

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



D2

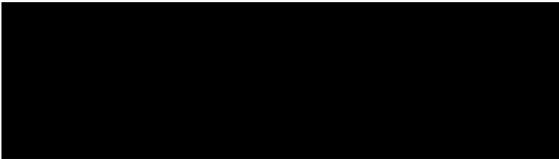
Date: Office: CALIFORNIA SERVICE CENTER File:

NOV 01 2011

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 service center director denied the nonimmigrant visa petition. The nonimmigrant visa petition was reopened on Service motion. The Director of the California Service Center recommended the denial of the nonimmigrant visa petition and certified her decision to the Administrative Appeals Office (AAO). Upon review, the AAO will affirm the decision of the director. The petition will be denied.

The petitioner states that it is a liquor sales and business acquisition company with 17 employees and a gross annual income of approximately \$2.78 million. It seeks to employ the beneficiary as an Operations and Finance Analyst 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 concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE) dated September 10, 2010; (3) the petitioner's response to the RFE; (4) the director's RFE dated May 13, 2011; (5) the petitioner's response to the RFE; (6) the director's decision and Notice of Certification to the AAO; and (5) the brief submitted by counsel. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment 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 one 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.

In this matter, the petitioner seeks the beneficiary's services as an Operations and Finance Analyst. In the petitioner's letter dated April 8, 2010, the petitioner states that it wishes to hire the beneficiary to "research, develop, and interpret information that assists management with policy formulation, and other managerial functions, including evaluation of accounting and operations." The position requires "use [of] analytical techniques, provid[ing] analysis and information to the President and CFO about business acquisition interests. The Operations and Financial Analyst will oversee and manage projects as assigned by the Chief Financial Officer." Specifically, the responsibilities include:

- Operations: Apply management and finance analytical methods to provide management with information to effectively manage money, materials, inventory, people, and time. Review and analyze business organizational systems (existing businesses and acquired businesses) to identify shortcomings and recommend solutions. Focus on retail operations including operating standards, policies and procedures for an efficient, effective and profitable retail operation, including review of records to ensure actual costs are within budgeting requirements. Conduct market research to determine feasibility of new products and new business acquisitions.
- Financial: Drive profit and loss accountability for all areas. Provide for and monitor system of internal controls, including the following: conduct financial analysis of daily operations and monthly budget projections and targets, allocate resources, measure performance, schedule, and manage inventory and supply chain.
- Development: Review business for profitability prior to acquisition; identify and apply strategies for potential high traffic (as required in discount market) and profitable retail operations. Leverage analytical tools to understand the demographic mix of customers and interpret data to determine if traffic potential matches franchise goals/requirements.
- Management: Asses[s] all staffing for feasibility and profitability.

The petitioner stated that it required someone with at least a Bachelor's degree in Management or in Business Administration with an emphasis in Management for the proffered position.

The petition submitted a certified Labor Condition Application indicating a Level I, entry-level position located at [REDACTED]

The petitioner also submitted a copy of the beneficiary's transcripts from the University of [REDACTED] establishing that she has a U.S. Master of Arts degree in Management. The petitioner provided a course-by-course evaluation report indicating that the beneficiary

has an equivalent to a U.S. Bachelor's degree in Business Administration with a major in International Business, specializing in International Agribusiness.

On September 10, 2010, the director issued an RFE requesting additional evidence that the proffered position is a specialty occupation. The RFE also requested additional information regarding the beneficiary's qualifications to perform services in a specialty occupation consisting of duties of a financial manager or sales manager.

In response to the RFE, the petitioner provided additional information pertaining to the proffered position, including three pages of detail expanding upon the description of the proffered job duties. Additionally, the petitioner submitted letters from vendors and service providers addressing the beneficiary's professional competency and her role with the petitioner. The petitioner also provided letters from other discount liquor store owners stating that they employ individuals in roles similar to the proffered position, and that a bachelor's degree is required to perform the job. The petitioner also submitted a series of invoices, bank statements, [REDACTED] and price analyses.

The director denied the petition on January 27, 2011.

The petition was subsequently reopened on a Service motion and a second RFE was issued on May 13, 2011 requesting additional evidence that the proffered position is a specialty occupation.

In response to the second RFE, the petitioner provided additional details regarding the proffered position as it relates to the Occupational Outlook Handbook's¹ (*Handbook*) definition of Operations Research Analyst, along with copies of financial reports, and an employee handbook created by the beneficiary. The petitioner also submitted additional letters from other discount liquor store owners stating that they employ individuals in roles similar to the proffered position, and that a bachelor's degree in management or accounting is required to perform the job. Additionally, the petitioner submitted copies of advertisements for jobs purporting to relate to that of an Operations and Finance Analyst, specifically: a Corporate Finance and Operations Analyst for a luxury fitness company, an Operations and Financial Analyst for a bank, Business Analysts for an undisclosed company, an Operations Analyst for a public accountancy firm, a Business Development – Acquisitions Analyst for a financial services company, and a Senior Financial Analyst, Operations for an entertainment company.

