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U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



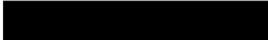
U.S. Citizenship  
and Immigration  
Services

D2



Date: **FEB 08 2012**

Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:

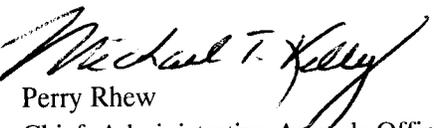


**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a distributor of garment and packaging supplies with 93 employees. To employ the beneficiary in what it designates as a human resource generalist position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements. In support of these contentions, counsel submitted a brief and additional evidence.

As will be discussed below, the AAO has found that the director's determination to deny the petition on the specialty occupation issue was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a 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 employ the beneficiary in a specialty occupation position.

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.

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 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 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 (5<sup>th</sup> 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.

With the visa petition, counsel provided a letter, dated July 8, 2009, from the petitioner's vice president, who provided the following description of the duties of the proffered position.

[The beneficiary] will spend 60% of his time working on communicating goals and policies with management:

- Maintains open communication of issues, initiatives open communication of issues, initiatives and operating plans and responsibilities among location personnel, management, and corporate office to facilitate efficient and effective execution of training plans and HR programs.
- Coordination with Finance Manager, Sales Manager and Customer Service Manager as needed.
- Preparing labor management and statistical reports; creating charts and power point graphs depicting labor activity and trends.
- Securing and maintaining personnel records and documentation; periodically auditing records for completeness and compliance with established standards.
- Assisting with the management to generate reports to document associate training participation.
- Assisting with the development and computation of annual salary adjustments and executing wage and salary plan strategies.
- Managing specialized and administrative activities to include composing correspondence, purchasing supplies, office equipment and managing special events.

The remaining 40% of [the beneficiary] time will be spent on training, coaching, and hiring staff:

- Training and supporting Sales managers and supervisors to ensure company goals for associate development and customer service are attained through consistent execution of human resources, training and operational plans.
- Employee coaching and development through policy and program implementation and management.
- Safety implementation and training as needed.
- Search and recruitment for salaried and hourly employees, as well as full hiring process duties.
- Creating and posting vacancy announcements; referring candidates, verifying employment eligibility and participating in new employee orientation.
- Positively influence the behavior of employees at all levels of our organization.

The petitioner's vice president also stated that the position requires a minimum of a bachelor's degree, but not that the degree must be in any specific specialty.

In his own letter of July 14, 2009, counsel stated that the proffered position requires that the beneficiary “apply the theoretical and practical specialized knowledge [that he] attained through the Bachelor of Science in Psychology, specifically, in coursework such as economics, statistics, psychology, and political science.”

The AAO observes that the assertion that the beneficiary would apply knowledge attained in economics, statistics, psychology, and political science classes is not an assertion that the proffered position requires a minimum of a bachelor’s degree or the equivalent in a specific specialty, such as, for instance, industrial psychology.

Counsel also provided vacancy announcements posted by other companies. Those announcements will be described and addressed later in this decision.

On August 27, 2009, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted a letter, dated September 16, 2009, from the petitioner's vice president; additional vacancy announcements, which are addressed below; and counsel's own letter, dated October 6, 2009.

The director denied the petition on November 6, 2009, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a position for an Administrative Services Manager, as described in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* chapter of that name.

On appeal, counsel submitted another letter, dated December 29, 2009, from the petitioner's vice president; additional vacancy announcements, which are addressed below; and a brief. In the brief, counsel asserted that the proffered position is a position for a human resources generalist, a position most similar to positions described in the *Handbook* chapter entitled “Human Resources, Training, Labor Relations Managers and Specialists.” Counsel reiterated that the position qualifies as a specialty occupation position by virtue of requiring a bachelor's degree, but did not assert that the requisite degree must be in any specific specialty.

The AAO will reiterate some claims made about the educational requirements of the proffered position. In his June 8, 2009 letter, the petitioner's vice president asserted that the proffered position requires a minimum of a bachelor's degree, but not that the degree must be in any specific specialty. In his July 14, 2009 letter, counsel stated that the proffered position requires the application of knowledge acquired in economics, statistics, psychology, and political science, which the beneficiary acquired in studying for his bachelor's degree in psychology. In the brief on appeal, counsel stated that the proffered position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Neither the petitioner's vice president nor counsel has ever asserted that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Counsel and the petitioner have claimed that the position requires a bachelor's degree. Counsel has gone so far as to assert that the degree should include coursework in economics, statistics, psychology, and political science. Degrees in any number of social sciences and other subjects might include such coursework. A requirement of a degree that includes coursework in economics, statistics, psychology, and political science is clearly not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

The failure of the petitioner even to allege that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

Counsel did not contest that, if the position were an Administrative Services Manager position, as it was found to be by the director, it would not qualify as a specialty occupation position. Counsel asserted that the proffered position requires a bachelor's degree because it is a human resources generalist position, as described in the *Handbook* chapter entitled Human Resources, Training, Labor Relations Managers and Specialist, rather than an Administrative Services Manager position, as the director indicated.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The *Handbook* describes the duties of Administrative Services Manager positions as follows:

*Administrative services managers* plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. They might, for example, coordinate space allocation, facilities maintenance and operations, and major property and equipment procurement. They also may oversee centralized operations that meet the needs of multiple departments, such as information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, recycling, wellness, and transportation services. Administrative services managers also ensure that contracts, insurance requirements, and government regulations and safety standards are followed and up to date. They may examine energy consumption patterns, technology

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

usage, and personal property needs to plan for their long-term maintenance, modernization, and replacement.

