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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**

[Redacted]

82

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)

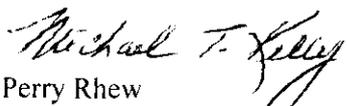
ON BEHALF OF PETITIONER:
[Redacted]

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,

for 
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 an international trade company engaged in the import, export, wholesale and distribution of consumer electronics, as well as the sampling, production, and distribution of specialized product lines. It seeks to employ the beneficiary as a production coordinator. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant 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 position was not a specialty occupation.

On appeal, counsel for the petitioner contends that the director's findings were erroneous. Specifically, counsel asserts that the director incorrectly classified the proffered position as that of a compliance officer, and submits a brief and additional evidence in support of his contentions.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's May 20, 2009 request for further evidence (RFE); (3) the petitioner's June 18, 2009 response to the director's RFE; (4) the director's July 15, 2009 denial decision; and (5) the Form I-290B and counsel's brief in support of the appeal. 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 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.

In a March 20, 2009 letter appended to the petition, the petitioner stated that due to fast increasing demand and business volume, it required the services of a production coordinator. The duties of the proffered position were described as follows:

1. According to customer requirements to communicate with overseas manufacturing bases. Ensure quality control on all pre-production samples to guarantee customer satisfactions; Identify and analyze problems in quality control and service aspects, propose alternatives, and implementing mutual benefit solutions;
2. Interact with vendors on production specifications, product line up during testing and evaluation on sample and specifications;
3. Check and make sure products meet necessary safety standard: UL/CUL, FCC, FDA, ETL, RoHS etc.
4. Issue PO's and updating production status on a weekly basis;
5. Communicate with overseas production bases to ensure adherence to time and action calendars throughout the pre-production process to achieve on-time delivery;
6. Work with bank to issue Letter of Credit or transfer L/C to our factories overseas;
7. Make shipping arrangement, negotiating with forwarder and shipping company on shipping cost, tonnage, port of entry, customs and tariffs, routing arrangement, packing, cargo and loading arrangements and direction and location of alternate vessels and routes. Monitoring estimated ship dates, shipping statuses, and informing our sales team and customers on any updates.
8. Make, review, and verify shipping, financial, customs, tariff and other commercial documents including letter of credit, billing of lading, customs documentation and warehouse receipt, for accuracy and compliance with contract terms;
9. Handle transportation insurance matters, shipping damage/loss and theft issues;
10. Secure the communication accuracy and efficiency during new sample testing, new product design and improvement, and follow-up for the order supply;
11. Evaluate our fulfillment and objectives and identify potential problem and opportunities and make recommendation for appropriate modification and improvement to our standard and processing.
12. Gather competitors' data on pricing, well-received products and market demand trends, providing production bases with updated information report and statistic data analysis. Advising our managing team on cost forecast and correct cost/price structure; Pushing our production bases to enhance price competitiveness[.]

The petitioner indicated that in order to perform these duties, the production coordinator must have at least a bachelor's degree in any management or administration major "with about two years of industrial work experience in production management or marketing related field."

In a May 20, 2009 RFE, the director requested additional information. Specifically, the director requested more detailed evidence demonstrating that the proffered position was a specialty occupation, including but not limited to a more detailed description of the proffered position and information pertaining to the petitioner's business, its hiring practices, 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 production managers, and requested evidence in the form of job postings or advertisements from similar companies in the industry to demonstrate that the employment of a degreed production manager was an industry-wide standard..

In response, the petitioner submitted a letter dated June 18, 2009, in which the director's queries were addressed. The petitioner described the duties of the proffered position in additional detail, breaking down each area of primary focus with an explanation of duties and the experience required to perform such duties. Below is an excerpt from the petitioner's letter, which confirms the main focus areas of the duties of the proffered position as well as the amount of time the beneficiary would allot to each area:

- 1) Purchasing and Production Coordinating: issue or transfer L/C, check material purchasing status, mass production plan, arrange inspection, shipping, insurance, documents, etc.

