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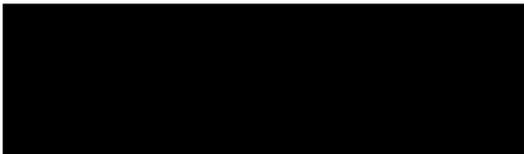
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



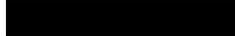
U.S. Citizenship  
and Immigration  
Services

D2



Date: **FEB 02 2012**

Office: VERMONT 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 nonimmigrant visa petition was denied by the service center director and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the matter is now moot.

The petitioner describes itself as a cable service provider, and it seeks to employ the beneficiary as a customer service manager.<sup>1</sup> The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the petitioner failed to: (1) submit an itinerary for all work locations of the beneficiary; (2) submit a valid Labor Condition Application (LCA) that corresponded to the petition; and (3) demonstrate that the proffered position is a specialty occupation. On appeal, counsel for the petitioner submits a brief and additional evidence.

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

In the letter of support dated March 18, 2009, the petitioner claimed that it is a cable service provider that offers various services including home entertainment, high-speed Internet access and multimedia needs. The petitioner explained that it required the beneficiary's services as a customer service manager to service its operations in Santee, South Carolina. The petitioner provided an overview of the duties of the proffered position and concluded by stating that the position required the incumbent to hold at least a bachelor's degree in business administration, management, computer science, or any other related field.

The director found the initial evidence insufficient to establish eligibility, and thus issued an RFE on July 13, 2009. The RFE asked the petitioner to clarify the name of the business associated with the claimed work location of the beneficiary in Part 5 of the petition and requested a letter from this entity discussing the beneficiary's projects and assignments during the requested validity period, as well as a more specific discussion of the beneficiary's duties. The director also requested letter(s) from end clients or vendors describing the nature of any projects on which the beneficiary would work.

In a response dated August 5, 2009, the petitioner addressed the director's queries. The petitioner claimed that it provided its cable, Internet, and VoIP telephone services under its trade name, [REDACTED]. It further stated that, although [REDACTED] was based in Bedford, Texas, it also operated in South Carolina, Oregon, Virginia, and California. The petitioner clarified

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<sup>1</sup> It should be noted that, according to the Texas Comptroller of Public Accounts, the petitioner is not currently in good standing in Texas due to its failure to satisfy all state tax requirements. Therefore, regardless of whether the petitioner's tax issues in Texas can be easily remedied or not, it raises the critical issue of the company's continued existence as a legal entity in the United States.

that it correctly noted in Part 5 of the petition that the beneficiary would work at [REDACTED] in Santee, South Carolina, the work location set forth in the LCA. The petitioner further clarified that the beneficiary would not be working for any independent vendors and would always remain under the control of the petitioner.

The director denied the petition, finding that the petitioner had not established eligibility based on its failure to submit an itinerary and LCA covering all work locations for the beneficiary. In addition, the director found that the proffered position could not be deemed a specialty occupation since the record was devoid of evidence outlining the nature of the project(s) upon which the beneficiary would work. On appeal, the petitioner contends that the documents submitted in response to the RFE satisfied the evidentiary requirements in this matter.

General requirements for filing immigration applications and petitions are set forth at 8 C.F.R. §103.2(a)(1) as follows:

[E]very application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions . . . being hereby incorporated into the particular section of the regulations requiring its submission . . . .

Further discussion of the filing requirements for applications and petitions is found at 8 C.F.R. § 103.2(b)(1):

Demonstrating eligibility at time of filing. An applicant or petitioner must establish that he or she is eligible for the requested benefit at the time of filing the application or petition. All required application or petition forms must be properly completed and filed with any initial evidence required by applicable regulations and/or the form's instructions. Any evidence submitted in connection with the application or petition is incorporated into and considered part of the relating application or petition.

