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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]

D2

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 02 2011

IN RE: Petitioner: [redacted]
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:

[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 service center director denied the nonimmigrant visa petition and affirmed this decision after granting a subsequent motion to reopen/reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner operates a group of hotels and seeks to employ the beneficiary as its assistant operations manager. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to § 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 proffered position is not a specialty occupation. On motion, counsel asserted that the director's findings were erroneous and submitted new evidence in support of these contentions. After considering this evidence, the director affirmed the previous decision. The matter is now before the AAO on appeal, where counsel contends that the director erred in both denying the petition and affirming that decision in response to the subsequently-filed motion, contending that ample additional evidence provided by the petitioner on motion demonstrated the petitioner's eligibility in this matter.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position is a specialty occupation.

The AAO applies the following statutory and regulatory framework in its review of specialty occupation issues.

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

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

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation "which (1) requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting,

law, theology, and the arts, and which (2) requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States."

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must also meet one of the following criteria:

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (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.

The petitioner claims that it owns and operates several hotels, and is in need of an assistant operations manager. In a letter of support dated January 9, 2007, the petitioner described the duties of the proffered position as follows:

- Planning, directing, and coordinating operations of the company's group of hotels.
- Overseeing the formulation of company policies.
- Overseeing the management of daily company operations.
- Overseeing purchases of necessary equipment and supplies for each property.
- Overseeing and managing the interviewing, hiring, and training of personnel.

The petitioner concluded by stating that the person who would fill the position must have a minimum of a bachelor's degree, or U.S. equivalent, in management, business, or a related field.

The director found the initial evidence insufficient to establish eligibility and consequently issued a request for evidence (RFE) on May 24, 2008. In the request, the director asked for additional information pertaining to the nature of the proposed position in relation to the business operations of the petitioner. Specifically, the director requested evidence pertaining to the nature, scope and activity of the petitioner's enterprise, evidence of its past hiring practices, additional information pertaining to the duties of the proffered position, and evidence demonstrating that the nature of the position required an individual with a least a bachelor's degree in a related field.

In a response dated June 20, 2008, the petitioner addressed the director's queries. The petitioner claimed that the petitioner owned two hotels; namely, a [redacted] and an [redacted] both located in Ozona, Texas. The petitioner also indicated that it owned commercial lots in Ozona and Harlingen, Texas, and planned to expand its business by opening new hotels in the future.

Regarding the proffered position, the petitioner provided the following expanded description of duties:

> In short, the company's Assistant Operations Manager will oversee the management and operations of our properties. These are duties that [the petitioner's co-owner has] been performing up until this time. The specific duties of our Assistant Operations Manager remain the following:
>
> **Plan, direct, and coordinate operations of company's group of hotels (60% of the time)**
> - Devise the plans of operation using the best management practices and knowledge of sales and marketing. Provide plans to hotel management.
> - Review reports prepared by hotel management to assure compliance with company policies and management plans.
> - Review and analyze company policies to maximize profit.
> - Analyze sales and occupancy rate statistics to determine budgetary concerns.
> - Confer with owner on as-needed basis to make decisions regarding properties.
> - With regards to our leased properties [redacted] make sure that the entities leasing our properties are complying with the terms of the lease and other requirements.

Oversee management of daily operations (20% of time)

- Devise plans of operation for the management and staff of each property to follow.
- Keep in contact with management of each property to be certain operation of each hotel is in accordance with all company policies.
- Conduct site visits and oversee meetings with hotel managers and supervisors on as-needed basis.
- Oversee the company's records and documents to ensure everything is in order, particularly in the fields of marketing, sales, finance, etc.

Oversee formulation of company policies (10% of the time)

- Along with owner, devise company policies in accordance with Federal, State and Local laws/ordinances.
- Ensure that these policies are followed, and modify/augment policies on marketing, personnel, budgeting, etc. on an as-needed basis.

Oversee purchases of necessary equipment and supplies for each property (5% of the time)

- Determine what equipment and/or supplies need to be purchased for each property.
- Order proper equipment and supervise hotel managers to ensure that they have taken proper delivery and achieved installation[.]
- Ensure that these policies are followed properly and that they are effective, and change policies if necessary.

