

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

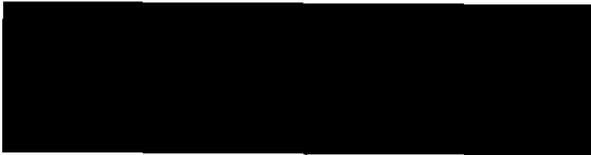


U.S. Citizenship
and Immigration
Services

Administrative Appeals Office
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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Date: **JUN 13 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the California 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 physician practice management company with 14 employees. It seeks to employ the beneficiary as an operations research analyst pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the beneficiary is not qualified for classification as 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 decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

On appeal, counsel for the petitioner argues that the director's findings that the beneficiary is not qualified to perform the duties of an occupation that requires a bachelor's degree in a specific field of study and that she does not possess the equivalent to a U.S. bachelor's in a field of study which would prepare her to perform the duties of the position being offered in the petition are erroneous and without basis in the facts of the case.

However, the AAO notes that the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. Without determining whether the proffered position is a specialty occupation, i.e., whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty, United States Citizenship and Immigration Services (USCIS) cannot determine whether the beneficiary is qualified for the proffered position as a specialty occupation. Therefore, the AAO will discuss the issue of whether the proffered position in this matter is a specialty occupation first beyond the director's decision.

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

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act 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), 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.

To make its determination whether the proffered position, as described in the initial petition and in the petitioner’s response to the RFE, qualifies as a specialty occupation, the AAO turns 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 *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)).

In this matter, the petitioner seeks the beneficiary’s services as an operations research analyst. The petitioner’s support letter dated April 24, 2008 and submitted with the initial filing indicates the proffered position would require the beneficiary to perform the following primary job responsibilities:

- Apply metrics and set requirements to our internal business applications such the Scheduler, IntelliCred and IntelliReport systems;
- Measure the data to form usable reports;
- Effectively organizing content and presenting summaries for both internal and external use;
- Analyze data to measure best practice results of our individual clients;
- Utilize data to provide information to internal team for recommendations on client changes;
- Actively participating in review of reporting and analysis plans and providing input on required formats;
- Preparing individual client presentations for team members to provide to physician practice; and
- Demonstrating outstanding verbal and written communication skills and abilities, including small and large group presentations with clients.

The support letter goes on to state that the minimum education requirement to competently perform the duties and demands of the proffered position is a bachelor's degree in a business administration, computer science, management, marketing, or the equivalent. The petitioner submitted the beneficiary's degree of Bachelor of Science in Hotel and Restaurant Management and transcripts from the University of Santo Tomas in Philippines. The petitioner also submitted an expert opinion evaluation of academics and work experience dated April 23, 2009 from [REDACTED]

[REDACTED] expert opinion letter).

The submitted Labor Condition Application (LCA) was certified for an "Operations Research Analyst" to work at the petitioner's office in Manhattan Beach, CA, and the printout of prevailing wage from O*NET Online Wage Library shows that the petitioner obtained the Level I prevailing wage of Operations Research Analysts (OES/SOC code 15-2031) in Los Angeles-Long Beach-Glendale, CA Metro area for the proffered position.

On August 27, 2009, the director requested additional evidence pertaining to the proffered position and the beneficiary's qualifications.

In response to the director's RFE, counsel asserted that the O*NET Online states that this occupation would be in Job Zone Five classification for which a bachelor's degree is the minimum formal education required and that the U.S. department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* also states that it is an occupation in which a bachelor's degree is the minimum requirement.

In the response letter, counsel also provided a more detailed description as an addendum to the job description the petitioner provided with the initial filing as follows:

- 1) Analyzing data from the company business applications programs by identifying reasons for results. She would analyze operational and management reports; evaluate management programs and use computer programs to perform statistical modeling.
- 2) Determining the data to be entered into the computer systems to process both client and business management information to be used in reports. She would use computer application flow charts; use computers to enter, access, and retrieve data; use spreadsheet software; and use word processing software.
- 3) Obtaining information from all relevant sources. She would collect technical data and statistical data; and obtain information from individual clients.
- 4) Providing consultation and advice. She would provide guidance to management on systems and process related topics and explain what the information in the systems means and how it can be used.
- 5) Providing administrative information to management via reports and presentations.
- 6) Maintaining the company data systems and insuring that they are functioning properly and in the most effective manner to achieve company objectives. She would recommend modifications or upgrades as required.

