

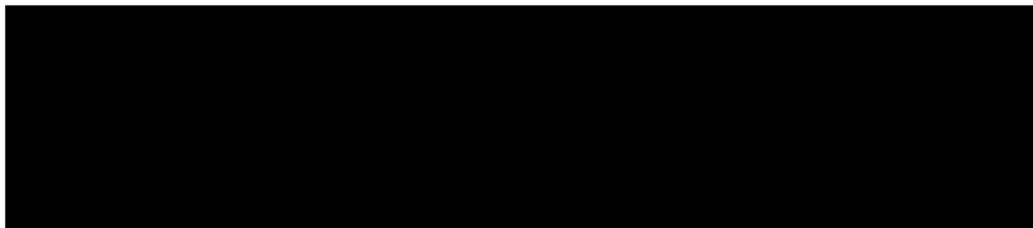
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services



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DATE: **JAN 18 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:

SELF-REPRESENTED

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn in part and affirmed in part. The petition will remain denied.

The petitioner represented itself on the Form I-129 as a provider of industrial supplies and equipment with 12 employees. It seeks to employ the beneficiary as a business development manager/specialist 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 on the basis of her determination that the petitioner failed to demonstrate: (1) that the proposed position qualifies for classification as a specialty occupation; and (2) that the beneficiary is qualified to perform the duties of a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's denial letter; and (3) the Form I-290B and supporting documentation. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

The Proposed Position Does Not Qualify for Classification as a Specialty Occupation

The first issue before us on appeal is whether the proposed position qualifies for classification 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 Immigration and Nationality Act (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 proposed 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 its October 3, 2009 letter of support, the petitioner stated that the duties of the proposed position would include the following:

- Planning, directing, or coordinating the petitioner's development operations;
- Devising strategies and formulating policies to ensure that established goals and objectives are met;
- Developing new clients;
- Reviewing financial statements, sales, and activity reports;
- Administering key accounts;
- Implementing cost reduction plans;
- Formulating policies and managing daily operations;
- Planning the use of materials and human resources;
- Planning and directing sales promotions;
- Determining the goods and services to be sold;
- Setting prices and credit terms, based upon forecasts of customer demand;
- Using sales forecasting and strategic planning to ensure the sales and profitability of the petitioner's products, lines, and services;
- Analyzing business developments and monitoring market trends;
- Locating, selecting, and procuring merchandise for resale;
- Representing the company's management in purchase negotiations; and
- Initiating market research studies and analyzing their findings.

In making our determination as to whether the proposed position qualifies as a specialty occupation, we turn first 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 Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which we routinely rely 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)).

In making our determination as to whether the proposed position qualifies for classification as a specialty occupation, we turn first 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

Department of Labor's *Occupational Outlook Handbook (Handbook)*, a resource upon which we routinely rely 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)).

In reaching our conclusion regarding the degree requirements of the proposed position, we have relied upon the 2010-2011¹ edition of the *Handbook*, comparing the position's duties against those described for a range of occupations. Our review has found that virtually all of the proposed position's duties are listed among those described for administrative services managers; general and operations managers; purchasing managers, buyers, and purchasing agents; and advertising, marketing, promotions, and sales managers.

The director found that many of the duties of the proposed position are similar to those performed by administrative services managers, and we agree. In pertinent part, the *Handbook* states the following regarding the duties of administrative services managers:

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

* * *

The nature of these managerial jobs varies as significantly as the range of administrative services required by organizations. For example, administrative services managers who work as *contract administrators* oversee the preparation, analysis, negotiation, and review of contracts related to the purchase or sale of equipment, materials, supplies, products, or services. Other administrative services managers handle the acquisition, distribution, and storage of equipment and supplies, while others oversee the disposal of surplus or unclaimed property.

Handbook, 2010-11 ed., available at <http://www.bls.gov/oco/ocos002.htm> (last accessed January 5, 2012). We also find that many of the duties of the proposed position align with those

¹ The 2012-13 edition of the *Handbook* will not be available until March 2012. See U.S. Department of Labor, Bureau of Labor Statistics, <http://www.bls.gov/oco> (last accessed January 5, 2012).

normally performed by general and operations managers,² which is contained within the *Handbook's* description of top executives. In pertinent part, the *Handbook* states the following:

All organizations have specific goals and objectives that they strive to meet. *Top executives* devise strategies and formulate policies to ensure that these goals and objectives are met. Although they have a wide range of titles—such as *chief executive officer, chief operating officer, general manager, president, vice president, school superintendent, county administrator, and mayor*—all formulate policies and direct the overall operations of businesses and corporations, public-sector organizations, nonprofit institutions, and other organizations.