Time Allocation: 40%, 16 hours per week

- 2) New Product Development: Identify market trend, Specifications Analysis, Sample Test & Evaluation, Safety Regulation & Quality Control on whole production processing.

Time Allocation: 30%, 12 hours per week.

- 3) Sales Support: Product Line Up, Presentation/Sales proposal, update on status and schedule of cargo, receiving cargo and arrange shipment to retailer.

Time Allocation: 20%, 8 hours per week.

- 4) Evaluation Performance: Analysis on processing improvement, Cost structure analysis, Advise management team on improvement plan[.]

Time Allocation: 10%, 4 hours per week.

The petitioner also provided copies of newspaper advertisements and Internet job postings for what it claimed were similar positions in the industry, as well as a copy of its own job announcement for the proffered position. In addition, an organizational chart demonstrating the beneficiary's role in the petitioner's organizational hierarchy was submitted.

On July 15, 2009, the director denied the petition determining that the duties of the proffered position were duties similar to the position of a compliance officer, an occupation that did not require a bachelor's in a specific specialty. On appeal, counsel for the petitioner asserts that the director mischaracterized the position. Counsel references the [REDACTED] Employment Development Department (EDD) and contends the EDD has categorized this position as a logistician, an occupation that requires a bachelor's degree. Counsel repeats the petitioner's description of duties for the proffered position and contends that sufficient evidence has been submitted to demonstrate the proffered position meets the criteria of more than one of the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel's assertions are not persuasive. The AAO observes that 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 disagrees with counsel's assertion that the proffered position is that of a logistician. Turning to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, a source the AAO routinely consults for information regarding the duties and educational requirements of particular occupations, the AAO notes that the occupation of logistician is briefly described as follows:

Analyze and coordinate the logistical functions of a firm or organization. Responsible for the entire life cycle of a product, including acquisition, distribution, internal allocation, delivery, and final disposal of resources.

The *Handbook's* general description suggests that logisticians are responsible for the life cycles of particular products. The petitioner, however, is a five-person international trade company that interacts with overseas manufacturers and imports, exports, and distributes consumer electronics. The record, including the petitioner's description of the duties of the proffered position, does not establish that the proffered position is a logistician position. While the AAO notes that some of the duties of the proffered position encompass the brief overview of the duties of a logistician as stated by the *Handbook*, the position is more accurately described by other occupational titles, which will be discussed below. Specifically, the AAO notes that, according to the duties of the proffered position set forth in response to the RFE, one of the tasks of the beneficiary in the proffered position is to assist the logistics manager with various tasks, such as shipping arrangements and negotiations with freight forwarders. It is unclear how the beneficiary will act as a logistician if a logistics manager already exists within the petitioner's company. Moreover, the organizational chart submitted indicates that the production coordinator will oversee six departments: (1) purchasing; (2) sales; (3) product development; (4) receiving; (5) shipping; and (6) finance. The fact that dedicated departments for essential tasks exist within the petitioner's organizational structure undermines the claim that the beneficiary is solely responsible for all of these functions.

Even if the AAO considered the duties of the proffered position as similar to the duties of a logistician, which it does not, the *Handbook* does not state that a bachelor's degree or higher in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. While it indicates that a bachelor's degree is the most significant source of postsecondary education for persons employed as logisticians, no specific specialty is identified as the area in which the degree must be obtained.

Turning to the more specific duties of the proffered position, the AAO also disagrees with the director's findings, which equate the proffered position to that of a compliance officer. According to the *Handbook*, the duties of a compliance officer are generally described as follows:

Examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits, and other compliance and enforcement inspection activities not classified elsewhere. Exclude tax examiners, collectors, and revenue agents and financial examiners.

