

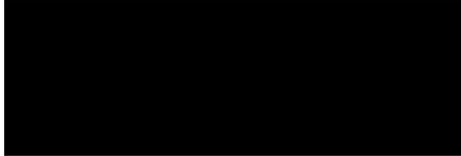
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



b2

DATE: JUL 07 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:

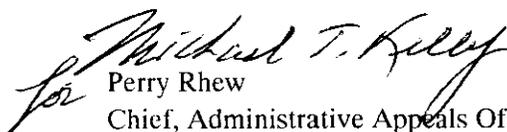


INSTRUCTIONS:

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, California 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 freight forwarding company and seeks to employ the beneficiary as a finance manager. 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, and submits a brief and additional evidence in support of these contentions.

The record of proceeding before the AAO contains: (1) the Form I-129 with supporting documentation; (2) the director's request for further evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's 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 [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 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 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, a freight forwarding company established in 1994, claims to employ twelve persons and claims a gross annual income of \$757,621.16. Due to major expansion plans within the company, the petitioner is seeking the beneficiary's services as a finance manager to assist with the petitioner's expansion and business goals. The record indicates that the beneficiary holds the U.S. equivalent to a bachelor's degree in business administration. According to the job description submitted by the petitioner in its letter of support dated May 27, 2009, the beneficiary will be required to perform the following duties:

[The beneficiary] will be responsible for preparing or directing the preparation of financial statements, business activity reports, financial position forecasts, annual budgets, and reports. [The beneficiary] will develop internal control policies, guidelines, and procedures for activities such as budget administration, cash and credit management, and accounting. [The beneficiary] will also analyze the financial details of past, present and expected operations to identify development opportunities and areas where improvement is needed. [The beneficiary] will advise on short-term and long-term financial objectives, policies and actions. [The beneficiary] will also provide direction and assistance regarding accounting and budgeting policies and procedures of the company and efficient control and utilization of financial resources.

The petitioner concluded by stating that the prospective employee for the proffered position must have a bachelor's degree in business administration or its equivalent.

The director found the initial evidence insufficient, and consequently issued an RFE on June 5, 2009. The director requested additional evidence demonstrating that the position was a specialty occupation, and further requested additional details regarding the petitioner's business. In a response dated July 1, 2009, the petitioner responded to the petitioner's requests. The petitioner stated that it normally requires a degree in business administration or its equivalent for the position of finance manager, and submitted copies of its past vacancy announcements for the position from 2004, 2006 and 2008 as well as evidence of the academic qualifications of other employees. Regarding the duties of the proffered position, the petitioner provided the following updated description of the duties to be performed by the beneficiary:

A. Job Description:

1. **Job Duties:** Prepare or direct the preparation of financial statements.
Percentage of Time Spent: Five Percent (5%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 2 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
2. **Job Duties:** Prepare or direct the preparation of business activity reports.
Percentage of Time Spent: Five Percent (5%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 2 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
3. **Job Duties:** Prepare or direct the preparation of financial position forecasts.
Percentage of Time Spent: Ten Percent (10%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 4 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
4. **Job Duties:** Prepare or direct the preparation of annual budgets and reports.
Percentage of Time Spent: Ten Percent (10%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 4 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
5. **Job Duties:** Develop internal control policies for budget administration.
Percentage of Time Spent: Ten Percent (10%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 4 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.

6. **Job Duties:** Develop internal control guidelines for cash and credit card management.
Percentage of Time Spent: Two Percent (2%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 0.8 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
7. **Job Duties:** Develop internal control procedures for accounting.
Percentage of Time Spent: Three Percent (3%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 1.2 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
8. **Job Duties:** Analyze financial details of past, present, and expected operations to identify development opportunities and areas where improvement is needed.
Percentage of Time Spent: Thirty Percent (30%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 12 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
9. **Job Duties:** Advise on short-term and long-term financial objectives, policies and actions.
Percentage of Time Spent: Ten Percent (10%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 4 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.
10. **Job Duties:** Provide direction and assistance regarding accounting and budgeting policies and procedures of the company.
Percentage of Time Spent: Five Percent (5%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 2 hours

Minimum Education: Bachelors Degree in Business Administration or its equivalent.

11. **Job Duties:** Provide direction and assistance regarding efficient control and utilization of financial resources.
Percentage of Time Spent: Ten Percent (10%)
Level of Responsibility: High oversee five (5) departments and report directly to the vice president
Hours per Week of Work: 4 hours
Minimum Education: Bachelors Degree in Business Administration or its equivalent.