The AAO will jointly address the issues of whether the petitioner submitted an itinerary and valid LCA with the petition, and thus established filing eligibility at the time the Form I-129 was received by U.S. Citizenship and Immigration Services (USCIS).

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from the U.S. Department of Labor (DOL) in the occupational specialty in which the H-1B worker will be employed. See 8 C.F.R. § 214.2(h)(4)(i)(B). The instructions that accompany the Form I-129 also specify that an H-1B petition must be filed with evidence that an LCA has been certified by DOL.

Additionally, the regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) provides as follows:

*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.

In the instant case, the petitioner filed the Form I-129 with USCIS on September 28, 2009. On the Form I-129, the petitioner indicated that the beneficiary would work in Santee, South Carolina, and submitted a certified LCA with the petition for this work location.

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing. Further, 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 (emphasis added):

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.*

In this case, the LCA submitted with the petition is certified for the claimed work location of the beneficiary. However, upon review, it is noted that the LCA was certified for occupational code 189. Based on the prevailing wage listed, it is apparent that the LCA was certified for an association executive, Dictionary of Occupational Titles (DOT) code 189.117-010, which corresponds to SOC code 11-9199, managers, all other. As discussed in greater detail *infra*, as a customer service representative position, SOC code 43-4051, the LCA submitted in this matter should have been certified under the 239 occupational code, as SOC code 43-4051 best corresponds in this matter to DOT code 239.362-014, customer service representative.<sup>2</sup> Thus, while the director's reasoning pertinent to this issue was flawed, the AAO hereby affirms the director's conclusion and finds that the LCA submitted with the petition does not correspond to the proffered position. The appeal must be dismissed and the petition denied for this reason.

Regarding the itinerary requirement, the AAO notes that in its letter of support dated March 18, 2009, the petitioner stated as follows:

[The petitioner] operates [REDACTED], a cable service provider offering home entertainment, [and] deliver[s] digital services, provide[s] high-speed Internet access, and prepare[s] the infrastructure for its customers' voice, data, wireless, and multimedia needs. [REDACTED] requires the services of a Customer Service Manager to service its operations in Santee, South Carolina.

<sup>2</sup> Alternatively, the proffered position could have been classified under DOT code 239.137-014, customer service representative supervisor, which corresponds to first-line supervisors of office and administrative support workers, SOC code 43-1011.

The petitioner further corroborated this claim on Form I-129, where it stated in Part 5 that the beneficiary would work for [REDACTED] in Santee, South Carolina.

Upon review, the AAO finds that there is no claim or indication in the record that the beneficiary will work at locations other than Santee, South Carolina, as consistently claimed by the petitioner throughout the record. Consequently, the director's finding that the petitioner failed to provide a concise itinerary covering all work locations for the beneficiary during the requested validity period is withdrawn.

Beyond the decision of the director, however, is the question of whether the petitioner will comply with the terms and conditions of employment.

The petitioner claims in the record that it operates under the trade name of [REDACTED], and that the beneficiary would be working in its Sandee, South Carolina office. Despite withdrawing the itinerary basis of the director's denial discussed above, the AAO reviewed the petitioner's corporate and organizational structure due to the issues raised by the director.<sup>3</sup>

As noted earlier in this decision, records maintained by the Texas Comptroller of Public Accounts indicate that the petitioner is not currently in good standing in Texas due to its failure to satisfy all state tax requirements. Therefore, it raises the critical issue of the company's continued existence as a legal entity in the United States. Additionally, further review of the records maintained by the Texas Comptroller of Public Accounts indicate that [REDACTED] is a separate and distinct corporate entity from the petitioner, and that it was incorporated in the State of Delaware on October 15, 2008. Records further indicate that [REDACTED] President of the petitioner, is also [REDACTED] registered agent and director.

According to the regulation at 8 C.F.R. § 214.2(h)(2)(i)(A), the filer of an H-1B petition must be "[a] United States employer" seeking to classify an alien as an H-1B temporary employee.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii), defines "United States employer" as follows:

United States employer means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and

<sup>3</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

- (3) Has an Internal Revenue Service Tax identification number.