While the beneficiary may be required to ensure that the petitioner's activities conform to applicable laws and regulations, classifying the position as that of a compliance officer is misplaced. The various duties of the proffered position, which include tasks such as purchasing coordination, marketing and trend monitoring, sales support, and cost structure analysis, are not included in the occupation of compliance officer. The AAO, therefore, concludes that the proffered position is also not that of a compliance officer.¹

Upon review, it appears that the proffered position encompasses duties from numerous occupations, but most accurately resembles a combination of the duties of an industrial production manager and a purchasing manager. Regarding industrial production managers, the *Handbook* states, in relevant part:

Industrial production managers plan, direct, and coordinate the production activities required to produce the vast array of goods manufactured every year in the United States. They make sure that production meets output and quality goals while remaining within budget. Depending on the size of the manufacturing plant, industrial production managers may oversee the entire plant or just one area of it.

* * *

Industrial production managers also monitor product standards and implement quality control programs. They make sure that the finished product meets a certain level of quality, and if it doesn't, they try to find out what the problem is and solve it. Although traditional quality control programs reacted only to problems that reached a certain significant level, newer management techniques and programs, such as ISO 9000, Total Quality Management (TQM), or Six Sigma, emphasize continuous quality improvement. If the problem relates to the quality of work performed in the plant, the manager may implement better training programs or reorganize the manufacturing process, often on the basis of the suggestions of employee

¹ Therefore, while the AAO concurs with the director's ultimate conclusions, the director's mischaracterization of the proffered position is harmless because the AAO conducts a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility. The AAO maintains plenary power to review each appeal on a *de novo* basis, which has long been recognized by the federal courts. See *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

teams. If the cause is substandard materials or parts from outside suppliers, the industrial production manager may work with the supplier to improve their quality.

Industrial production managers work closely with other managers of the firm to implement the company's policies and goals. They also must work with the firm's financial departments in order to come up with a budget and spending plan. They work the closest with the heads of the sales, procurement, and logistics departments. Sales managers relay the client's needs and the price the client is willing to pay to the production department, which must then fill the order. The logistics or distribution department handles the delivery of the goods, often coordinating with the production department. The procurement department orders the supplies that the production department needs to make its products. The procurement department also is responsible for making sure that the inventories of supplies are maintained at proper levels so that production proceeds without interruption. A breakdown in communications between the production manager and the procurement department can cause slowdowns and a failure to meet production schedules. Just-in-time production techniques have reduced inventory levels, making constant communication among managers, suppliers, and procurement departments even more important.

The *Handbook's* general description suggests that industrial production managers are responsible for the smooth operation of a manufacturing plant. The petitioner, however, is not a manufacturing plant but rather is a five-person international trade company that imports, exports, and distributes consumer electronics. While the proffered position is not by definition that of an industrial production manager, many of the duties of such an occupation, such as working with the financial department to establish a budget and spending plan and working closely with the heads of the sales, procurement, and logistics departments, specifically encompass the duties of the proffered position. As discussed above, the organizational chart indicates that the beneficiary, in the position of production coordinator, oversees six departments: (1) purchasing; (2) sales; (3) product development; (4) receiving; (5) shipping; and (6) finance. His supervision of these essential departments is clearly in line with the duties of an industrial production manager.

Moreover, additional duties of this occupation include monitoring product standards and implementing quality control programs. According to the petitioner in its response to the RFE, the beneficiary oversees sample testing and evaluation as well as safety standards, and notes that the beneficiary needs to have an understanding of quality control procedures in order to perform the duties of the position.² Therefore, the *Handbook's* discussion of industrial production managers clearly encompasses a substantial amount of the duties of the proffered position. However, since the petitioner is not an actual manufacturing plant, to characterize the proffered position solely as an industrial production manager would be erroneous.

² It is also noted here that these specific duties, which include ensuring that industry standards are met and regulatory compliance is established, are duties that the director most likely relied upon when equating the proffered position to that of a compliance officer. However, since these duties comprise only 30% of the beneficiary's proposed duties, the director's classification of the position as solely that of a compliance officer was incorrect, as previously stated.

