

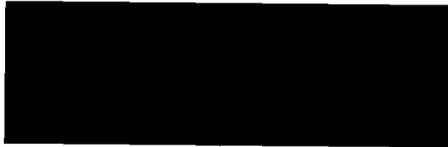
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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: **MAR 01 2012**

Office: CALIFORNIA SERVICE CENTER



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, 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 operates an art business which is engaged in research, purchasing, restoration and selling of original art. It seeks to employ the beneficiary as a curator. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on three separate and independent grounds, namely, that the petitioner had failed to establish that: (1) the proffered position qualifies as a specialty occupation; (2) the beneficiary is qualified to serve in a specialty occupation in accordance with 8 C.F.R. § 214.2(h)(4)(iii)(C) and (D); and (3) it will comply with the terms and conditions of employment as stated in the petition. On appeal, counsel for the petitioner contends that the director's findings were erroneous, and submits a brief and additional evidence in support of this contention.

The first issue before the AAO is whether the beneficiary will be employed in a specialty occupation.

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 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.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director’s two requests for additional evidence (RFEs) dated August 21, 2009 and October 6,

2009; (3) the petitioner's responses to the director's RFEs dated October 1, 2009 and November 16, 2009; (4) the director's decision denying the petition; and (5) the petitioner's Form I-290B, appeal brief, and supporting documents. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is engaged in the research, purchasing, restoration and selling of original art and currently employs two persons. It states that its current inventory includes approximately 5,000 works of art on paper, and that it began expansion into the field of Latin American art in 2008. The petitioner claims that it requires the services of the beneficiary as a curator to facilitate its expansion into the Latin American art market, and described the duties of the position in a letter of support dated July 28, 2009. Specifically, the petitioner stated:

The position entails the administration of the affairs of the art collection business to expand into the Latin American art market; to plan and conduct historical research on traditional and current artists, art movements and pricing of Latin American art. He will attend meetings, conventions, and civic events to promote business and maintain connections in the Latin American art community. He will also plan and organize the acquisition, storage, cataloging and pricing of Latin American art.

The Beneficiary will utilize his expertise and experience in the art business and his vast knowledge of Latin American art for the position. The Beneficiary is well known in the art business and his contacts with various artists, galleries, and art institutions will be an asset to The Collection.

The petitioner concluded by stating that the proffered position required the incumbent to possess a bachelor's degree in business administration and expertise in Latin American art.

As a preliminary matter, it must be noted that the petitioner's claimed entry requirement of at least a bachelor's degree in "business administration and expertise in Latin American art" 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).¹

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.

On August 21, 2009, the director issued an RFE, which requested a more detailed description of the work to be performed by the beneficiary. The director specifically requested information pertaining to the beneficiary's specific job duties and the percentage of time devoted to such duties, as well as an organizational chart demonstrating the composition of the petitioner's company and the beneficiary's position therein.

In a response dated October 1, 2009, counsel for the petitioner submitted an updated job description for the beneficiary. Specifically, counsel indicated that the business objectives of the petitioner required a staff person who had knowledge of Latin American cultures and business practices along with a business background, an understanding of Internet marketing and sales, and fluency in Spanish. Regarding the duties of the proffered position, counsel provided a more detailed overview of the position and divided the responsibilities of the beneficiary into five categories, namely: (1) Research; (2) Selling online/Auctions/eBay; (3) Petitioner's store on eBay; (4) Buying art from eBay and other online sites; and (5) Other Responsibilities. Under each heading, counsel provided a detailed description of each area of responsibility.

Upon review of counsel's response, the director issued a second RFE dated October 6, 2009. The director concluded that, after review of the updated description of duties, the proffered position was

¹ 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.

that of a marketing and/or sales manager and not a curator as originally claimed by the petitioner. The director found that the U.S Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, upon which the AAO routinely consults for its information about the duties and educational requirements of particular occupations, did not require a degree in a specific specialty for the occupation of marketing and/or sales manager, and thus the position could not be considered a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A). Consequently, the director requested evidence to demonstrate that the proffered position qualified as a specialty occupation under one of the remaining three criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(A).