In addition, USCIS regulations affirmatively require a petitioner to establish H-1B eligibility as of the date the petition is filed. See 8 C.F.R. § 103.2(b)(1) and (12).

When the instant petition was filed on September 28, 2009, [REDACTED] was an incorporated entity. Therefore, the petitioner's claim contained in the petition and supporting documentation which states that it is operating under the trade name of [REDACTED] is false. Although the petitioner and [REDACTED] share the same president and director [REDACTED] a corporation is a separate and distinct legal entity from its owners or stockholders. See *Matter of M*, 8 I&N Dec. 24, 50 (BIA 1958, AG 1958); *Matter of Aphrodite Investments Limited*, 17 I&N Dec. 530 (Comm. 1980); and *Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980). Consequently, it appears that the petitioner will not comply with the terms and conditions of employment since it does not meet the regulatory requirements for a U.S. employer and it will not serve as the beneficiary's employer during the requested validity period. The petitioner has failed to establish that it has satisfied the criteria at 8 C.F.R. § 214.2(h)(4)(ii)(1) and (2). For this reason alone, the petition must be denied.

Furthermore, the regulation does not accord standing to file an H-1B visa petition to anyone other than a beneficiary's prospective U.S. employer or agent acting as the U.S. employer. See 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991) (stating that "only United States employers can file an H-1B petition."). As such, lacking standing to file the instant petition as either a United States employer or as an agent for a United States employer, the petitioner was not qualified to file this petition on behalf of the beneficiary. For this additional reason, the appeal must be dismissed and the petition denied.

Although the appeal must be dismissed for the above-stated reasons, the AAO will also address the issue of whether the beneficiary would be employed in a specialty occupation.

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 regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means 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, a proposed 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, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. See *K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); see also *COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. See *Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty, or its equivalent, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

In addressing whether the proffered position is a specialty occupation, the director found that the record was devoid of any documentary evidence as to where and for whom the beneficiary would be performing his services during the requested employment period. Concluding that the petitioner appeared to be in the business of subcontracting aliens to third parties, the director concluded that the record failed to sufficiently articulate the ultimate duties of the beneficiary, thereby precluding a finding that the beneficiary would be employed in a specialty occupation position.

As related in the discussion above, the petitioner failed to establish that an employer-employee relationship exists or will credibly exist between the petitioner and the beneficiary. This fact alone renders an examination of the remaining issue moot in these proceedings. Nevertheless, for the purpose of providing a full and comprehensive review, the AAO will also review the director's analysis of the specialty occupation issue as set forth in the decision dated August 24, 2009.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Moreover, the regulation at 8 C.F.R. § 214.2(h)(4)(iv)(A)(1) indicates that contracts are one of the types of evidence that may be required to establish that the services to be performed by the beneficiary will be in a specialty occupation.

The March 18, 2009 support letter submitted by the petitioner described the proffered position of customer service manager as a position that required directing and coordinating customer and technical service for [REDACTED] as well as investigating customer complaints, coordinating technical liaison services, and evaluating market and financial activities.

Based on the petitioner's claims that the beneficiary would work onsite for [REDACTED] the director requested additional documentation, such as contracts or work orders, demonstrating the exact nature of the beneficiary's duties while working onsite for [REDACTED]. In response to the RFE, which also requested more specific information regarding all projects upon which the beneficiary would work, the petitioner indicated that the beneficiary would be employed exclusively by the petitioner, who was doing business as [REDACTED] thereby eliminating the need for contracts or other such documents since they were essentially the same entities. Consequently, no contractual agreements were submitted due to the petitioner's claim that [REDACTED] was simply its trade name and not a separate legal entity. Although the original description of duties was submitted, no additional description of duties was submitted.