The petitioner also notes that the production coordinator will develop sourcing strategies, meet with vendors to discuss product specifications, identify trends, and have knowledge of international trade. The duties of the proffered position also include tasks such as identifying and gathering pricing data and providing sales support. These duties suggest that the production coordinator may also have duties similar to a buyer or purchasing manager. The *Handbook* notes:

Purchasing managers, buyers, and purchasing agents buy a vast array of farm products, durable and nondurable goods, and services for companies and institutions. They attempt to get the best deal for their company—the highest quality goods and services at the lowest possible cost. They accomplish this by studying sales records and inventory levels of current stock, identifying foreign and domestic suppliers, and keeping abreast of changes affecting both the supply of, and demand for, needed products and materials. Purchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. To be effective, purchasing professionals must have a working technical knowledge of the goods or services to be purchased.

* * *

Purchasing specialists who buy finished goods for resale are employed by wholesale and retail establishments, where they commonly are known as buyers or *merchandise managers*. Wholesale and retail buyers are an integral part of a complex system of distribution and merchandising that caters to the vast array of consumer needs and desires. Wholesale buyers purchase goods directly from manufacturers or from other wholesale firms for resale to retail firms, commercial establishments, and other organizations. In retail firms, buyers purchase goods from wholesale firms or directly from manufacturers for resale to the public.

Buyers largely determine which products their establishment will sell. Therefore, it is essential that they have the ability to predict what will appeal to consumers. If they fail to purchase the right products for resale, buyers jeopardize the profits and reputation of their company. They keep track of inventories and sales levels, check competitors' sales activities, and watch general economic conditions to anticipate consumer buying patterns. Buyers working for large and medium-sized firms usually specialize in acquiring one or two lines of merchandise, whereas buyers working for small stores may purchase the establishment's complete inventory.

Evaluating suppliers is one of the most critical functions of a purchasing manager, buyer, or purchasing agent. Many firms now run on a lean manufacturing schedule and use just-in-time inventories so any delays in the supply chain can shut down production and potentially cost the firm its customers. Purchasing professionals use many resources to find out all they can about potential suppliers. The Internet has become an effective tool for searching catalogs, trade journals, industry and company publications, and directories. Purchasing professionals attend meetings, trade shows, and conferences to learn of new industry trends and make contacts with suppliers. They often interview prospective suppliers and visit their plants and distribution centers to assess their capabilities. It is important to make certain that

the supplier is capable of delivering the desired goods or services on time, in the correct quantities, and without sacrificing quality. Once all of the necessary information on suppliers is gathered, orders are placed, and contracts are awarded to those suppliers who meet the purchaser's needs. Most of the transaction process is now automated through use of the Internet.

The production coordinator in this matter processes order information and purchase order requisitions; facilitates communication between customers, vendors, and the manufacturer; enforces the production schedule ensuring shipment instructions, import documentation, and reporting specifications are coordinated; maintains records for samples; and prioritizes and balances multiple tasks simultaneously. These duties are akin to those of a purchasing manager or buyer as discussed above.

Therefore, the AAO concludes that the duties of the proffered position encompass the duties of both an industrial production manager and a purchasing manager. However, these duties, although requiring skill and the ability to prioritize, meet deadlines, and communicate with others, do not suggest that the position requires a bachelor's degree in a specific discipline to perform them.

Regarding industrial production managers, the *Handbook* reports:

Because of the diversity of manufacturing operations and job requirements, there is no standard preparation for this occupation. Most employers prefer to hire workers with a college degree. Experience in some part of production operations is also usually required also.

Education and training. Many industrial production managers have a college degree in business administration, management, industrial technology, or industrial engineering. However, although employers may prefer candidates with a business or engineering background, some companies will hire well-rounded graduates from other fields who are willing to spend time in a production-related job, because experience in some aspect of production operations is needed before one advances to upper management positions.

With regard to purchasing managers, the *Handbook* states:

Workers may begin as trainees, purchasing clerks, junior buyers, or assistant buyers. Most employers prefer to hire applicants who have a college degree and who are familiar with the merchandise they sell and with wholesaling and retailing practices. Prospects often need continuing education or certification to advance.

Education and training. Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants with a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. A master's degree is essential for advancement to many top-level purchasing manager jobs.

