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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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DATE: **JUL 06 2011** Office: CALIFORNIA SERVICE CENTER FILE:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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.

The petitioner is a tennis academy that seeks to employ the beneficiary as a marketing manager. The petitioner, therefore, 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, finding that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation. On appeal, counsel contends that the director's findings were erroneous and submits a brief and additional evidence in support of this contention.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, a 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 [1] 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 [2] 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 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 particular position for which the petition was filed 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 stated on the Form I-129 that it is an international transportation relocation company that has 35 employees and gross annual income of \$3 million. In a letter of support dated June 24, 2009, the petitioner claimed that it wished to employ the beneficiary as a marketing manager, and stated that the duties of the proffered position were as follows:

Specifically, [the beneficiary] will [be] developing new clientele and expanding our market share in Korea related transportation and relocation areas. He will utilize his cultural and linguistic advantages to build our company's presence in the Korean expatriate communities in the city and the suburbs. He will also project potential revenues that can be generated from such communities and Illinois companies that ship goods or have plans to branch out in Korea. He will work with our graphic designer and marketing staff to create marketing material in Korean and English and will develop appropriate transportation and relocation programs to cater to our Korean clients. He will also develop competitive pricing strategies based on the findings of his market research. Moreover, he will be responsible for researching market conditions in local, regional and national area to determine potential sales of international relocation services to Korean speaking clients or American clients planning to relocate to Korea. He will establish research methodology and design format for data gathering, such as surveys, opinion polls, questionnaires or organizing targeted focus groups. He will examine and analyze statistical data to forecast future marketing needs and trends. He will gather data on competitors and analyze prices, sales, and methods of marketing and promotion. He will also collect data on customer preferences and satisfaction. Moreover, he will prepare reports and graphic illustrations of findings and report to the executive management.

The petitioner further stated that, at a minimum, the candidate for the proffered position must possess at least a bachelor's degree in business, business administration, management, or other related fields or the equivalent. Regarding the beneficiary, the petitioner indicated that he possessed a U.S. bachelor's degree in business administration from [REDACTED] in South

Korea which, according to an enclosed educational credentials evaluation, was equivalent to a U.S. bachelor's degree in business administration.

The director determined that the petitioner had submitted insufficient evidence to establish eligibility, and consequently issued an RFE on July 16, 2009. Specifically, the director requested additional documentation demonstrating that the proffered position was in fact a specialty occupation in accordance with the four criteria outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A). The director requested additional documentation, including but not limited to:

- a clear explanation of what differentiates the proffered position such that the specific tasks require the expertise of someone with a bachelor's degree in a specific field;
- evidence showing that the petitioner and similarly situated businesses in the same industry require individuals with a bachelor's degree in a specific field of study to fill the position;
- an explanation of how many other individuals have been employed in similar positions in the past and documentary evidence to establish those employees were employed by the petitioner and have a bachelor's degree in the specific field of study; and
- the petitioner's present and past job announcements for the proffered position and evidence of any other forms of recruitment utilized by the company for the proffered position showing that the petitioner requires its applicants to have at least a bachelor's degree in a specific specialty or its equivalent.

In a response dated August 16, 2009, counsel for the petitioner addressed the director's RFE and identified the supporting documentation included with the response. Counsel submitted a copy of the petitioner's organizational chart, copies of job postings for positions claimed to be akin to that of the proffered position in the petitioner's industry, and an opinion letter from [REDACTED]. Finally, counsel submitted a more detailed description of the duties of the proffered position, which stated as follows:

Position Title: Marketing Manager

Report to: General Manager

Duties: responsible for developing new clientele and expanding our market share in international and domestic transportation dealing with Korean transnational companies and expatriates.

- establish marketing plans and set sales goals
- utilize cultural and linguistic advantages to build our company's presence in the Korean expatriate communities in the city and the suburbs

- research and project potential revenues that can be generated from such communities and Illinois companies that ship goods or have plans to branch out Korea and implement marketing plans accordingly
- work with our graphic designer and marketing staff to create marketing material in Korean and English and will develop appropriate transportation and relocation programs to cater to our Korean clients
- develop competitive pricing strategies based on the findings of his market research
- responsible for researching market conditions in local, regional and national area to determine potential sales of international relocation services to Korean speaking clients or American clients planning to relocate to Korea
- establish research methodology and design format for data gathering, such as surveys, opinion polls, questionnaires or organizing targeted focus groups
- examine and analyze statistical data to forecast future marketing needs and trends
- gather data on competitors and analyze prices, sales, and methods of marketing and promotion
- collect data on customer preferences and satisfaction by creating survey forms and analyze the data
- prepare reports and graphic illustrations of findings and report to the executive management

The director denied the petition on September 14, 2009, concluding that the proffered position is not a specialty occupation. On appeal, counsel for the petitioner contends that performance of the duties of the proffered position requires the theoretical and practical application of a body of highly specialized knowledge, and asserts that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* clearly indicates that the proffered position is a specialty occupation.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the AAO finds that the proffered position is not a specialty occupation.