Oversee and manage the interviewing, hiring, and training of personnel (5% of time)

- Determine if and where new personnel [are] needed in any of our hotels, including front desk managers and assistant managers.
- Determine proper requirements for position and recruit on that basis.
- Interview potential candidates and hire/train newly hired managers; oversee assistant hotel managers in training of lower level employees.

On November 20, 2008, the director denied the petition. The director found that the proffered position was not a specialty occupation because the proposed duties were not so complex as to require a baccalaureate degree. Citing to the Department of Labor's *Occupational Outlook Handbook* (*Handbook*), 2010-2011 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. 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 motion and on appeal, counsel states, in part, that the proffered position meets all four criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). On motion, counsel submits agreements representing the proposed expansion plans of the petitioner, along with job postings for similar positions in the petitioner's industry, and refers to these documents on appeal as credible evidence that support the contention 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 proffered position is not a specialty occupation.

The AAO will first review the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) and (*2*): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by USCIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999)(quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position has been established as being a specialty occupation.

The director originally assessed the proffered position under the category of "Top Executives" as set forth in the 2010-2011 section of the *Handbook*. With regard to the position of operations manager, the *Handbook* states as follows:

> All organizations have specific goals and objectives that they strive to meet. *Top executives* devise strategies and formulate policies to ensure that these goals and objectives are met. Although they have a wide range of titles—such as *chief executive officer*, *chief operating officer*, *general manager*, *president*, *vice president*, school superintendent, county administrator, and mayor—all formulate policies and direct the overall operations of businesses and corporations, public-sector organizations, nonprofit institutions, and other organizations.
>
> * * *
>
> *General and operations managers* plan, direct, or coordinate the operations of companies and other public- or private-sector organizations. Their duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources that are too diverse and general in nature to be classified into any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the tasks of general and operations managers may overlap those of chief executive officers.

The *Handbook* further states:

> ***Education and training.*** Many top executives have a bachelor's or master's degree in business administration, liberal arts, or a more specialized discipline.

* * *

> Many top executive positions are filled from within the organization by promoting experienced lower level managers when an opening arises. In industries such as retail trade or transportation, for example, individuals without a college degree may work their way up within the company and become executives or general managers. When hiring top executives from outside the organization, those doing the hiring often prefer managers with extensive managerial experience.

As noted by the director, the *Handbook* indicates that a wide array of degrees in varying specialties is acceptable for entry into the position of operations manager.

Further review of the evidence submitted, however, indicates that, while the petitioner contends that it has expansion plans and franchise opportunities available and wishes to pursue such expansion, the petitioner sought the services of the beneficiary to oversee one hotel at the time of filing. Specifically, the evidence indicates that, as assistant operations manager of the the beneficiary would oversee a front desk manager and a guest services manager, who in turn would supervise seven desk clerks and five housekeeping staff. As noted by the petitioner in response to the RFE, the was leased to another company at the time of filing; therefore, the petitioner required the beneficiary's services solely for the management of the .

As noted by the director, the *Handbook's* section on lodging managers states as follows:

> A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for both vacationing families and business travelers. *Lodging managers* make sure that these conveniences are provided, while also ensuring that the establishments are run efficiently and profitably. Most lodging managers work in traditional hotels and motels, but some work in other lodging establishments, such as recreational camps and RV parks, inns, boardinghouses, and youth hostels.
>
> * * *
>
> The one person who oversees all lodging operations at a property is usually called a *general manager*. At larger hotels with several departments and multiple layers of management, the general manager and multiple *assistant managers* coordinate the activities of separate departments. (See related sections elsewhere in the *Handbook* on supervisors and managers of housekeeping and janitorial workers; human resources, training, and labor relations managers and specialists; financial managers; advertising, marketing, promotions, public relations, and sales managers; and food service managers.) In smaller limited-service hotels—mainly those without food and beverage service—one lodging manager may direct all the activities of the property.
>
> Lodging managers have overall responsibility for the operation and profitability of the hotel. Depending on the hotel and the size of its staff, lodging managers may either perform or