On July 10, 2009, the director denied the petition. The director found that the proffered position was not a specialty occupation as it could not be determined that the duties of the proffered position were those of a financial manager. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner contends that the proffered position is in fact a specialty occupation, and that the petitioner has demonstrated this fact by submitting evidence of its hiring of degreed individuals. Counsel asserts that the beneficiary's services are crucial to the petitioner's expansion plans and that only a degreed individual such as the beneficiary can properly provide the required services.

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)(1), 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 finance manager. Again, the critical element in examining whether the proffered position is a specialty occupation is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a bachelor's degree in the specific specialty as the minimum for entry into the occupation, as required by the Act. With regard to the instant petition, the record does not clearly establish that the proffered position, while it has the title of finance manager, is a specialty occupation position.

The 2010-2011 edition of the *Handbook* does not contain a position description for "finance manager." It appears, therefore, that the director logically consulted the *Handbook's* description of the position of financial manager, which is described as follows:

Financial managers oversee the preparation of financial reports, direct investment activities, and implement cash management strategies. Managers also develop strategies and implement the long-term goals of their organization.

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

Cash managers monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of their firm. For example, cash flow projections are needed to determine whether loans must be obtained to meet cash requirements or whether surplus cash can be invested. *Risk* and *insurance managers* oversee programs to minimize risks and losses that might arise from financial transactions and business operations. Insurance managers decide how best to limit a company's losses by obtaining insurance against risks such as the need to make disability payments for an employee who gets hurt on the job or costs imposed by a lawsuit against the company. Risk managers control financial risk by using hedging and other techniques to limit a company's exposure to currency or commodity price changes. Managers specializing in international finance develop financial and accounting systems for the banking transactions of multinational organizations. Risk managers are also responsible for calculating and limiting potential operations risk. Operations risk includes a wide range of risks, such as a rogue employee damaging the company's finances or a hurricane damaging an important factory. (Chief financial officers and other executives are included with top executives elsewhere in the *Handbook*.)

*

*

*

In addition to the preceding duties, financial managers perform tasks unique to their organization or industry. For example, government financial managers must be experts on the government appropriations and budgeting processes, whereas healthcare financial managers must be knowledgeable about issues surrounding

healthcare financing. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry.

Financial managers play an important role in mergers and consolidations and in global expansion and related financing. These areas require extensive, specialized knowledge to reduce risks and maximize profit. Financial managers increasingly are hired on a temporary basis to advise senior managers on these and other matters. In fact, some small firms contract out all their accounting and financial functions to companies that provide such services.

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

The *Handbook* states the following with regard to academic credentials for financial manager positions:

Education and training. A bachelor's degree in finance, accounting, economics, or business administration is the minimum academic preparation for financial managers. However, many employers now seek graduates with a master's degree, preferably in business administration, finance, or economics. These academic programs develop analytical skills and teach financial analysis methods and technology.

Experience may be more important than formal education for some financial manager positions—most notably, branch managers in banks. Banks typically fill branch manager positions by promoting experienced loan officers and other professionals who excel at their jobs. Other financial managers may enter the profession through formal management training programs offered by the company.

It should first be noted that, while the director concluded that the occupation of financial manager is a specialty occupation, the director overlooks the fact that a baccalaureate or higher degree, or the equivalent, *in a specific specialty*, is not required according to the *Handbook* for entry into the position. While the *Handbook* states that a bachelor's degree is the minimum academic preparation for this occupational category, it also provides that a degree in a variety of disciplines is acceptable. When a job, like that of a financial 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. 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 (Comm. 1988).

Moreover, the *Handbook* indicates that for certain positions, such as those as branch managers in banks, experience or formal training in lieu of academic credentials may be sufficient for entry into the position. However, upon review of the record, the AAO concurs with the director's ultimate conclusions and finds that the director's erroneous finding 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. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The director concluded that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which assigns specialty-occupation status to a position for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties. The AAO notes that in reaching this determination, the director turned to the record for information regarding the nature of the petitioner's business operations. The AAO finds that, 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 a finance/financial manager, as they contribute to determining the substantive nature of the beneficiary's work, and, by extension, the educational credentials required to perform that work. In matters where a petitioner's business is relatively small, USCIS reviews the record for evidence that its operations are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in a position requiring a level of financial knowledge that may be obtained only through a baccalaureate degree in a specific specialty.