Specific duties for these managers vary by size of company or office and degree of responsibility and authority. In small organizations, a single administrative services manager, sometimes called an office manager, may oversee all support services. (See the statement on office and administrative support worker supervisors and managers elsewhere in the Handbook.) In larger ones, however, there may be several layers of administrative services managers that may specialize in different areas and report to directors of administration, or vice presidents of administration who oversee all administrative services.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos002.htm> (last accessed November 15, 2011).

The *Handbook* describes the duties of Human Resources, Training, Labor Relations Managers and Specialists as follows:

Every organization wants to attract, motivate, and retain the most qualified employees and match them to jobs for which they are best suited. Human resources, training, and labor relations managers and specialists provide this connection. In the past, these workers performed the administrative function of an organization, such as handling employee benefits questions or recruiting, interviewing, and hiring new staff in accordance with policies established by top management. Today's human resources workers manage these tasks, but, increasingly, they consult with top executives regarding strategic planning. They have moved from behind-the-scenes staff work to leading the company in suggesting and changing policies.

In an effort to enhance morale and productivity, limit job turnover, and help organizations increase performance and improve results, these workers also help their companies effectively use employee skills, provide training and development opportunities to improve those skills, and increase employees' satisfaction with their jobs and working conditions. Although some jobs in the human resources field require only limited contact with people outside the human resources office, dealing with people is an important part of the job.

There are many types of human resources, training, and labor relations managers and specialists. In a small organization, a human resources generalist may handle all aspects of human resources work, and thus require an extensive range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs.

The description of the duties of the proffered position provided by the petitioner's vice president closely tracks the description of the duties of a human resources generalist as described in the *Handbook*. The AAO finds that the proffered position is, in fact, a human resources generalist position. Accordingly, the AAO hereby withdraws the director's finding with regard to the particular occupational classification of the proffered position. The question remaining, of course, is whether the evidence provided with regard to the particular human resources generalist positions establishes that it qualifies as a specialty occupation position.

The AAO will now address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if the petitioner, having demonstrated that the proffered position is a human resources generalist position, demonstrates that a bachelor's or higher degree in a specific specialty or its equivalent is normally the minimum entry requirement for that particular position.

The *Handbook* describes the educational requirements of Human Resources, Training, Labor Relations Managers and Specialist positions, including human resources generalist positions, as follows:

Although a bachelor's degree is a typical path of entry into these occupations, many colleges and universities do not offer degree programs in personnel administration, human resources, or labor relations until the graduate degree level. However, many offer individual courses in these subjects at the undergraduate level in addition to concentrations in human resources administration or human resources management, training and development, organizational development, and compensation and benefits.

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business administration, and behavioral sciences is useful. Some jobs may require more technical or specialized backgrounds in engineering, science, finance, or law. Most prospective human resources specialists should take courses in principles of management, organizational structure, and industrial psychology; however, courses in accounting or finance are becoming increasingly important. Courses in labor law, collective bargaining, labor economics, and labor history also provide a valuable background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems is useful.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos021.htm> (last accessed November 15, 2011).

That a bachelor's degree is the typical path of entry into such positions does not indicate that it is a minimum requirement. Further, the suggestion that an appropriate degree might contain coursework in the social sciences, business administration, behavioral sciences, principles of management, organizational structure, and industrial psychology is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty. The *Handbook* does not support the proposition that the particular position offered in this case requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no other evidence that suggests that the normal minimum requirement for the particular position offered is bachelor's or higher degree or its equivalent, and the petitioner has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry, or any other, requires human resources generalists to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of human resources generalists that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

The AAO will now describe and address the vacancy announcements provided.

One of the vacancy announcements was placed by [REDACTED] for a human resources generalist. That announcement states that the position requires a bachelor's degree, but not that the degree should be in any specific specialty.

Another vacancy announcement was placed by [REDACTED] for a human resources specialist. It states that the position requires a bachelor's degree in business, human resources, or a related area.