* * *

General and operations managers plan, direct, or coordinate the operations of companies and other public- or private-sector organizations. Their duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources that are too diverse and general in nature to be classified into any one area of management or administration, such as personnel, purchasing, or administrative services. In some organizations, the tasks of general and operations managers may overlap those of chief executive officers.

Id. at <http://www.bls.gov/oco/ocos012.htm>. The *Handbook's* discussion regarding the duties of purchasing managers, buyers, and purchasing agents also relates to the petitioner's proposed position, as follows:

Purchasing managers, buyers, and purchasing agents buy a vast array of farm products, durable and nondurable goods, and services for companies and institutions. They attempt to get the best deal for their company—the highest quality goods and services at the lowest possible cost. They accomplish this by studying sales records and inventory levels of current stock, identifying foreign and domestic suppliers, and keeping abreast of changes affecting both the supply of, and demand for, needed products and materials. Purchasing professionals consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. To be effective, purchasing professionals must have a working technical knowledge of the goods or services to be purchased.

Id. at <http://www.bls.gov/oco/ocos023.htm>. Finally, the *Handbook* states the following with regard to advertising, marketing, promotions, and sales managers:

Advertising, marketing, promotions, public relations, and sales managers coordinate their companies' market research, marketing strategy, sales, advertising, promotion, pricing, product development, and public relations activities. In small firms the owner or chief executive officer might assume all advertising, promotions, marketing, sales, and public relations responsibilities. . . .

² We note that at page 1 of the labor condition application, the petitioner classified the "SOC (O*NET/OES) Occupation Title" of its proposed position as a general and operations manager.

* * *

Advertising managers. Advertising managers direct a firm's or group's advertising and promotional campaign. . . .

Marketing managers. Marketing managers work with advertising and promotion managers to promote the firm's or organization's products and services. With the help of lower level managers, including *product development managers* and *market research managers*, marketing managers estimate the demand for products and services offered by the firm and its competitors and identify potential markets for the firm's products. Marketing managers also develop pricing strategies to help firms maximize profits and market share while ensuring that the firms' customers are satisfied. In collaboration with sales, product development, and other managers, they monitor trends that indicate the need for new products and services and they oversee product development.

Promotions managers. Promotions managers direct promotions programs that combine advertising with purchasing incentives to increase sales. Often, the programs are executed through the use of direct mail, inserts in newspapers, Internet advertisements, in-store displays, product endorsements, or other special events. Purchasing incentives may include discounts, samples, gifts, rebates, coupons, sweepstakes, and contests.

* * *

Sales managers. Sales managers direct the distribution of the product or service to the customer. They assign sales territories, set sales goals, and establish training programs for the organization's sales representatives . . . Sales managers advise the sales representatives on ways to improve their sales performance. In large multiproduct firms, they oversee regional and local sales managers and their staffs. Sales managers maintain contact with dealers and distributors, and analyze sales statistics gathered by their staffs to determine sales potential and inventory requirements and to monitor customers' preferences. Such information is vital in the development of products and the maximization of profits.

Id. at <http://www.bls.gov/oco/ocos020.htm>. Based upon our reading of the *Handbook*, we conclude that the duties of the proposed position as described by the petitioner combine the duties of several occupations, as those occupations are described in the *Handbook*. As indicated, the duties of the proposed position combine those of administrative services managers; general and operations managers; purchasing managers, buyers, and purchasing agents; advertising and marketing managers; and advertising, marketing, promotions, and sales managers, as such positions are described in the *Handbook*. Having made that determination, we turn next to the *Handbook's* discussion of the educational credentials necessary for entry into these occupations. The *Handbook* states the following with regard the educational requirements for administrative services managers:

Education and experience requirements for these managers vary widely, depending on the size and complexity of the organization. In small organizations, experience

may be the only requirement. In large organizations, however, administrative services managers may need a bachelor's degree and appropriate experience.