> direct housekeeping, personnel, office administration, marketing and sales, purchasing, security, maintenance, oversight of recreation facilities, and other activities. They may hire and train staff, set schedules, and lend a hand when needed.
>
> * * *
>
> Lodging managers may work with hotel sales and marketing directors and public relations directors to manage and coordinate the advertising and promotion of the hotel. They help develop lodging and dining specials and coordinate special events, such as holiday or seasonal specials. They may direct their staff to purchase advertising and to market their property to organizations or groups seeking a venue for conferences, conventions, business meetings, trade shows, and special events.
>
> Lodging managers who oversee the personnel functions of a hotel or serve as human resource directors ensure that all accounting, payroll, and employee relations matters are handled in compliance with hotel policy and applicable laws. They also oversee hiring practices and standards and ensure that training and promotion programs reflect appropriate employee development guidelines.

A review of the petitioner's description of the proffered duties of the position indicates that this category is most akin to the position proffered to the beneficiary, as noted by the director in the denial. According to the *Handbook*, the educational requirements for such a position are as follows:

> ***Education and training.*** Most large, full-service hotel chains usually hire people who have a bachelor's degree in business, hotel, or hospitality management for management trainee positions; however, a liberal arts degree coupled with experience in the hospitality field may be sufficient. At other hotels, especially those with fewer services, employers look for applicants with an associate degree or certificate in hotel, restaurant, or hospitality management along with experience. Formal internships or part-time or summer work in a hotel are an asset. Most degree programs include work-study opportunities.

As discussed above, the petitioner is seeking the beneficiary's services to manage and operate a [redacted] hotel, an establishment generally considered to provide basic amenities without the benefits and extensive services of large, full-service hotels. In this instance, the hotel where the beneficiary will work does not have a restaurant or offer convention facilities. Consequently, as stated by the *Handbook*, an employee working as a lodging manager in such a hotel may only need to possess at most an associate degree or certificate in hotel, restaurant, or hospitality management along with experience and, according to the *Handbook*, even then that level of education, training, and experience is only a preference, not a minimum entry requirement.

It is noted that counsel contends repeatedly that the director discounted the abundance of evidence submitted with regard to the petitioner's expansion plans and franchise opportunities. However, upon review of the record, the AAO concurs with the director's findings. While the co-owner of the petitioner demonstrates his ownership and involvement in various business ventures through other corporate entities such as [redacted]., [redacted], and [redacted]., the petitioner in this matter is a separate legal

from these other enterprises, and the business ventures undertaken by these entities are irrelevant to the petitioner currently before the AAO. The petitioner in this matter indicates that it owns two hotels, one of which is leased to another company. While the petitioner submitted copies of warranty deeds and franchise inquiries for parcels of property on which it contends it will eventually build hotels, the mere ownership of land absent definitive plans to build and expand is not sufficient to establish an immediate, non-speculative need for an operations manager to manager numerous properties. USCIS "cannot consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In support of the motion, the petitioner submitted copies of two Earnest Money Contracts for projects "that have been in the works for a while and that we are now able to finalize." It is noted that both agreements were executed in December 2008, nearly eight months after the filing of the instant petition. Counsel argues on appeal that the director erred by finding that, since the new hotels were not in existence at the time of filing, the petitioner had no need for the beneficiary's services. Relying on evaluation, counsel asserts that the petitioner required the beneficiary's services to assist in hiring contractors and overseeing the construction of these projects. However, counsel overlooks a critical factor in this matter.

At the time of filing, the petitioner merely owned parcels of land. There was no contract or franchise agreement in place that outlined specific plans to build hotel(s) on these parcels. The petitioner and counsel merely contended that expansion plans were in process, but no evidence, such as the earnest money contracts submitted eight months after filing, were submitted to support these contentions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Contrary to counsel's contentions on motion and appeal, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).[1]

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[1] The agency made clear long ago that speculative employment is not permitted in the H-1B program. Specifically, the 1998 proposed rule documented this position as follows:

> Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment,

Moreover, it is noted that, on motion, counsel refers to an unpublished decision in which the AAO determined that "a petitioner's size, scope, and newness of operation" are not relevant to the determination of whether to grant an H-1B visa petition. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Regardless, while a petitioner's size, scope, and newness of operation may not necessarily be relevant to certain positions, e.g., an attorney, medical doctor, or physical therapist, it may very well be relevant where the proffered duties are affected by or dependent on those factors. It is not logical, for example, to simultaneously claim that a beneficiary's proffered duties will entail in part the management of a hotel or motel that does not yet exist while also claiming that such duties cannot be questioned as they relate to the newness or current size of the corporation. In other words, the size, scope, and newness of a corporation may certainly be relevant and may therefore be considered where those factors raise questions as to the credibility of any of the claims and assertions made in a petition material to an eligibility determination at the time of filing for the immigration benefit sought.