As noted by the director, the classification above describes financial managers working in either investment or business firms, among other venues, while the actual proffered position appears to be that of a finance manager for a single freight forwarding company. Specifically, at the time of filing, the petitioner claimed to employ twelve employees and to have a gross annual income of approximately \$758,000.

In its May 27, 2009 letter of support, the petitioner indicates that it has plans for further expansion and that it is the rapid and continuing growth of the company that necessitates a full-time finance manager. The AAO acknowledges that the process of expanding a petitioner's business operations could potentially establish financial and operational complexities that would require the duties of a finance manager as described by the *Handbook*. Accordingly, the AAO has reviewed the record for evidence of the petitioner's growing business, as well as its financial structure and operations, to determine whether the employment described by the petitioner would impose a specific degree requirement on the beneficiary. However, the AAO notes that the petitioner provides no documentation related to its financial operations or organization that would shed light on the complexity of the financial and accounting work to be performed by the beneficiary. While it

submits copies of its recent tax returns, these documents have been prepared by a certified public accountant and suggest that financial matters are currently handled by an outside firm as opposed to an internal finance department. Moreover, the petitioner has not provided any evidence that would indicate how the petitioner's plans for expansion have affected its financial position. 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)). Accordingly, the record offers no meaningful evidence to establish that the financial duties to be performed by the beneficiary in relation to the petitioner's claimed operations or in relation to the petitioner's business expansion plans are sufficiently complex to require the services of a finance manager or financial analyst as described in the *Handbook*.

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.

With regard to parallel positions in similar freight forwarding companies, the petitioner has failed to submit any evidence in support of this premise. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. 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 not submitted evidence that responds to this criterion.

In the alternative, the petitioner may show that the proffered position is so complex or unique that only an individual with a degree can perform the work associated with the position under 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The petitioner's failure to submit information related to its financial operations or its business expansion plans precludes it from establishing that the position's complexity or unique nature distinguish it from accounting employment that is performed with less than a four-year degree in a specific specialty. As previously stated, simply going on the 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 158. Therefore, the petitioner has likewise failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position.¹ The petitioner claims that it has a history of hiring only degreed individuals for the proffered position, and submits copies of its job vacancy announcement for the position of finance manager from 2004, 2006, and 2008. These postings, however, are insufficient to satisfy this criterion for two reasons.

First, while the petitioner's advertisements demonstrate that it advertised a degree as a prerequisite for entry into the position of finance manager, it fails to supplement the record with evidence pertaining to its former finance managers, their dates of employment, and their educational credentials. While the petitioner did submit copies of degree certificates for two of its other claimed management level employees along with copies of quarterly tax returns evidencing their employment with the petitioner, it failed to submit supporting evidence demonstrating the positions held by these individuals and whether they were actually employed as finance managers. Additionally, the history of job vacancy announcements for the position of finance manager is questionable, since the petitioner at the time of filing claims that the need for a finance manager is directly related to the petitioner's current plans for expansion. Doubt cast on any aspect of the petitioner's proof may, of course, lead 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 record, therefore, does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them.

Second, the petitioner's reliance on its requirement that the incumbent hold a bachelor's degree in business administration is insufficient to meet the requirements of this criterion. The AAO notes that while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence 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. In this regard, the AAO finds that neither the duty descriptions nor any other evidence in this record of proceeding establishes an adequate factual basis for a requirement for a degree in a specific specialty.

As noted above, however, the petitioner states that an individual with a general bachelor's degree in business administration can perform the duties of the proffered position.

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.

¹ Again, as noted earlier in this decision, in context with and conformity to the specialty occupation definitions at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii), "degree" means at least a bachelor's degree in a specific specialty directly related to the position.

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 financial duties. 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 it is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

To the extent that they are depicted in the record, the duties of the position appear generic, with the use of such terms as “prepare financial statements” or “analyze financial details.” While the petitioner states that its financial and accounting responsibilities are complex and specialized, the primary source of the petitioner’s revenues appears to be from freight forwarding contracts. The AAO finds, one, that it is not self-evident that the duties, which are so generally and generically described in the record, possess the complexity and specialization required to satisfy this criterion, and, two, that there is no documentary evidence remedying this deficiency. The petitioner provided no details showing any specialized or complex duties that the beneficiary would perform as a financial manager or analyst for a freight forwarding company. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.