The director issued a Notice of Certification on August 5, 2011.

In response to the Notice of Certification, counsel for the petitioner argues that the evidence submitted is sufficient to establish that the proffered position is a specialty occupation.

¹ Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/OCO> (last accessed October 25, 2011).

In her denial, the director found the duties of the proffered position to reflect those of financial analysts or sales managers as listed in the *Handbook*, and denied the petition because she determined that the proffered position was not a specialty occupation under those classifications. The AAO disagrees with the director's finding that the proffered position falls under the classification of financial analyst or sales manager, and finds that the proffered position's duties most closely relate to the *Handbook's* description of operations research analysts. However, the record of proceeding fails to establish that any related duties to be performed by the beneficiary would require the practical and theoretical application of a body of highly specialized knowledge attained by at least a bachelor's degree, or the equivalent, in management, or business administration with an emphasis in management, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation. Therefore, the AAO will affirm the director's decision for the reasons stated below.

The *Handbook's* description of operations research analysts provides in pertinent part:

Operations research analysts formulate and apply mathematical modeling methods to develop and interpret information that assists management with policy formulation and other managerial functions. Using analytical techniques, operations research analysts help managers to make better decisions and solve problems. The procedures of operations research were first formalized by the military. They have been used in wartime to effectively deploy radar, search for enemy submarines, and get supplies to where they are most needed. In peacetime and in private enterprises, operations research is used in planning business ventures and analyzing options by using statistical analysis, data mining, simulation, computer modeling, linear programming, and other mathematical techniques.

In addition to the military, operations research analysts today are employed in almost every industry, as companies and organizations must effectively manage money, materials, equipment, people, and time. Operations research analysts reduce the complexity of these elements by applying analytical methods from mathematics, science, and engineering, to help companies make better decisions and improve efficiency. Using sophisticated software tools, operations research analysts are largely responsible for solving complex problems, such as setting up schedules for sports leagues or determining how to organize products in supermarkets. Presenting the pros and cons of each possible scenario, analysts present solutions to managers, who use the information to make decisions.

Analysts are often involved in top-level strategizing, planning, and forecasting. They help to allocate resources, measure performance, schedule, design production facilities and systems, manage the supply chain, set prices, coordinate transportation and distribution, or analyze large databases.

The duties of operations research analysts vary according to the structure and management of the organizations they are assisting. Some firms centralize operations research in one department; others use operations research in each division. Many analysts work with management consulting companies that perform contract work for other firms. Analysts working in these positions often have areas of specialization, such as transportation or finance. Because problems are very complex and often require expertise from many disciplines, most analysts work in teams.

Teams of analysts usually start projects by listening to managers describe problems. Analysts ask questions and search for data that may help to formally define a problem. For example, an operations research team for an auto manufacturer may be asked to determine the best inventory level for each of the parts needed on a production line and to determine the optimal number of windshields to be kept in stock. Too many windshields would be wasteful and expensive, whereas too few could halt production.

Analysts study the problem, breaking it into its components. Then they gather information from a variety of sources. To determine the optimal inventory, operations research analysts might talk with engineers about production levels, discuss purchasing arrangements with buyers, and examine storage-cost data provided by the accounting department. They might also find data on past inventory levels or other statistics that may help them to project their needs.

Relevant information in hand, the team determines the most appropriate analytical technique. Techniques used may include Monte Carlo simulations, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, Markov decision processes, econometric methods, data envelopment analysis, neural networks, expert systems, decision analysis, and the analytic hierarchy process. Nearly all of these techniques involve the construction of mathematical models that attempt to describe the system. The problem of the windshields, for example, would be described as a set of equations that represent real-world conditions.

Using these models, the team can explicitly describe the different components and clarify the relationships among them. The model's inputs can then be altered to examine what might happen to the system under different circumstances. In most cases, a computer program is used to numerically evaluate the model.

A team will often run the model with a variety of different inputs to determine the results of each change. A model for airline flight scheduling, for example, might stipulate such things as connecting cities, the amount of fuel required to fly the routes, projected levels of passenger demand, varying ticket and fuel prices, pilot scheduling, and maintenance

costs. Analysts may also use optimization techniques to determine the most cost effective or profit-maximizing solution for the airline.

