

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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: JUL 03 2012

OFFICE: VERMONT SERVICE CENTER

FILE:

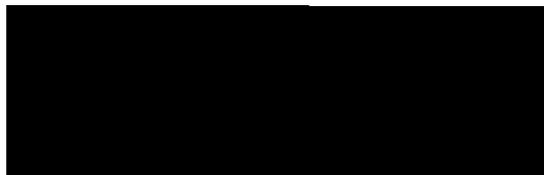


IN RE: Petitioner:
Beneficiary:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 director of the Vermont Service Center 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.

The petitioner claims to be a convenience retail store franchisor and operator with 33,000 employees and a stated gross annual income of approximately \$15.6 billion. It also states that it seeks to employ the beneficiary as a field consultant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition, concluding that the petitioner (1) failed to establish that the proffered position qualifies as a specialty occupation; and (2) failed to establish the beneficiary qualifies for a specialty occupation.

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

The primary issue before the AAO is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as 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 [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

In this matter, the petitioner seeks the beneficiary's services as a field consultant. The support letter dated November 24, 2009 and submitted with the initial filing indicates the duties of the proffered position would include the following:

- Oversee a group of eight to ten [of the petitioner's] stores with \$10-\$20 million in revenue;
- Work closely with store operators to implement corporate and merchandising strategies;
- Introduce new products and address other business issues;
- Communicate store needs to the corporation;
- Work with store operators and franchisees to develop, update and execute annual budgets and business plans;
- Monitor all aspects of store operations, providing advice, coaching and assistance to store management;
- Promote efficiency to maximize store profitability; and
- Ensure key processes are in place through store visits, store and staff evaluations, and data analysis.

The letter goes on to state that the position is professional in nature and scope and that it requires, at a minimum, a bachelor's degree or the equivalent. Counsel for the petitioner submitted a letter dated November 18, 2009 from [REDACTED] for the petitioner, verifying that the petitioner does not require a specific field of study for the bachelor's degree required, and that the petitioner routinely hires applicants with a bachelor's degree in various fields of study. The petitioner also claims that the beneficiary is highly qualified for the proffered position because he earned a bachelor of science degree from the United States Military Academy in West Point, New York. Counsel also submitted the beneficiary's Bachelor of Science degree, transcript, and a letter from the United States Military Academy evidencing that the beneficiary holds the degree required for the proffered position.

The Labor Condition Application (LCA) was submitted for a field consultant under SOC code 13-1111.00 Management Analysts, to work at 1202 Richardson Drive, Suite 400, Richardson, Texas 75080 at an annual salary of \$60,000.

On December 8, 2009, the director requested additional information from the petitioner to establish that the proffered position qualifies as a specialty occupation and that the beneficiary is qualified for a specialty occupation.

With regard to the proffered position's qualifications for a specialty occupation, counsel responded by providing a more detailed job description of the proffered position from the petitioner; copies of job postings from other companies for similar positions that require a bachelor's degree with various fields of study; spreadsheets of the employees currently and previously employed by the petitioner in the proffered position; and an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, 2008-09 edition, outlining the qualifications of Management Analysts. Additionally, counsel submitted a professional evaluation from Professor James S. Gould

and letters from the beneficiary's former professors and platoon leaders regarding his qualifications.

In a support letter dated November 24, 2009, the petitioner provided the following job description for the proffered position:¹

- Oversee a group of eight to ten 7-Eleven stores with \$10-\$20 million in revenue **(100%)**;
- Work closely with store operators to implement corporate and merchandising strategies **(25%)**;
- Introduce new products and address other business issues **(20%)**;
- Communicate store needs to the corporation **(10%)**;
- Work with store operators and franchisees to develop, update and execute annual budgets and business plans **(10%)**;
- Monitor all aspects of store operations, providing advice, coaching and assistance to store management **(20%)**;
- Promote efficiency to maximize store profitability **(10%)**; and
- Ensure key processes are in place through store visits, store and staff evaluations, and data analysis **(15%)**.