It is important to note that when determining whether a particular job qualifies as a specialty occupation, USCIS does not use a title by itself. The AAO finds that the record is insufficient to establish a credible offer as an operations research analyst. Counsel for the petitioner asserted in response to the director's RFE that the beneficiary would not be in a supervisory position and that she would be directed by the signatory of the petitioner, Irv Edwards, the president of the company. The petitioner claims to be a physician practice management leader with 150+ providers in 16 separate groups throughout California. The official business database maintained by the California State Secretary and the petitioner's 2008 tax return show that the petitioning company is a limited liability company (LLC) formed under the California law on December 14, 2007, and that the LLC has two corporation members: [REDACTED]. (federal employment identification number (FEIN): [REDACTED] registered at the same address as the petitioner's, and [REDACTED] registered at [REDACTED]

The record does not contain the petitioner's organizational chart or any other supporting documentary evidence corroborating the nature, location, or clients of the petitioner's business or any of the other remaining assertions made by counsel relevant to the petitioner's business operations. Without such documentary evidence, the petitioner failed to establish the necessity of the petitioner's business for the proffered position, failed to prove that it extended a bona fide job offer to the beneficiary, and also failed to demonstrate that the beneficiary would perform the duties of an operations research analyst as a specialty occupation at the location indicated on the petition. 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 Obaighena*, 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).

For the reasons discussed above, the AAO finds that the record is insufficient to establish a credible offer as an operations research analyst. Accordingly, the petition must be denied on this basis alone.

As noted above, the petitioner quoted the *Handbook* under "Operations Research Analysts" to support its assertion that an operation research analyst is a specialty occupation. The petitioner claimed the proffered position as an operations research analyst on the LCA and obtained the prevailing wage of a Level I operations research analyst (SOC/O*NET code: 15-2031.00) for the proffered position. The AAO agrees with the director that the duties set forth by the petitioner for the proffered position most closely resemble that of the position described in the section of Operations Research Analysts in the *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/Math/Operations-research-analysts.htm> (last accessed May 3, 2012).

However, the director erred in concluding that the position of operations research analysts as defined in the *Handbook* qualifies as a specialty occupation. Consequently, this part of the director's decision will be withdrawn.

The overarching reason for the AAO's dismissal of this appeal would be that the proposed duties as described in the record do not establish that the performance of the proffered position requires the theoretical and practical application of at least a bachelor's degree level of highly specialized

knowledge in a specific specialty, as required by the H-1B specialty occupation provisions of the Act and their implementing regulations even if the petitioner had established that it offered a *bona fide* job offer to the beneficiary. In this regard, the AAO has considered all of the assertions of counsel in support of the requirements of the position, but finds that they are not supported by documentation in the record. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). As stated previously, 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. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

With respect to education and training requirements for "Operations Research Analysts", the *Handbook* states as follows:

Applicants need a master's degree for most operations research positions, but a bachelor's degree is enough for many entry-level positions. Many schools offer bachelor's and advanced degree programs in operations research, but it is common for analysts to have degrees in related fields.

Education

Most employers prefer to hire applicants with a master's degree, but many entry-level positions are available for those with a bachelor's degree. Many schools offer bachelor's and advanced degree programs in operations research, management science, or a related field. Many operations research analysts have degrees in other technical fields, such as engineering, computer science, mathematics, and physics.

Because operations research is based on quantitative analysis, students need extensive coursework in mathematics. Courses include statistics, calculus, and linear algebra. Coursework in computer science is important because analysts rely on advanced statistical and database software to analyze and model data. Courses in other areas, such as engineering, economics, and political science, are useful because operations research is a multidisciplinary field with a wide variety of applications.

Continuing education is important for operations research analysts. Keeping up with advances in technology, software tools, and improved analytical methods is vital.

Handbook, 2012-13 ed., available at <http://www.bls.gov/ooh/Math/Operations-research-analysts.htm#tab-4> (last accessed May 3, 2012).

Although the *Handbook* states that a bachelor's degree is enough for many entry level positions, it does not indicate that the degree held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation. 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. As such, an operations research analyst does not qualify as a specialty occupation under the first criterion.

The AAO notes that the *O*NET* Detailed Report for 15-2031.00 – Operations Research Analysts, referenced at <http://online.onetcenter.org/link/details/15-2031.00>, printed out by counsel on October 3, 2009, is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. While the education requirement states that a bachelor's degree is the minimum formal education required for these occupations, it does not state that the position requires the degree in a specific specialty. The AAO notes that although the new version of *O*NET* Summary Report for: 15-2031.00 - Operations Research Analysts indicates in the section of education that 56% of this occupation requires a master's degree, 30% requires a bachelor's degree and 15% requires a doctoral or professional degree, and that this occupation **may** require a background in the following science, technology, engineering, and mathematics (STEM) educational disciplines: computer science – management science, general; and mathematics – operations research, it does not, however, demonstrate that a bachelor's degree in a specific specialty is required as minimum educational requirements, 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 <http://www.onetonline.org/link/summary/15-2031.00> (last accessed May 3, 2012). Therefore, despite counsel's assertions to the contrary, the *O*NET* information is not probative of the proffered position qualifying as a specialty occupation.

As the record's descriptions of the proposed duties are limited to generic and generalized functions which are normally performed by operations research analysts pursuant to descriptions in the *Handbook* and *O*NET*, and based on the fact that the *Handbook* and *O*NET* do not indicate that at least a bachelor's degree in a specific specialty or its equivalent is a minimum entry requirement for this occupation, it cannot be found that the petitioner has satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The record does not contain any evidence of a common degree-in-a-specific-specialty requirement in positions that are both parallel to the proffered position and located in organizations similar to the petitioner. Therefore, the petitioner failed to demonstrate that it meets the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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.” Here, the petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Furthermore, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of operations research analyst.