In a response dated November 16, 2009, counsel addressed the director's requests. Counsel asserted that, contrary to the director's findings, the proffered position did in fact qualify as a specialty occupation under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel submitted a copy of a summary report for the occupational category of Marketing Managers from [REDACTED], which stated that employers preferred a bachelor's or master's degree in business administration with an emphasis on marketing, and concluded that, based on this requirement, the proffered position was a specialty occupation. Simultaneously, counsel maintained that the appropriate title of the position remained a curator, and claimed that a curator position was also a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) since the minimum degree required for entry into that occupation was a bachelor's degree. Counsel also submitted copies of job postings for curator positions that it contended were parallel to that of the proffered position in the petitioner's industry.

The director ultimately concluded that the proffered position was that of a marketing manager, and denied the petition on November 19, 2009. The director found that counsel's reliance on the summary report from *O*Net* was not persuasive, and repeated that, according to the *Handbook*, the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel for the petitioner contends that the director's decision was erroneous. Counsel maintains that, contrary to the director's conclusions, the proffered position is that of a curator and not of a marketing manager. Counsel contends that the occupation of curator requires at least a bachelor's degree for entry into the position, and submits additional evidence in support of the contention that the proffered position is a specialty occupation. Counsel does not assert or provide evidence in support of the contention that the proffered position is a marketing manager.

The AAO will first review counsel's assertion that the proffered position is that of a curator.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered 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 alien, 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 or its equivalent as the minimum for entry into the occupation, as required by section 214(i)(1) of the Act.

The 2010-2011 edition of the *Handbook* describes the occupation of curator under the heading of “Archivists, Curators, and Museum Technicians” as follows:

Archivists, curators, and museum technicians work for museums, governments, zoos, colleges and universities, corporations, and other institutions that require experts to preserve important records and artifacts. These workers preserve important objects and documents, including works of art, transcripts of meetings, photographs, coins and stamps, and historic objects.

Archivists and curators plan and oversee the arrangement, cataloguing, and exhibition of collections. They also maintain collections with technicians and conservators. They acquire and preserve important documents and other valuable items for permanent storage or display. They also describe, catalogue, and analyze, valuable objects for the benefit of researchers and the public.

Archivists and curators may coordinate educational and public outreach programs, such as tours, workshops, lectures, and classes, and may work with the boards of institutions to administer plans and policies. They also may research topics or items relevant to their collections.

Although some duties of archivists and curators are similar, the types of items they deal with differ: archivists mainly handle records and documents that are retained because of their importance and potential value, while curators usually handle objects with cultural, biological, or historical significance, such as sculptures, textiles, and paintings.

* * *

Curators administer museums, zoos, aquariums, botanical gardens, nature centers, and historic sites. The *museum director* often is a curator. Curators direct the acquisition, storage, and exhibition of collections, including negotiating and authorizing the purchase, sale, exchange, or loan of collections. They are also responsible for authenticating, evaluating, and categorizing the specimens in a collection. Curators often oversee and help conduct the institution's research projects and related educational programs. Today, an increasing part of a curator's duties involves fundraising and promotion, which may include the writing and reviewing of grant proposals, journal articles, and publicity materials, as well as attendance at meetings, conventions, and civic events.

Most curators specialize in a particular field, such as botany, art, paleontology, or history. Those working in large institutions may be highly specialized. A large natural

history museum, for example, would employ separate curators for its collections of birds, fishes, insects, and mammals. Some curators maintain their collections, others do research, and others perform administrative tasks. In small institutions with only one or a few curators, one curator may be responsible for a number of tasks, from maintaining collections to directing the affairs of the museum.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Archivists, Curators, and Museum Technicians," <http://www.bls.gov/oco/ocos065.htm> (accessed February 28, 2012). *The Handbook* also indicates that curators generally work in museums, historical sites, educational institutions, or in Federal, State, or local government.