(Emphasis added).²

The director denied the petition, finding that the proffered position does not require a bachelor's degree or its equivalent in a specific specialty and, therefore, the petitioner failed to establish that the proffered position qualifies as a specialty occupation. In the denial, the director also found that the beneficiary is not qualified for a specialty occupation because he does not hold a bachelor's degree in a specific specialty.

On appeal, counsel contends in the Form I-290B that the director erred in concluding that the proffered position does not meet the criteria of a specialty occupation and the beneficiary does not qualify for the proffered position. In the appellate brief, counsel states "the petitioner accepts baccalaureate degrees or their equivalent in business, management, marketing or a related field for the offered position." In addition, counsel states "[t]he petitioner demonstrated that academic degrees or their equivalent in various fields of related study will be acceptable as a threshold requirement to qualify for the offered position of Field Consultant . . ." Counsel further states that the position of management analyst is classified as a Job Zone 4 position, which is defined as a position that requires a bachelor's degree and several years of preparation prior to qualifying for the position.

¹ The letter dated January 13, 2010 from [REDACTED] Manager for the petitioner provides a detailed description of the day-to-day tasks that the beneficiary would be involved in performing in the proffered position. Pages 1-4. Since it has already become part of the record of proceeding, the AAO will not quote the entire-description.

² It must be noted for the record that the total percentage of time spent on these duties equals 210%, not 100%.

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business, management, marketing or a 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, without further specification, does not establish the position as a specialty occupation. *Cf. 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, 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).³

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. 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.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, the AAO first turned 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

³ 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.

organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴ The AAO agrees with the petitioner and finds that the duties described by the petitioner reflect the duties of a management analyst. The "Management Analysts" chapter of the 2012-2013 edition of the *Handbook* describes the duties of a management analyst as follows:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.

Duties

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

⁴ 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 2012 – 2013 edition available online.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Management Analysts, <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm#tab-2> (last accessed June 27, 2012). According to the description in the *Handbook* above, the proffered position appears to be more likely an internal management consultant sent by the petitioner to its group of eight to ten franchisee convenience stores. The description provided above encompasses the duties of the proffered position as described by the petitioner.

For the description of education and training for Management Analysts, the *Handbook* states:

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

Handbook, 2012-13 ed., Management Analysts, <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm#tab-4> (last accessed June 27, 2012).

While the *Handbook* states that a bachelor's degree is the typical entry-level requirement for management analyst positions, it does not indicate that a bachelor's degree in a specific specialty is normally required for entry-level positions. Therefore, the *Handbook* does not support the proffered position as being a specialty occupation.

The AAO will now address counsel's claim on appeal that the position of management analyst is a Job Zone 4 position. The AAO notes that a classification of Job Zone 4 by the *O*NET OnLine Summary Report for 13-1111.00 – Management Analysts* is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty. A designation of Job Zone 4 indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See the *O*NET OnLine Help Center*, at <http://www.onetonline.org/help/online/zones> (explaining that Job Zone 4 signifies only that *most* but not all of the occupations within it require a bachelor's degree). Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite counsel's assertions to the contrary, a classification of Job Zone 4 is not probative of the proffered position qualifying as a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 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.

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted copies of four advertisements in response to the RFE and copies of six advertisements on appeal. The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but not at least a bachelor's degree or the equivalent in a *specific specialty*. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, none of the advertisements are for positions in the convenience retail store industry and, therefore, they cannot be found to be parallel positions in similar organizations. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁵

The petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty for entry into the occupation. Nor did the petitioner and its counsel provide evidence to distinguish the proffered position as unique from or more complex than management analyst positions, such as those as described in the *Handbook*, which can be performed