The requirement of a bachelor's degree in business administration does not indicate that a position qualifies as a specialty occupation. A specialty occupation position requires a precise and specific course of study that relates directly and closely to the position. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree

with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

That the educational requirement of the vacancy announcement provided may be satisfied by an otherwise undifferentiated degree in business indicates that the position it announces is not a specialty occupation position. The assertion that it is similar to the proffered position, therefore, does not support the proposition that the proffered position is a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

Another announcement was placed by justretail, a wholesale/retail company, for a director of human resources position. It states that this position also requires a bachelor's degree in business, human relations, or a related field. Again, as explained above, because the educational requirement of the position may be satisfied by an otherwise undifferentiated degree in business, it does not require a minimum of a bachelor's degree or the equivalent in a specific specialty, and this vacancy announcement does not support an inference that the proffered position, by virtue of similarity to the position advertised, qualifies as a specialty occupation position.

Another vacancy announcement was placed by an unidentified company in Meridian, Connecticut that is in the defense/aerospace/electronics manufacturing industry. It states that the position requires a bachelor's degree in business, human resources, or a related field. As was explained above, that is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty, and that vacancy announcement does not support the assertion that the proffered position is a position in a specialty occupation.

Another announcement is for a human resources manager and was placed by [REDACTED]. It states that the position requires a bachelor's degree, but not that the requisite degree must be in any specific specialty. It further states that a degree in human resources is desired, but not required. The position it announces is not a specialty occupation position, and any similarity it may have to the proffered position does not support the proposition that the proffered position is a specialty occupation position.

Another vacancy announcement was placed by [REDACTED] for a human resources generalist. It states that the position requires a four-year degree, but not that the degree must be in any specific specialty. It further states that a degree in business or human relations is preferred. A preference, of course, is not a minimum requirement. Further, even if it were a requirement, a requirement that may be satisfied by an otherwise undifferentiated degree in business, as was explained above, is not a requirement of a degree in a specific specialty.

Another announcement is for a human resources generalist and was placed by [REDACTED]. It states that the position requires a four-year degree, but not that the degree must be in any specific specialty.

Another vacancy announcement was placed by the [REDACTED] for a human resources manager. It states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement was placed by [REDACTED] for a human resources generalist. It states that the position requires a bachelor's degree in human resources, business administration, or a related field. Again, that the educational requirement may be satisfied by a degree in business administration demonstrates that the position is not a specialty occupation position, and that announcement cannot be used to show that the proffered position is in a specialty occupation position.

The final vacancy announcement was placed by an unidentified company in East-Central Illinois for a human resources manager. It states that the position requires a four-year degree, but not that the degree must be in any specific specialty.

None of the ten vacancy announcements provided requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Thus, none of the announcements provide any support for the inference that the proffered position, because it is similar to those announced positions, is a specialty occupation position.

Further, even if all 10 positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and each unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the 10 announcements is statistically insufficient to demonstrate an industry-wide requirement. The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.<sup>2</sup>

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among

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<sup>2</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from less than a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* [REDACTED] (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position required a bachelor's or higher degree in a specific specialty or its equivalent, it could not be found that such a limited number of postings that may have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not necessarily require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

similar organizations, and has not, therefore, satisfied criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner demonstrates that, notwithstanding that other human resources generalist positions in the petitioner's industry may not require a minimum of a bachelor's degree or the equivalent in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such a degree.

The description of duties provided by the petitioner's vice president in his July 8, 2009 letter is the only evidence in the record that might have differentiated the proffered position as more complex or unique than other human resources generalist positions. However, given the generalized and generic extent to which they are described, the proffered position's duties contain no evidence of complexity or uniqueness beyond the ken of a human resources generalist without a specialized degree.

Maintaining open communication; coordinating with other executives; preparing statistical reports, charts, and PowerPoints; maintaining personnel records, assisting in developing and computing salary adjustments; composing correspondence; purchasing supplies and office equipment; and managing special events, for instance, contain no indication that they could not be performed without a specialized degree, notwithstanding that the *Handbook* indicates that not all human resources generalist positions require such a degree.

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, met the requirements of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In letters dated September 16, 2009 and October 6, 2009 and submitted in response to the RFE, the petitioner's vice president and counsel, respectively, stated that the proffered position is a new position. The record contains no evidence, therefore, that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, of course, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that 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, or its equivalent.

The AAO finds that, to the extent that they are described, the proposed duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between the attainment of a particular educational level in a specific specialty and whatever knowledge would be required to perform the proffered position.

Training and supporting sales managers and supervisors, coaching and developing employees, conducting safety implementation and training, recruiting employees, creating and posting vacancy

announcements, and positively influencing employee behavior appear to encompass routine duties associated with typical human resources generalist positions. The record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The petitioner has not demonstrated that 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. The petitioner has not, therefore, demonstrated that the proffered position meets the requirements of the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO finds that the director was correct in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

The record suggests an issue that was not discussed in the decision of denial. The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp.*, *NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

If the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or the equivalent, but that the beneficiary has a minimum of a bachelor's degree or the equivalent *in that specific specialty*. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not reach the issue of the beneficiary's qualifications.

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. The appeal will be dismissed and the petition denied.

**ORDER:** The appeal is dismissed. The petition is denied.