The director found that the statement of duties provided by the petitioner, coupled with the uncertain nature of the employment relationship between the petitioner, the beneficiary, and [REDACTED] resulted in an inability to determine who would ultimately control the work of the beneficiary and what would be the exact nature of the beneficiary's duties.

On appeal, the petitioner reiterates its claim that it is doing business as [REDACTED] and claims that it is not a consulting business contracting out its employees as determined by the director. In support of this contention, the petitioner submitted a copy of its organizational chart in support of its position that the petitioner and [REDACTED] are one intertwined entity.

Again, as the AAO has already determined that these entities are separate and distinct corporations, further discussion of the merits of this issue is moot. However, the crucial issue not examined by the director is whether the proffered position itself qualifies as a specialty occupation.

Upon review of the record, the AAO finds that 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.

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business administration, management, computer science, or any other related field" for the proffered position is inadequate to establish that the proposed 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'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 discussed *supra*, 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. 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).<sup>4</sup>

In this matter, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business

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<sup>4</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO turns next to 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; and 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.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

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's assertion that the proffered position is a specialty occupation.

The 2010-2011 edition of the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* describes the position of customer service manager under the heading of "Customer Service Representatives" as follows:

Customer service representatives provide a valuable link between customers and the companies who produce the products they buy and the services they use. They are responsible for responding to customer inquiries and making sure that any problems they are experiencing are resolved. Although most customer service representatives do their work by telephone in call centers, some interact with customers by e-mail, fax, post, or face-to-face.

Many customer service inquiries involve simple questions or requests. For instance, a customer may want to know the status of an order or wish to change his or her address in the company's file. However, some questions may be somewhat more difficult, and may require additional research or help from an expert. In some cases, a representative's main function may be to determine who in the organization is best suited to answer a customer's questions.

Some customer inquiries are complaints, which generally must be handled in accordance with strict company policies. In some cases, representatives may try to fix problems or suggest solutions. They may have the authority to reverse erroneous fees or send replacement products. Other representatives act as gatekeepers who make sure that complaints are valid before accepting customer returns.

Although selling products and services is not the primary function of a customer service representative, some customer services representatives may provide information that helps customers to make purchasing decisions. For instance, a representative may point out a product or service that would fulfill a customer's needs. (For information on workers whose primary function is sales, see the statement on retail salespersons elsewhere in the Handbook).

Customer service representatives use computers, telephones, and other technology extensively in their work. When the customer has an account with the company, a representative will usually open his or her file in the company's computer system. Representatives use this information to solve problems and may be able to make specific changes as necessary. They also have access to responses for the most commonly asked questions and specific guidelines for dealing with requests or complaints. In the event that the representative does not know the answer or is unable to solve a specific problem, a supervisor or other experienced worker may provide assistance.

Many customer service workers are located in call centers, where they spend the entire day speaking on the telephone. Companies usually keep statistics on their workers to make sure they are working efficiently. This helps them to keep up with their call volume and ensures that customers do not have to wait on hold for extended periods of time. Supervisors may listen in on or tape calls to ensure customers are getting quality service.

Almost every industry employs customer service representatives, and their duties may vary greatly depending on the nature of the organization. For instance, representatives who work in banks may have similar duties to tellers, whereas those in insurance companies may be required to handle paperwork, such as changes to policies or renewals. Those who work for utility and communication companies may assist customers with service problems, such as outages. Representatives who work in retail stores often handle returns and help customers to find items in their stores.

A review of the training required for customer service representatives indicates that the formal education of such employees varies widely. Specifically, the *Handbook* states as follows:

***Education and training.*** Most customer service representative jobs require a high school diploma. However, because employers are demanding a more skilled workforce, some customer service jobs now require associate or bachelor's degrees. High school and college level courses in computers, English, or business are helpful in preparing for a job in customer service.

Training requirements vary by industry. Almost all customer service representatives are provided with some training prior to beginning work. This training generally focuses on the company and its products, the most commonly asked questions, the computer and telephone systems they will be using, and basic people skills. Length of training varies, but often lasts several weeks. Some customer service representatives

are expected to update their training regularly. This is particularly true of workers in industries such as banking, in which regulations and products are continually changing.