⁵ 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 just ten job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar convenience retail store companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (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 of field consultant for a 33,000-person convenience retail store company required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to 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 require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

by persons without a specialty degree or its equivalent. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner's November 24, 2009 support letter stated that the proffered position requires, at a minimum, a bachelor's degree or equivalent. The petitioner's letter dated November 18, 2009 from [REDACTED] Talent Acquisition clearly stated that the petitioner does not require a specific field of study for the bachelor's degree required. The letter also reviewed the degree, coursework and previous experience of the applicant to determine if the applicant was qualified for the position, and further stated that the petitioner routinely hires applicants with a bachelor's degree in various fields of study. In response to the director's RFE, in addition to reaffirming the statement in Mr. [REDACTED] November 18, 2009 letter, the petitioner also stated that it currently has 27 employees employed in the position of field consultant at the location of [REDACTED] and in the past had a similar number of field consultant employees. Counsel submitted spreadsheets of the employees currently and previously employed by the petitioner in the proffered position. However, the spreadsheets do not provide information regarding these employees' educational backgrounds. As such, none of these documents contradicts the *Handbook's* report that a degree in a specific specialty is not required for entry-level management analyst positions. Therefore, they do not demonstrate that the proffered position is a specialty occupation requiring at least a bachelor's degree or the equivalent in a *specific specialty* and, in fact, support the opposite conclusion.

As the record has not established a prior history of hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree

⁶ While a petitioner may believe or otherwise assert that a proffered 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 occupation as 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 proffered 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 § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

in a specific specialty or its equivalent. The record's descriptions of the proposed duties are limited to generic and generalized functions which, even when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically.

The record does not contain sufficient evidence showing that the petitioner must have an individual with at least a bachelor's degree in a specific specialty, or its equivalent, to perform the duties of overseeing a group of convenience stores or that these duties can only be performed by an individual with such a degree. Corroborating evidence aside, neither counsel nor the petitioner even claims that the duties of this position are so specialized and complex they can be performed only by individual with a bachelor's degree in a *specific specialty*. Instead, they asserted that the proffered position does not require a bachelor's degree or its equivalent in a specific specialty but a bachelor's degree without a specialty. To the extent that they are depicted in the record, the duties of the proposed position are not so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty.⁷ The AAO, therefore, concludes that the proffered position does not meet the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The director also found that the beneficiary would not be qualified to perform the duties of the proffered position if the job had been determined to be a specialty occupation. However, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that the petitioner must submit sufficient evidence to establish that the beneficiary's U.S. bachelor's degree is in a specific specialty. Alternatively, the petitioner may submit evidence that the beneficiary's education, specialized training and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary has recognition of expertise in the specialty occupation through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Since evidence was not presented that the beneficiary has a bachelor's degree in a specific specialty required for the proffered position, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

⁷ It is further noted that any claims of specialization and complexity are simply not credible given the Level I designation on the supporting LCA. If the proffered position did in fact involve some level of complexity relative to other management analysts, the petitioner would have to have submitted an LCA certified for at least a Level III, and more likely a Level IV, position.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) states that an alien must have education, specialized training, and/or progressively responsible experience that are the equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, *and* have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

In order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree, the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

The record contains a letter dated November 19, 2009 prepared by [REDACTED] United States Military Academy, a letter dated November 23, 2009 from [REDACTED], Minister Counselor/Military Adviser, a letter dated November 24, 2009 from [REDACTED], Captain, United States Army, and a letter dated December 22, 2009 from [REDACTED] Lubin Graduate School of Business at Pace University. The letters verify the beneficiary's military leadership experience. However, none of these letters indicate that the authors have "authority" to grant college-level credit for training and/or experience in the specialty at an accredited college or university, and the record does not contain any evidence showing that the United States Military Academy or Pace University has a program for granting credit based on an individual's training and/or work experience. Additionally, the letters do not provide an explanation as to how the beneficiary's military leadership experience and the beneficiary's bachelor's degree in foreign languages could be evaluated as a bachelor's

degree in a specific specialty for the proffered position. Therefore, the petitioner failed to establish that the beneficiary holds a U.S. bachelor's degree in a specific specialty that would be required for the proffered position if the proffered position were established to be a specialty occupation. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty or that he has recognition of expertise in the specialty through progressively responsible positions directly related to the claimed specialty, the petition could not be approved even if the proffered position were a specialty occupation.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.