While both occupations indicate that employers typically prefer to hire candidates with a bachelor's degree, neither requires a degree in a specific specialty. However, the record lacks evidence substantiating that the duties of the proffered position correspond to a position that requires a baccalaureate or higher degree or its equivalent as the normal minimum requirement for entry into the position. Upon review of the duties of the proffered position, the AAO cannot conclude that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty.

Moreover, as the AAO has long determined, a generic four-year degree does not qualify a job as a specialty occupation. When a job, like that of an industrial product manager or a purchasing manager or buyer, can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *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. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(A)(1) to require a degree in a specific specialty that is directly related to the proffered position. The petitioner has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of a production coordinator as described in the record of proceeding. Accordingly, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to a consideration of the proffered position pursuant to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), whether a degree requirement is common to the industry in parallel positions among similar organizations or that a particular position is so complex or unique that only an individual with a degree can perform the duties associated with the position. Factors often considered by USCIS when determining the industry standard 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 this matter, the petitioner has submitted six job announcements for positions titled production coordinator or product manager. Three of the job announcements indicated a desire to hire an individual with a bachelor's degree in business, a general degree; two of the job announcements indicated the employer required the successful candidate to have a bachelor's degree or a college degree, but did not require a specified discipline or the equivalent in experience. The sixth job announcement submitted on appeal required a bachelor's degree in fashion or apparel-related fields.

The AAO observes first, that the job advertisements do not require the successful candidate to have attained a baccalaureate degree in a specific discipline, thus the positions cannot be considered specialty occupations. Requiring a bachelor's degree in a generalized discipline, such as business, fails to provide the specificity necessary to establish a position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. at 558. Second, while the petitioner claims that the advertisements submitted in response to the director's RFE are by companies that are similar to the petitioner in size and annual income, the petitioner does not

substantiate the claim in the record. 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)). Third, the companies in the advertisements submitted in response to the director's RFE are either substantially different than the petitioner (i.e., fashion textiles, home accessories) or the ultimate employer is not disclosed; thus these three advertisements have little probative value.

The petitioner also submitted a letter from ██████████ President of ██████████ in support of the contention that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations. ██████████ now a partner in the petitioner's company, claims that after 36 years of experience in the consumer electronics industry as an executive vice president, a vice president, a director, and a division sales manager, the position of production coordinator in the consumer electronics industry "is a specialty position that require[s] at least [a] bachelor degree in business or administration." He continues to state that the petitioner requires a minimum of a bachelor's degree along with experience in the field of consumer electronics for entry into the proffered position.

This letter bears little evidentiary weight. ██████████ is now a partner in the petitioner's company and thus holds a vested interest in the outcome of these proceedings. While submitted in support of the contention that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations, ██████████ provides no objective, independent evidence to support these claims. 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. The record, therefore, does not contain sufficient evidence to establish that a degree requirement in a specific discipline is common to the industry in parallel positions among similar organizations.

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has failed to establish the proffered position as a specialty occupation under either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner acknowledges that the proffered position has been vacant since 2008, and does not confirm or deny that it previously employed anyone in the position of production coordinator. Although it claims that all of its existing employees hold a bachelor's degree or higher, the record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that while a petitioner may

believe that a proffered position requires a degree, that opinion cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer required the individual to have a baccalaureate or higher degree. See *Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties of the position described encompass routine clerical and supervisory duties and the duties of a purchasing manager/buyer. The record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The beneficiary's actual duties involve the routine tasks of sending purchase orders to the manufacturer, updating the overseas factories with customers' change requirements, monitoring and tracking the overseas production and ensuring adherence to deadlines, updating customers, troubleshooting issues, ensuring quality of goods, coordinating the development of new products, maintaining sample libraries, negotiating costs, prioritizing, and interacting with management, the sales force, internal staff, and overseas factories. Neither a particular body of highly specialized knowledge, nor a particular educational level of such knowledge, that would be required to perform the duties of the proffered position is evident in the duties as described in the record of proceeding. The petitioner has not established that the proffered position's specific duties require the application of specialized or complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline. In this matter, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Based on the record of proceeding, the AAO determines that the petitioner has not established that the proffered position is 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.