Specifically, the petitioner failed to demonstrate how the operations research analyst duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position.

Therefore, the evidence of record does not establish that this position is significantly different from other operations research analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for operations research analyst positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than operations research analyst or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of operations research analyst is so complex or unique relative to other operations research analyst positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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. Although the petitioner asserted in its April 24, 2008 support letter that the minimum education requirement to competently perform the duties and demands of the proffered position is a bachelor's degree in a business administration, computer science, management, marketing, or the equivalent, the petitioner provided no information about its normal education requirements for the position. 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).¹

Further, according to the petitioner's requirements a person with a bachelor's degree in business administration can meet the minimum educational requirement for the proffered position. It must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business administration" for the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).²

¹ 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").

² 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.

Id.

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

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 in a specific specialty or its equivalent. The record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. Neither the petitioner nor its counsel have provided evidence to distinguish the proffered position as unique from or more complex than operations research analyst positions, such as those as described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent. It is further noted that, according to the petitioner's LCA, the proffered position is not a senior position performing duties much more specialized and complex than what entry-level operations research analysts usually do. More specifically, the LCA provided in support of the instant petition lists a Level I prevailing wage level for operations research analysts in Los Angeles–Long Beach–Glendale, California.³ As such, the beginning level position offered to the beneficiary cannot be found to be required to perform duties so specialized and complex that must be a specialty occupation.

Relative complexity is not sufficiently developed by the petitioner and, absent evidence to the contrary, 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. 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).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall dismiss the appeal and deny the petition for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. As discussed in this decision, the petitioner failed to establish that the proffered position is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty becomes irrelevant. However, the director found that the beneficiary is not qualified to perform the duties of the proffered position by apparently and

³ A Level I designation indicates that the position is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

mistakenly assuming that the proffered position is a specialty occupation. Therefore, the AAO will discuss the beneficiary's qualification issue further.

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:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are 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.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a

license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating 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
- (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. . . .

Regardless, even assuming arguendo that the proffered position is a specialty occupation requiring at least a bachelor's degree or its equivalent in a specific specialty as described by the petitioner, the petitioner has failed to demonstrate that the beneficiary possesses such a degree or its equivalent. The record indicates that the proffered position does not require a license. The petitioner submitted the beneficiary's bachelor's degree in hotel and restaurant management from the University of Santo Tomas in Philippines and [REDACTED] April 23, 2009 expert opinion letter as evidence to demonstrate that the beneficiary possesses a foreign equivalent bachelor's degree in a specific specialty set forth for the proffered position. The beneficiary's bachelor's degree is from a four year program at a university in Philippines which can be evaluated as an equivalent of a U.S. bachelor's degree.

⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or experience.

However, the beneficiary's bachelor's degree in hotel and restaurant management cannot be considered as the equivalent of a U.S. bachelor's degree in business administration as the petitioner claimed.

expert opinion evaluation of academics and work experience concludes that the beneficiary has attained the equivalent of a bachelor's degree in business administration from an accredited institution of higher education in the United States based on a combination of the beneficiary's degree in hotel and restaurant management and fifteen years of specialized training and work experience in business administration, and related areas. While claims that he has authority to grant college level credit for experience, training, and/or courses taken at other U.S. or international university, the record does not contain any documentary evidence that he is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university and that University of Maryland School of Business has a program for granting such credit based on an individual's training and/or work experience. Therefore, the evaluation does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

On appeal, the petitioner submitted a new evaluation report dated October 1, 2009 and prepared by (FIS). This evaluation report states that the beneficiary has the equivalent of a bachelor's degree in tourism and hospitality management from a regionally accredited college or university in the United States. Furthermore, as a result of her education and employment experience (3 years of experience = 1 year of university-level credit), the evaluation concludes that the beneficiary has a background equivalent to that of an individual with a bachelor's degree in business administration from a regionally accredited college or university in the United States. As with evaluation, the experience-based part of the evaluation does not meet the standard described in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). For instance, no documentation was provided to demonstrate that the evaluator has the authority to grant credit for training and/or work experience, which is the first requirement under this regulation. Furthermore, assuming *arguendo* that the proffered position required at least a bachelor's degree in a closely related business specialty, both evaluations only equate the beneficiary's education and experience to a general business administration degree. A general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.*

Therefore, neither Dr. Chen's evaluation nor the FIS evaluation report satisfies the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Accordingly, except for a position requiring a bachelor's degree in hotel and restaurant management, the AAO finds that the beneficiary would not be qualified for a specialty occupation requiring a closely related business specialty even if the proffered position was proved to be a *bona fide* offer and a specialty occupation. Therefore, the AAO will not disturb the director's decision on the beneficiary's qualifications.

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

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