Therefore, as correctly noted by the director, the petitioner at the time of filing operated only the Best Western, and was seeking the beneficiary's services to manage that property. For the reasons discussed above, the position is akin to a lodging manager, a position that does not require at least a bachelor's degree in a specific specialty. Accordingly, the petitioner has not established the proffered position as a specialty occupation under 8 C.F.R. § 214.2(h)(iii)(A)(*1*).

Additionally, the proposed position does not qualify as a specialty occupation under either prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). The first prong of this regulation requires a showing that a specific degree requirement is common to the industry in parallel positions among similar organizations.

Regarding parallel positions in the petitioner's industry, the petitioner submitted two job postings for the position of operations manager. However, neither of these postings is for a parallel position in organizations similar to the petition. Specifically, the petitioner has submitted a job posting for an operations manager at an automotive parts company and a gym. Neither of these companies is comparable to the petitioner. Therefore, these postings bear no evidentiary weight in these proceedings.

> the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. at 30420. While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through the filing of an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E).

The petitioner also submitted an evaluation from at the University of Phoenix, in support of the contention that a bachelor's degree is typically required for assistant operations managers. The director found the evaluation to be unpersuasive, and on motion, counsel contended that the director incorrectly disregarded the evaluation.

Upon review, the AAO concurs with the director's conclusions regarding evaluation. concludes that it is an industry standard for assistant operations managers to hold a bachelor's degree in business administration or a related field. However, does not base his conclusion on a review of similar businesses in the petitioner's industry. Instead, he bases his conclusion on the list of proffered duties coupled with the title of the position. presents no evidence that other companies in the industry who employ an assistant operations manager to oversee a hotel require their assistant operations managers to possess a degree in a specific specialty. Moreover, evaluation is generalized in that, while he considers the position title and general list of duties, he does not review the organizational chart which indicates that the beneficiary will be managing a and its desk and housekeeping staff. 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).

Moreover, it is again noted that only finds that the proffered position requires the attainment of a bachelor's degree in business administration or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). In addition to proving 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 also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Therefore, the AAO finds that the letter from does not establish that the proffered position is a specialty occupation.

Furthermore, the AAO also concludes that the record does not establish that the proposed position is a specialty occupation under the second prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*), which requires a demonstration that the position is so complex or unique that it can only be performed by an individual with a

degree. The record does also not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position.

The petitioner, therefore, has not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*) or (*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. The petitioner indicated in its response to the RFE that "our company has never hired a separate person to serve as Assistant Operations Manager." However, the petitioner indicates that one of its owners has performed these duties to date, and indicates that he possesses a bachelor's degree in business administration.

This contention is insufficient to establish eligibility under this criterion. As noted above, the petitioner has no history of hiring any individual for the proffered position, and the owner of a company assuming responsibility for any and all tasks required in the absence of adequate staff is not the same as employing an individual in the proffered position. Even if it were, simply contending that the owner has a bachelor's degree in business administration is not sufficient to establish that the petitioner normally requires a degree or its equivalent in a specific specialty for the position. Again, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Moreover, the critical element is not the title of the position or an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results. The petitioner's contention that the owner possesses a degree in business administration and has performed the duties of the proffered position is insufficient to establish a hiring history of specialty degreed individuals. If USCIS were limited to reviewing a petitioner's self-imposed employment requirements, then any alien with a bachelor's degree could be brought into the United States to perform a non-professional or non-specialty occupation, so long as the employer required all such employees to have baccalaureate degrees or higher degrees. Accordingly, the AAO finds that the record does not establish the proffered position as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)*(3)*. The evidence of record does not establish this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*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 discussed previously, to the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As related in the discussion above, the petitioner has failed to establish 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.