As noted by the director, while the proffered position may require the beneficiary to perform some of the duties associated with the occupation of curator, such as research in art, the ultimate goal of the petitioner is to acquire various works of art for resale as opposed to preserving such works for the purpose of display and permanent storage. The duties of a curator, as stated by the *Handbook*, involve planning and overseeing the arrangement, cataloguing, exhibition and maintenance of collections, as well as the acquisition and preservation of important documents and other valuable items for permanent storage or display. Curators also describe, catalogue, and analyze valuable objects for the benefit of researchers and the public, whereas the beneficiary, in working for the petitioner, would focus on the acquisition of artwork for the purpose of reselling such works via the Internet.

Upon review of the totality of the duties described in the record of proceeding, the AAO concurs with the director's finding that while the proffered position requires some research in the field of art, the proffered position is most akin to that of a marketing manager as described in the *Handbook's* section pertaining to advertising, marketing, promotions, public relations, and sales managers.

The *Handbook* describes the occupational category of marketing manager as follows:

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.

Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., "Advertising, Marketing, Promotions, Public Relations, and Sales Managers," <http://www.bls.gov/oco/ocos020.htm> (accessed February 28, 2012). The duties of the proffered

position as defined in the job description submitted in response to the first RFE are akin to the occupation of marketing manager. For example, while the petitioner claims that the beneficiary will spend some of his time researching artists, the main focus of the beneficiary's research is twofold. The beneficiary will first establish a client base by identifying galleries, venues, and auction houses that buy and sell Latin American prints in order to build the petitioner's collection, and subsequently acquire and sell such works online via auctions and a store on eBay. The main purpose of the beneficiary's research, therefore, is to maximize potential markets and increase profits for the petitioner by acquiring works of art that can be resold for a profit.

The *Handbook* states as follows with regard to the educational requirements of this occupation:

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.

Id. The *Handbook* clearly indicates that educational requirements vary for the position of a marketing manager. While the *Handbook* indicates that a bachelor's degree in business administration with an emphasis on marketing is often preferred, the *Handbook* does not indicate that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the position. Upon review of the duties of the proffered position, the AAO cannot conclude that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in a specific specialty or its equivalent.

Although not asserted on appeal, the AAO notes counsel's former submission of and reliance on [REDACTED] summary report for the position of marketing managers, which, like the *Handbook*, indicated that a bachelor's or master's degree in business administration with an emphasis on marketing was preferred for entry into the occupation of marketing manager. Despite this statement by both the *Handbook* and [REDACTED] the proffered position in this matter cannot be deemed a specialty occupation. To prove that a job requires the theoretical and practical application of a body of 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, and not just demonstrate that such a degree is preferred.

The petitioner submits no additional evidence on appeal to address this criterion and thus has failed to establish that a baccalaureate or higher degree or its equivalent in a specific specialty is the normal minimum requirement for entry into the position of a marketing manager as described in the record of proceeding. Accordingly, the petitioner has not established 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.

In response to the director's second RFE, the petitioner submitted several vacancy postings for the position of curator/director at various museums and/or galleries in support of the contention that a degree requirement is common in parallel positions within the petitioner's industry. These postings, however, are not persuasive. In the second RFE, the petitioner was advised of the director's finding that the proffered position was akin to that of a marketing manager, and evidence demonstrating that such an occupation was a specialty occupation was requested. Despite the director's specific request, the petitioner instead submitted evidence pertaining to the occupational category of curator, which for the reasons set forth above is not relevant. Nevertheless, the AAO will review the job postings submitted.