Based on the results of the analysis, the operations research team presents recommendations to managers. Managers may ask analysts to modify and rerun the model with different inputs or change some aspect of the model before making their decisions. Once a manager reaches a final decision, the team usually works with others in the organization to ensure the plan's successful implementation.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos044.htm> (last accessed October 25, 2011). The AAO's first point with regard to its analysis of the proffered position is that, despite the petitioner's assumption to the contrary, operations research analysts do not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As will now be discussed, the *Handbook* indicates that operations research analysts do not constitute an occupational group that categorically requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty. The "Operations Research Analysts" chapter in the 2010-2011 edition of the *Handbook* indicates that not every operations research analyst position requires least a bachelor's degree level of knowledge in "mathematics and other quantitative subjects." *Id.*

Specifically, the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[a] bachelor's degree coupled with extensive coursework in mathematics and other quantitative subjects usually is the minimum education requirement." *Id.* Additionally, the *Handbook* states: "[s]ome entry-level positions are available to those with a bachelor's degree in operations research, management science, or a related field, but higher degrees are required for many positions." *Id.* This does not support the view that any operations research analyst job qualifies as a specialty occupation.

Moreover, while the *Handbook* reports that a bachelor's degree is usually the minimum educational requirement for many operations research analyst jobs, a bachelor's degree alone is not sufficient for all positions in the occupational category to be recognized as specialty occupations. Further, the aforementioned section of the *Handbook* also includes this statement: "beginning analysts usually perform routine computational work under the supervision of more experienced analysts." *Id.* In this context, the petitioner indicated that the proffered position is an entry-level (Level I²) position in the Labor Condition

² According to the *Prevailing Wage Determination Policy Guidance* issued by the Department of Labor: "**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level

Application that it submitted in support of its petition. The fact that a person is employed in an entry-level operations research position and may perform related duties in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers here would necessitate operations research analysis at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in a specific, related specialty. This, the petitioner has failed to do.

Even if the petitioner were to demonstrate, which it did not do, that the proffered position involved the theoretical and practical application of a highly specialized body of knowledge, the petitioner has still failed to establish that the position of Operations and Finance Analyst, as described by the petitioner, satisfies any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In making this determination, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty 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 in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

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. See generally *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.

work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered." *Prevailing Wage Determination Policy Guidance*, Employment and Training Administration, p. 7 (November 2009).

The AAO notes that, as reflected in the job description quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, which, the AAO finds, do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of operations research analysis that the beneficiary would have to apply to those matters. As discussed in greater detail, *infra*, as the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

It is not self-evident that, as previously discussed in regard to the *Handbook*, the proposed duties comprise a position for which the normal entry requirement would be at least a bachelor's degree, or its equivalent, in a specific specialty. The AAO therefore concludes that the performance of the proffered position's duties does not require the beneficiary to hold a baccalaureate or higher degree in a specific specialty. Accordingly, the AAO finds that the petitioner has not established its proffered position as a specialty occupation under the requirements of the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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.

Again, 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. As discussed *supra*, three out of five letters from similar companies provided establish at best that employees holding similar positions to that of the proffered position hold a bachelor's degree in management or accounting, but fail to document an established practice of recruiting and hiring only employees holding at least bachelor's degrees in management or accounting in similar positions over time. Furthermore, the corroborating evidence of the degrees held by the individuals employed does not establish what in fact each individual's major or specialization was, and it also fails to show whether the claimed bachelor's degrees in management for two of the individuals were general bachelor's degrees, i.e. bachelor's degrees in business administration, or whether they were bachelor's degrees in business administration with a specialization in management.³ The remaining two companies provided letters that state that while they

³ The requirement of a bachelor's degree in management or business administration with an emphasis in management is inadequate to establish that a position qualifies as a specialty

employ degreed individuals, they did not state any specific field of study required for the position, thus indicating that at least a bachelor's degree in a specific specialty is not required to perform the duties of those parallel positions.⁴

Additionally, none of the advertisement submitted are for businesses that are in the same industry as the petitioner. As a result, the petitioner has not established that similar companies in its industry routinely require at least a bachelor's degree in a specific specialty for positions that are parallel to the proffered position.

The petitioner also failed to satisfy 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 petitioner did not submit any documentation to evidence that the proffered position requires at least a bachelor's degree or the equivalent in a specific specialty. While the petitioner did provide additional information pertaining to the proffered job duties in its RFE responses, the job duties were generic in nature and did not provide documentation as to how modeling techniques and simulation tools were used to perform the duties required for the position. Rather, the documentation submitted in support of the petition consisted of Excel spreadsheets and a financial summary that lacked information about any modeling or simulation used to create these documents. Therefore, the record is devoid of sufficiently detailed information to distinguish the proffered position as unique from or more complex than similar positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

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 management or business administration with an emphasis in management, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly 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 or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require 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).

