AAO reiterates that the record of proceeding does not establish that the proffered position requires at least a bachelor's degree level of a body of highly specialized knowledge in [REDACTED].

The *Handbook* describes the position of bookkeeper as follows:

In small businesses, *bookkeepers and bookkeeping clerks* often have responsibility for some or all the [REDACTED] known as the [REDACTED]. They record all [REDACTED]. They also produce [REDACTED] statements and prepare reports and summaries for supervisors and managers. [REDACTED] prepare [REDACTED] by compiling data from [REDACTED], or other forms of [REDACTED]. Additionally, they may handle [REDACTED].

This description of duties appears to accurately describe the duties of the proffered position.

The *Handbook* describes the educational requirements of a [REDACTED] as follows:

Employers usually require [REDACTED] clerks to have at least a high school diploma and some [REDACTED] coursework or relevant work experience. Clerks should also have good communication skills, be detail oriented, and trustworthy.

Education and training. Most [REDACTED] clerks are required to have a high school degree at a minimum. However, having some postsecondary education is increasingly important and an associate degree in business or [REDACTED] is required for some positions. Although a bachelor's degree is rarely required, graduates may accept [REDACTED] clerk positions to get into a particular company or to enter the [REDACTED] field with the hope of eventually being promoted.

According to the *Handbook*, a bachelor's degree in a specific specialty is not required for entry into the proffered position.

Accordingly, the record offers no meaningful evidence to establish that the [REDACTED] duties to be performed by the beneficiary in relation to the petitioner's claimed operations are sufficiently complex to require the services of a degreed [REDACTED]. As discussed above, and despite the petitioner's claims to the contrary, the proffered position appears more likely than not to be that of a [REDACTED] a position which does not require an individual who holds a degree in a specific specialty. Accordingly, 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 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. Factors considered by the AAO when determining this criterion include 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)).

In the instant matter, the petitioner has failed to satisfy either prong of the criterion. Although the petitioner submitted a letter from [REDACTED] in support of an industry standard of hiring only degreed accountants, this letter is not sufficient. [REDACTED] claimed that, as part of its full-time staff of four persons, the center employed an [REDACTED] and provided a generic statement of the [REDACTED] duties performed by this [REDACTED]. [REDACTED] further indicated that the center's membership totaled approximately 250 people. Aside from this letter, however, no additional documentary evidence in support of these contentions has been submitted. The petitioner has submitted no evidence to demonstrate that the [REDACTED] is currently operating under the structure claimed by [REDACTED]. There is no additional evidence providing details about the [REDACTED], its membership, and organizational hierarchy. As previously stated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Additionally, though requested in the RFE, the petitioner failed to submit job postings for similar positions in the petitioner's industry, to establish its degree requirement as the norm within its industry under the first prong of the criterion. The AAO notes, however, that the petitioner submits three job postings for the first time on appeal. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted

the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not and does not consider the sufficiency of the job postings submitted on appeal. Notwithstanding this fact, the AAO notes that the job postings would not in themselves be probative of an industry-wide recruiting and hiring standard, absent persuasive documentary evidence that they are representative of such a standard.

For the reasons set forth above, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position. The petitioner's failure to submit sufficient information related to its claimed business expansion plans and corroborating evidence supporting its claimed volunteer employee workforce precludes it from establishing that the position's complexity or unique nature distinguish it from [redacted]-related employment that is performed with less than a four-year degree in a specific specialty or its equivalent. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Therefore, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually 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. In the instant matter, the petitioner indicated that it previously outsourced its [redacted] duties to [redacted] and indicates that it has not previously hired an [redacted]. Therefore, the record does not establish that the petitioner has ever employed an [redacted] on a full-time basis. Since the petitioner has not established that it previously employed a degreed [redacted] in the proffered position, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).³

³ To satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have

The fourth criterion requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree. The AAO, however, finds no evidence to indicate that the beneficiary's duties would require greater knowledge or skill than that normally possessed by a [REDACTED] or a junior [REDACTED]. Further, the position, as described, does not appear to represent a combination of jobs that would require the beneficiary to have a unique set of skills beyond those of a [REDACTED] or at most a junior [REDACTED].

In reaching its decision, the AAO has again considered counsel's letter dated December 24, 2008 and the response to the RFE dated June 2, 2009, as well as the arguments and evidence submitted by the petitioner on appeal. The initial letter of support provided only a vague and generalized overview of [REDACTED] duties, and the evidence submitted in response to the RFE failed to expand or describe these duties in further detail. On appeal, the petitioner urges the AAO to consider its unpaid staff departments when considering the complexity of the proffered position, noting that a centralized [REDACTED] department headed by the beneficiary would be critical for the petitioner's expansion and the continued [REDACTED] operations of the [REDACTED]. In support of these contentions, the petitioner submitted numerous documents, such as promotional flyers for the [REDACTED], membership forms, policies manuals, and examples of [REDACTED]. However, the petitioner failed to submit any evidence to demonstrate that, other than its current staff of four employees, the [REDACTED] possessed a complex organizational hierarchy made up of volunteer workers, such as the claimed ten-person [REDACTED] department, and how such an organizational structure would affect the educational requirements of the proffered position. Consequently, there is an inadequate factual foundation to support a finding that the proposed duties are as specialized and complex as required by the regulations to qualify as a specialty occupation. The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than that of a typical [REDACTED] or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree or its equivalent in [REDACTED]. The totality of the record does not establish the proffered position is a specialty occupation based on a claimed complex and unique nature as required by the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For reasons related in the preceding discussion, the petitioner has failed to establish the proffered position as a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

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.