The petitioner submitted eight vacancy announcements in response to the second RFE. Upon review, the AAO first notes that none of the employers advertising the positions are engaged in the same industry as the petitioner. Specifically, all of the employers are either museums or art galleries, none of which are engaged in petitioner's line of business which focuses on the online purchase and sale of art. Moreover, seven of these eight announcements are for positions not related to marketing, which is the field in which the proffered position has been categorized by USCIS. Specifically, four of the announcements are for various curator positions and three are for director positions. Only one announcement, posted by the [REDACTED] in Kansas City, Missouri, is for a director of development and marketing, a position more akin to the proffered position in this matter. Regardless, the employer is a museum and cannot be deemed similar to the petitioner. Moreover, the announcement simply requires a bachelor's degree, yet does not require the degree to be in a specific specialty.

On appeal, counsel lists three private and/or for profit collections currently seeking a curator, and claims that private galleries do not advertise their job openings publicly. However, no job announcements or other documentary evidence to verify these statements have been submitted. More importantly, however, the three collections listed claim to seek a curator, a position not akin to the proffered position in this matter.

The petitioner also submitted various letters and email transmissions from persons employed in the art industry in support of the contention that the proffered position is a specialty occupation. The

record contains two email messages from [REDACTED], an international executive search firm. The first message from [REDACTED] simply claims that the position title of curator is also akin to that of a sales director. However, no discussion is made with regard to a degree requirement for such a position; therefore, this document holds no evidentiary value. The second message from [REDACTED] states that curators should have strong academic credentials. This document is likewise insufficient, since it fails to specifically discuss academic requirements imposed within the petitioner's industry. Even if specific degree requirements for curators had been specified in these messages, the fact remains that the proffered position is not that of a curator, thereby rendering such claims, had they been made, irrelevant.

The petitioner also submitted a letter from [REDACTED], who claims that it is common for galleries, private collections, and other "for-profit" entities to have persons on staff with the title of curator. He also claims that galleries also employ sales directors, who are responsible for the marketing and promotion of specific artists. However, this letter also fails to address the criterion under first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which requires a petitioner to demonstrate that a degree requirement is common in parallel positions in the petitioner's industry. Moreover, as discussed above, the proffered position is that of a marketing manager, not a curator.

The record also contains a letter from [REDACTED], Art Historian for California State University, who claims that most art collectors want to buy/sell art in a specific area, and hire curators to assist them. She claims these curators "need to have a bachelor's degree," and also claims that it is "highly desirable for these curators to have a business background." However, while [REDACTED] claims to hold a Ph.D. in Art History, she fails to provide documentation regarding the manner in which she is qualified to draw such conclusions regarding the educational requirements for curators and, as discussed above, she provides no relevant information pertaining to the degree requirements for marketing managers employed in the petitioner's industry.

Finally, the petitioner submitted a letter from [REDACTED], President of Caponigro Fine Art & Design, who claims that, at a minimum, it is necessary for an applicant for a curator position to have a bachelor's degree. Similar to [REDACTED], while he claims to have 30 years of experience in the art industry, he also provides no documentary evidence such as a resume to corroborate his claimed experience. Additionally, despite stating a degree is required for curators, he does not state that curators are required to hold a degree in a specific specialty. Finally, no commentary regarding degree requirements for marketing managers is provided.

The letters submitted on appeal focus on curators and their roles within private collections in the art industry. The claims regarding educational requirements are not supported by corroborating evidence and, most importantly, none of the letters focus on the marketing aspect of the position, which USCIS has deemed is the appropriate classification for the duties of the beneficiary in this matter. Consequently, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background, language skills, business connections, and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specific specialty or its equivalent. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-degreed employment. The petitioner has thus failed to establish the proffered position as a specialty occupation under either prong of the criterion at 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. The petitioner provides no evidence and makes no claim that it has hired only degreed individuals to fill the proffered position in the past. The petitioner, therefore, has likewise failed to satisfy this criterion.

Although the petitioner relies on the letters of support submitted on appeal, which discuss, albeit sparsely, the academic requirements for curators, this statement is not persuasive, since the record does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them. The AAO notes that 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 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 required the individual to have a baccalaureate or higher degree. *See Defensor v. Meissner*, 201 F. 3d at 384. Accordingly, 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.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(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.