⁴ It is noted that one company, [REDACTED], provided two separate letters, making a total of six letters submitted. The initial letter from [REDACTED] however, indicated a different individual employed in the parallel position and did not indicate that that individual possessed a degree in any specific specialty related to that position.

As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The AAO now considers the merits of the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). As discussed above, the petitioner has not presented any evidence to show that the skills utilized in its daily operations are so specialized and complex that the knowledge required to perform the duties of the proffered position is usually associated with the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty. As stated in the *Handbook*, an Operations Research Analyst:

[d]etermines the most appropriate analytical technique. Techniques used may include Monte Carlo simulations, linear and nonlinear programming, dynamic programming, queuing and other stochastic-process models, Markov decision processes, econometric methods, data envelopment analysis, neural networks, expert systems, decision analysis, and the analytic hierarchy process. Nearly all of these techniques involve the construction of mathematical models that attempt to describe the system.

As reflected in the petitioner's letter dated October 20, 2010, the proffered position's duties include use of Monte Carlo Experimentation, profitability ratios, and business acquisition analyses; however, these tasks are "not constant." The petitioner's letter also described other techniques such as AHP and SWAT Analysis, but the record does not reflect any evidence or explanation of how modeling or simulation techniques are used in the course of performing the duties for the proffered position.

Further, the petitioner's letter dated April 8, 2010 stated that the beneficiary held the proffered position for one year under Optional Practical Training, and during this time, she renegotiated the petitioner's lease agreement and noted an irregularity in heating bills, resulting in cost savings for the petitioner. There is no evidence to suggest that such tasks require the attainment of a bachelor's degree in a specialty occupation, and fail to convey that the proffered position is specialized and complex. Additionally, the petitioner hired an accountant to conduct an in-house analysis of acquisition of a new company due to its inability to have the beneficiary perform these duties because her Optional Practical Training had expired. The record lacks evidence of the skills required to conduct income concept reports and financial analysis, including any modeling techniques and simulation tools that are specialized and complex. Additionally, the fact that this function can be conducted by an accountant, which is a notably dissimilar role and not necessarily requiring a degree in a specialty occupation, leads to the conclusion that the proffered position does not involve specialized and complex duties.

Therefore, the record of proceeding fails to provide documentary evidence that would convey the substantive content of issues that the petitioner's business operations would generate for the beneficiary to address using these techniques. The petitioner did not provide any evidence or information concerning analytical techniques required to perform the tasks described in the proffered position description. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 ('Reg. Comm'r 1972)). Therefore, the petitioner has not established the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The director's decision must be affirmed and the petition denied on this basis.

Finally, beyond the decision of the director, the AAO will enter an additional basis for denial, i.e., the petitioner's failure to comply with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B).

The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

Service or training in more than one location. A petition which requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed with the Service office which has jurisdiction over I-129H petitions in the area where the petitioner is located. The address which the petitioner specifies as its location on the I-129H petition shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations.

Additionally, the Department of Labor (DOL) regulations governing Labor Condition Applications states that "[e]ach LCA shall state...[t]he places of intended employment." 20 C.F.R. § 655.730(c)(4) (emphasis added). "Place of intended employment" is defined as "the worksite or physical location where the work actually is performed by the H-1B...nonimmigrant." 20 C.F.R. § 655.715. Additionally, the instructions for Section G of Form ETA 9035 require that the employer list the place of intended employment "with as much geographic specificity as possible" and notes that the employer may identify up to three physical locations, including street address, city, county, state, and zip code, where work will be performed. Petitioners who know that an employee will be working at additional worksites at the time of filing must include all worksites on Form ETA 9035. Failure to do this will result in a finding that the employer did not file an LCA that supports the H-1B petition.

[REDACTED]

In this case, Form I-129 lists the work locations as [REDACTED], plus locations acquired within [REDACTED]. In a letter dated April 8, 2010, the petitioner also states that the beneficiary will also "spend some time working at our [REDACTED] and [REDACTED] stores." The petitioner, however, failed to submit an itinerary including both the dates and locations of the services to be provided. In addition, section G of ETA Form 9035 (Labor Condition Application) states that the beneficiary's intended work site is [REDACTED], [REDACTED], and fails to mention any other work site locations indicated in the petitioner's letter. Therefore, the petitioner has also failed to submit a valid LCA that corresponds to all of the proposed work locations.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.*

[Italics added]. The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit the required itinerary as well as a valid LCA that corresponds to all of the proposed work locations, and the petition must be denied for these additional reasons.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision is affirmed. The petition is denied.