While the *Handbook* indicates that some customer service jobs require an associate's degree or a bachelor's degree, there is no evidence in the *Handbook* that indicates that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required for such a position. Instead, it appears that a high school diploma is the most common prerequisite for such a position. Therefore, since the *Handbook* does not indicate that a degree in a specific specialty is normally required, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The AAO now turns to the first prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). To satisfy this criterion, a petitioner must establish that its degree requirement for the proffered position is common to the petitioner's industry in parallel positions among similar organizations.

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

Regarding what it asserts to be parallel positions in its industry, the petitioner has provided numerous job vacancy postings advertised at [www.jobview.monster.com](http://www.jobview.monster.com). Of these postings, none require at least a bachelor's degree, or its equivalent, in a specific specialty. Some do not list any educational requirements and some simply state a four year bachelor's degree is required without specifying a major or concentration. While some postings required a degree in business/business administration or a related field, this requirement, as discussed *supra*, does not delineate a degree in a specific specialty. Finally, the petitioner has failed to demonstrate that any of these postings are for positions parallel to that of the proffered position in industries similar to the petitioner, a cable service provider with 20 employees. Therefore, the petitioner has failed to establish the first alternate prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Under the alternate prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the petitioner may show that the proffered position is so complex or unique that only an individual with a baccalaureate or higher in a specific specialty or its equivalent can perform the work associated with the position.

The record of proceeding, however, contains insufficient evidence regarding the specific work the proffered position would actually encompass. In fact, the record of proceeding does not develop the actual content of that work beyond generic and general functions, and the petitioner has provided no documentary evidence addressing the claimed relative complexity or uniqueness of the proffered position. As such, the record of proceeding lacks an evidentiary record which would afford the AAO a reasonable basis by which to assess the proffered position in terms of complexity or uniqueness. For these reasons, the petitioner has failed to establish the second prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

To determine whether a proffered position may be established as a specialty occupation under the third criterion, which requires that the employer demonstrate that it normally requires a degree or its equivalent for the position, the AAO usually reviews the petitioner's past employment practices, as well as the histories, including names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees' diplomas. In the instant matter, the petitioner makes no claim to have a history of hiring degreed individuals for this position. Therefore, since the petitioner has not established that it previously recruited and employed only degreed customer service managers, the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) has not been satisfied.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree.

The petitioner has addressed the duties of the proffered position in exclusively generalized and generic terms, which do not convey an association with a particular type and educational level of knowledge. Further, the petitioner has provided no documentary evidence establishing the duties as so specialized and complex that their performance would require at minimum a bachelor's or higher degree in a specific specialty or its equivalent. Thus, the petitioner fails to satisfy the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner has therefore failed to establish that the proffered position is a specialty occupation. For this additional reason, the petition will be denied.

A final issue not addressed by the director is whether the beneficiary is qualified to perform the services of a specialty occupation position. Even if the proffered position were a specialty occupation, which it is not, the beneficiary would not qualify to perform the duties of that specialty occupation based on his education credentials, because it has not been demonstrated that the beneficiary possesses a degree in a specialized field of study.

Specifically, while an evaluation of the beneficiary's academic credentials prepared by Morningside Evaluations and Consulting states that the beneficiary possesses the equivalent to a U.S. Bachelor of Business Administration degree, it fails to designate any specific business specialty. The AAO notes that a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* Thus, even if the petitioner had demonstrated that the proffered position requires at least a bachelor's degree in a specific specialty or its equivalent, the petition could not be approved, because the petitioner failed to demonstrate that the beneficiary has taken courses or gained knowledge considered to be a realistic prerequisite to any specific specialty within the field of business. For this additional reason, the petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the

initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 appeal is dismissed. The petition is denied.