In determining whether a proposed position qualifies as a specialty occupation, USCIS looks beyond the title of the position. It determines, from a review of the duties of the position and any supporting evidence, whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the minimum of a baccalaureate degree in a specific specialty for entry into the occupation, as required by the Act. The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations.

In order to ascertain whether the duties of the proposed position support the petitioner's characterization of the position as a marketing manager, the AAO turns to the 2010-2011 edition of the *Handbook* for its discussion of that field. The occupation of marketing manager is included in the *Handbook's* section pertaining to advertising, marketing, promotions, public relations, and sales managers, and is described as follows:

Marketing managers. Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

Based on a review of the above section, the AAO concurs with the petitioner's contention that the proffered position is akin to that of a marketing manager.

The *Handbook* states as follows with regard to the educational requirements of this occupation:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs, but many employers prefer college graduates with experience in related occupations.

Education and training. For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

The *Handbook* clearly indicates that educational requirements vary for the position of a marketing manager. While it appears that a bachelor's degree in business administration is often preferred for entry into the field, the *Handbook* does not indicate that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the position. Further, upon review of the duties of the proffered position as described in the record of proceeding, 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. In this regard, the AAO finds in particular that, to the extent that they are described in the record of proceeding (which is in terms of generalized and generic functions whose particular requirements are not documented anywhere in the record of

proceeding), there is nothing inherent in the proposed duties or the particular position which they comprise that indicates the need for at least a bachelor's degree, or its equivalent, in a specific specialty.

In this matter, counsel disagrees with these conclusions and asserts that the director misinterpreted the *Handbook's* statements regarding the educational requirements for the position. Specifically, counsel asserts that the job of marketing manager is a professional occupation and requires either a bachelor's degree in marketing or a related field or many years of work experience.

Counsel's assertions are not persuasive. The *Handbook's* discussion does not establish that a baccalaureate degree in a specific field, or its equivalent, is the normal minimum entry requirement for this field. Although the *Handbook* states that employers often prefer candidates with bachelor's or master's degrees in business administration with an emphasis in marketing, there are no defined standards for entry into this field. This statement, therefore, does not equate to a finding that a baccalaureate degree in a specific field, or its equivalent, is the normal minimum entry requirement.

It is further noted that the petitioner states that a degree in business, business administration (without any specialization identified), management, or a related discipline are acceptable for entry into the proffered position. When a job, like that of a marketing manager, 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. Again, 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. 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.

The petitioner has therefore 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 marketing manager 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).

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)).

In this matter, the petitioner submitted four job postings from the Internet for what it claims are parallel positions in similar organizations. The open positions in these postings are not akin to that of the proffered position in this matter. For example, these postings are recruiting candidates for the following occupations: (1) Business Consultant, Management and Supply Chain; (2) Business Unit Manager – Sales and Marketing for Facilities Supplies; (3) Regional Marketing Manager – Trucking Division; and (4) Assistant Manager – Air Cargo. The petitioner is an international transportation and relocation company with 35 employees, seeks to employ the beneficiary as a marketing manager. The postings, however, appear to be for companies much larger in scope than the petitioner, and advertise positions that are not akin to that of a marketing manager as described previously in this petition. Finally, despite requiring degrees for entry into the positions, the postings either fail to state a specific discipline in which the degree should be obtained, or alternatively provide a broad range of disciplines acceptable for entry into the position. These job postings, therefore, are not probative evidence of a degree requirement in a specific discipline that is common to the industry in parallel positions among similar organizations.

On appeal, counsel for the petitioner submits nine additional job postings for positions in the Chicago area which are considered by the petitioner to be parallel positions in similar organizations. One of these postings, however, provides insufficient information with regard to the position title and the hiring company. Specifically, the first posting submitted, for a position in Naperville, Illinois, simply states in the heading that the position is "full time" and requires a bachelor's degree in communications, English, journalism or business. The bottom of the webpage printout states "[REDACTED]," suggesting that this is the position title. Nevertheless, it does not appear that this posting is for the position of a marketing manager, and the posting omits any detail pertaining to the nature of the hiring company's business.

The remaining postings are also for positions dissimilar to that of the proffered position of marketing manager. For example, the other postings submitted include positions such as (1) District Sales Manager; (2) Asset Protection / Safety Manager; (3) Sr. Manager, Logistics and Quality; (4) Associate Brand Manager; (5) Marketing Director; (6) Global Marketing Director; and (7) Business Development Manager (two postings). None of these positions can be considered parallel to that of the proffered position, which is a marketing manager in an international transportation and relocation company with thirty-five employees. Moreover, as stated above, despite requiring degrees for entry into the positions, the postings either fail to state a specific discipline in which the degree should be obtained, or alternatively provide a broad range of disciplines acceptable for entry into the position. Therefore, these postings also cannot be considered probative evidence of a degree requirement in a specific discipline that is common to the industry in parallel positions among similar organizations.