Id. at <http://www.bls.gov/oco/ocos002.htm>. The *Handbook*, therefore, explains unequivocally that a bachelor's degree or its equivalent, in a specific specialty, is not the normal minimum requirement for entry into this field. The *Handbook* states that entry requirements vary, and that experience alone may qualify one for a position as an administrative services manager in a small organization. Although large organizations may require a degree, the *Handbook* does not indicate that the degree must come from a specific specialty.

The *Handbook* states the following with regard the educational requirements for operations managers which, again, is contained within its discussion of the educational requirements for top executives:

The formal education and experience required by top executives vary as extensively as their responsibilities do, but many of these workers have at least a bachelor's degree and considerable experience. . . .

Many top executives have a bachelor's or master's degree in business administration, liberal arts, or a more specialized discipline. The specific type and level of education required often depends on the type of organization for which top executives work. . . .

* * *

Many top executive positions are filled from within the organization by promoting experienced lower level managers when an opening arises. In industries such as retail trade . . . individuals without a college degree may work their way up within the company and become executives or general managers. . . .

Id. at <http://www.bls.gov/oco/ocos012.htm>. The *Handbook* finds that these positions generally impose no specific degree requirement on individuals seeking employment. The statement that many top executives have college degrees is not synonymous with the "normally required" standard imposed by this criterion. While the *Handbook* indicates that top management positions may be filled by individuals with a broad range of degrees, its subsequent discussion of the training and education necessary for such employment clearly states that companies also hire executives based on lower-level experience within their own organizations or management experience with another business.

With regard to the education and training requirements for purchasing managers, buyers, and purchasing agents, the *Handbook* states the following:

Educational requirements tend to vary with the size of the organization. Large stores and distributors prefer applicants who have completed a bachelor's degree program with a business emphasis. . . .

Id. at <http://www.bls.gov/oco/ocos023.htm>. These findings do not support the contention that a bachelor's degree in a specific field of study is required for entry into this occupation. The

Handbook states that educational requirements vary, and the fact that large employers “prefer” a degree is not synonymous with the “normally required” standard imposed by the regulation. Also, the record does not indicate that the petitioner is the type of “large employer” described by the *Handbook*.

Finally, with regard to the education and training requirements for advertising, marketing, promotions, and sales managers, the *Handbook* states the following:

A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs, but many employers prefer college graduates with experience in related occupations.

Education and training. For marketing, sales, and promotions management positions, employers often prefer a bachelor’s or master’s degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor’s degree in engineering or science, combined with a master’s degree in business administration, is preferred.

For advertising management positions, some employers prefer a bachelor’s degree in advertising or journalism. A relevant course of study might include classes in marketing, consumer behavior, market research, sales, communication methods and technology, visual arts, art history, and photography.

* * *

Most advertising, marketing, promotions, public relations, and sales management positions are filled through promotions of experienced staff or related professional personnel. For example, many managers are former sales representatives; purchasing agents; buyers; or product, advertising, promotions, or public relations specialists. In small firms, in which the number of positions is limited, advancement to a management position usually comes slowly. In large firms, promotion may occur more quickly.

Id. at <http://www.bls.gov/oco/ocos020.htm>. Although a bachelor’s degree may be preferred for some positions, the *Handbook* does not indicate that a minimum of a bachelor’s degree in a specific specialty is normally required for advertising, marketing, promotions, and sales managers.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proposed position’s title. The specific duties of the 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 beneficiary, 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.

As discussed, we have determined that virtually all of the proposed position's duties are listed in the *Handbook* among the occupations of administrative services managers; general and operations managers; purchasing managers, buyers, and purchasing agents; advertising and marketing managers; and advertising, marketing, promotions, and sales managers. Our review has found that none of these occupations imposes a normal minimum entry requirement of a bachelor's degree in a specific field of study as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). For all of these reasons, we find that the petitioner has failed to demonstrate that its proposed position qualifies for classification as a specialty occupation under the requirements of the first criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We turn next to a consideration of whether the petitioner, unable to establish its proposed position as a specialty occupation under the first criterion at 8 C.F.R. § 214.2(h)(iii)(A), may qualify it under one of the three remaining criteria: a degree requirement as the norm within the petitioner's industry or the position is so complex or unique that it may be performed only by an individual with a degree; the petitioner normally requires a degree or its equivalent for the position; or the duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with a baccalaureate or higher degree.

The petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed 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 proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry. Nor has the petitioner submitted any evidence to establish that its degree requirement is common in parallel positions in similar organizations. For all of these reasons, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We also conclude that the record does not establish that the proposed position is a specialty occupation under 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 evidence of record does not refute the *Handbook’s* information to the effect that there is a spectrum of degrees acceptable for administrative services manager; general and operations manager; purchasing manager, buyers, and purchasing agent; advertising and marketing manager; and advertising, marketing, promotions, and sales manager positions. The record lacks sufficiently detailed information to distinguish the proposed position as unique from or more complex than similar positions that can be performed by persons without a specialty degree or its equivalent.

We turn next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires that the petitioner demonstrate that it normally requires a degree or its equivalent for the position. To determine a petitioner’s ability to meet the third criterion, we normally review the petitioner’s past employment practices, as well as the histories, including the names and dates of employment, of those employees with degrees who previously held the position, and copies of those employees’ diplomas.³ However, the record contains no such evidence. Although the petitioner asserts that it would have submitted such evidence had the director requested it, it elected nonetheless not to submit it on appeal. The petitioner has not established that the proposed position qualifies for classification as a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The fourth criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), requires the petitioner to establish that the nature of its proposed position’s 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 in the specialty. As previously discussed, the *Handbook* indicates that a baccalaureate degree *in a specific specialty* is not a normal minimum entry requirement. The petitioner has failed to differentiate the duties of the proposed position from those performed by administrative services managers; general and operations managers; purchasing managers, buyers, and purchasing agents; and advertising, marketing, promotions, and sales managers who do not possess a degree from a specific specialty and, as such, has failed to indicate the specialization and complexity required by this criterion. As a result, the record fails to establish that the proposed position meets the specialized and complex threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Nor does the December 15, 2009 letter from [REDACTED] who holds an unspecified position at [REDACTED], establish the proposed position as a specialty occupation under any of the criteria discussed above. In his letter [REDACTED] repeats the duties of the

³ Even if a petitioner believes or otherwise asserts that a proposed position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner’s claimed self-imposed requirements, then any individual with a bachelor’s degree could be brought to the United States to perform any job so long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner’s degree requirement is only symbolic and the proposed position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

petitioner's proposed position, and asserts that the performance of those duties requires the attainment of a bachelor's degree in business administration, management, finance, or an equivalent degree. We note first that business administration, management, and finance do not constitute a single, specialized field of study. Moreover, [REDACTED] submitted no evidence to support any of his assertions. For example, he did not indicate whether his own company employs a degreed individual to perform similar duties, and back such an assertion with copies of that employee's degree and proof of employment. 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)). We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Finally, we note that on appeal, the petitioner questions the director's decision not to issue a request for additional evidence prior to denying the petition. However, the petitioner has now been provided the opportunity to supplement the record on appeal and remand of this petition would serve no purpose.

The proposed position does not qualify for classification as a specialty occupation under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1)-(4), and this petition was properly denied.

The Beneficiary Is Not Qualified To Perform the Duties of a Specialty Occupation

As noted above, the director also found the beneficiary unqualified to perform the duties of a specialty occupation. While we agree with the director's ultimate finding in this regard, we disagree with her analysis. In finding the beneficiary unqualified to perform the duties of a specialty occupation, the director looked to the beneficiary's undergraduate coursework and found that because that coursework was in the field of business administration, it was not sufficient to qualify the beneficiary to perform the services of a specialty occupation. While we agree that a general degree in business administration with no further specialization is generally insufficient to qualify an alien to perform the duties of a specialty occupation,⁴ the director in this particular case also failed to take into account the evaluation submitted by the petitioner regarding the beneficiary's work experience. As such, that portion of the director's decision is hereby withdrawn.

However, we find nonetheless that the beneficiary is not qualified to perform the duties of a specialty occupation. The statutory and regulatory framework that the AAO must apply in its consideration of the evidence of the beneficiary's qualification to serve in a specialty occupation follows below.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

⁴ See *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). A 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.