The petitioner also submits a letter from [REDACTED], president and owner of [REDACTED]. [REDACTED] letter claims that his business is very similar to that of the petitioner, and he asserts that he has been engaged in the international transportation business for over 20 years. [REDACTED] contends that because of increasing competition and increasing cost of maintaining fleets of trucks and cargo, marketing tactics have become more sophisticated. He concludes that, as a result, “most companies only hire college graduates who studied marketing or business management,” and that in his twenty years of experience, “it was unheard of and would be unprofitable for companies such as [the petitioner] to hire a marketing manager who did not have a bachelor’s degree.”

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this matter, there is no evidence submitted to support [REDACTED] conclusion that companies such as the petitioner routinely hire only degreed individuals for the position of marketing manager. [REDACTED] provides no documentation to support his conclusions and fails to adequately explain how his conclusions were reached. Further, [REDACTED] statement that that “most companies only hire college graduates who studied marketing or business management” is not an endorsement that this generally quantified group of companies only hire college graduates who majored in – as opposed to studied – “marketing or business management.” Additionally, [REDACTED] statement that, in his experience, “it was unheard of and would be unprofitable for companies such as [the petitioner] to hire a marketing manager who did not have a bachelor’s degree” does not amount to a claim that such degree was required to be in a specific specialty directly related to the proffered position. In short, in addition to a failing to provide a satisfactory factual basis for his opinion, [REDACTED] fails to state a requirement for at least a baccalaureate or higher degree or its equivalent in a *specific specialty*. In sum, the AAO accords no probative weight to [REDACTED] submission.

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree.” The AAO finds no such showing within the record of proceeding.

Here the AAO reiterates by reference, and incorporates and adopts, its earlier observations regarding the generalized and generic functions that the petitioner used to describe the duties comprising the proffered position. The AAO finds that neither those duties nor any of the documents submitted into the record of proceeding develop relative complexity or uniqueness of the proffered position, let alone show such complexity or uniqueness that would distinguish the proffered position from marketing manager positions held by persons without at least a bachelor’s degree, or the equivalent, in a specific specialty closely related to the performance requirements of the proffered position.

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. To determine a petitioner's ability to meet this criterion, the AAO normally reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas.

In its response to the director's RFE, the petitioner submitted copies of educational credentials for [REDACTED] and [REDACTED], demonstrating that they each held a bachelor's degree. The petitioner provided additional documentation for [REDACTED] in the form of a paystub from 2005 which confirmed his employment with the petitioner, and transcripts which demonstrated that his degree was in economics. On appeal, counsel refers to this documentation and asserts that it demonstrates that the petitioner has a history of hiring only degreed individuals for the position of marketing manager, and thus concludes that the petitioner has satisfied this criterion. The AAO disagrees.

The evidence is insufficient to establish that the petitioner employed these persons as marketing managers. Although the petitioner submits copies of the diplomas for each of these individuals and contends that these individuals were former marketing managers for the petitioner, there is no evidence in the record to demonstrate that both of these individuals actually held the position. There is no organizational chart from the time of their employment demonstrating their position in the petitioner's organizational hierarchy, nor is there any other evidence demonstrating their title with the petitioner. Moreover, there is no evidence, such as paystubs or other payroll documentation, demonstrating the employment of [REDACTED]. Further, the record of proceeding does not contain documentation indicative of the petitioner's past recruiting practices. 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)).

Further, the AAO notes that even if the petitioner had established a continual history of recruiting and hiring only persons with a bachelor's degree, or the equivalent, in a specific specialty, such a history would not satisfy this criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), absent the petitioner's also establishing that petitioner's imposition of such a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.¹ In this particular proceeding, the evidence in the record of proceeding

¹ To satisfy this criterion, the evidence of record must show 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 (5th Cir. 2000). 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

does not establish either such a history or its being necessitated by the position's performance requirements.

However, this discussion is academic, because, as noted earlier with regard to the range of acceptable bachelor's degrees specified by the petitioner (i.e., degrees in business, business administration (without any specialization identified), management, or a related discipline), the degree requirement asserted by the petitioner is not indicative of a specialty occupation.

For the reason's discussed above, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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 them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

Here adopting and incorporating by reference its earlier discussions regarding the generalized and generic descriptions of the proposed duties, and their failure to indicate that the proffered position requires at least a bachelor's degree in a specific specialty, the AAO finds that the petitioner has not established that specific duties of the proffered position are so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree in a specific specialty.

While the petitioner claims that the duties of the proffered position are sufficiently complex, 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 AAO notes that the duties as described in the record of proceeding are broad and numerous and appear to span a variety of marketing functions. However, the AAO finds that, to the extent that they are described, the duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty.

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 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 a 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 baccalaureate or higher degrees. *See id.* at 388.

As the petitioner has not established that the proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline, the petitioner has not satisfied 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.