The petitioner has submitted no independent documentation, such as letters or expert testimony, in support of the contention that complex knowledge is required to perform the duties of the proffered position. Again, while the petitioner relies on the letters discussed above under evaluation of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A), these letters provide opinions with regard to curator positions, and not marketing manager positions, in the art industry. In addition to discussing the wrong occupational category for purposes of this analysis, the letters likewise are not supported with independent evidence that supports the contentions claimed therein.

Moreover, while counsel and the petitioner repeatedly assert that a bachelor's degree is required for entry into the proffered position, the petitioner and counsel simply provide their own opinions with regard to the qualifications necessary for the beneficiary to successfully function in the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a specialty degreed individual could perform them. To the extent that they are depicted in the record, the duties do not appear 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. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 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 second issue in this matter is whether the beneficiary is qualified to perform the duties of a specialty occupation. Generally, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. However, since the director cited this deficiency as an alternative basis for denial in this matter, the AAO will address this issue along with the assertions submitted by counsel on appeal.

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 this matter, the petitioner claims that the beneficiary holds a bachelor's degree in business administration from the Federico Villareal Public University, as well as a bachelor's degree in chemical engineering from San Marcos Mayor Public University, both of which are located in Lima, Peru. The record contains copies of the beneficiary's transcript from Federico Villareal Public University along with an educational credentials evaluation from Sunil Vaswani of ECE International, which equates the beneficiary's degrees to both a bachelor's degree in business administration and chemical engineering from a regionally accredited college or university in the United States.

Although the record indicates that the beneficiary possesses a bachelor's degree in chemical engineering, which is a specialized field of study, such a degree is not a reasonable or logical prerequisite to perform the duties of the proffered position and, therefore, the degree under examination in this matter is the beneficiary's bachelor's degree in business administration, which the petitioner stated was the minimum educational requirement for entry into the proffered position in its letter of support dated July 28, 2009.

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

In this matter, the petitioner claims that the candidate for the proffered position must simply possess a bachelor's degree in business administration. As discussed previously in this decision, 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 or liberal arts, 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 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 explained above, 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. USCIS has consistently stated that, 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).

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. The beneficiary's coursework must indicate that he or she obtained knowledge of the particular occupation in which he or she will be employed. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968).

On appeal, counsel asserts that the beneficiary's degree in chemical engineering has a direct nexus to the proffered position, since his degree in this area taught him the chemical process in which to clean and restore works of art. Even if the proffered position were deemed a specialty occupation requiring a degree in a specific specialty, this contention would be unacceptable. The petitioner stated in its July 28, 2009 letter that it required the applicant for the proffered position to possess a bachelor's degree in business administration. However, for the first time on appeal, the petitioner

claims that it is the beneficiary's degree in chemical engineering that qualifies him for the position, since the background gained from this degree allows him to clean and restore works of art, thereby creating a direct nexus between the position requirements and the beneficiary's degree. On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or the associated job responsibilities. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Nevertheless, the proffered position is not a specialty occupation; therefore, the qualifications of the beneficiary are irrelevant for purposes of this analysis. However, had the proffered position been deemed a specialty occupation requiring a degree in a specific specialty, the petition would also be denied on this basis for the reasons set forth above.

The final issue in this matter is whether the petitioner will comply with the terms and conditions of employment.

The director noted that on the Form I-129, Petition for a Nonimmigrant Worker, the petitioner certified that its gross and net annual income was \$258,373 and \$174,173, respectively. However, the petitioner's 2008 federal tax return indicated that its gross and net income for 2008 was \$7,686 and \$4,413, respectively.

On appeal, counsel for the petitioner encloses the petitioner's business objectives for 2010, and claims that hiring a curator will permit the petitioner to grow and increase its revenue. Neither counsel nor the petitioner address the discrepancies noted by the director with regard to the petitioner's income.

A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. *See, e.g., Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Cir., 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after USCIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner signed Part 6 of Form I-129 under penalty of perjury, which states that "this petition and the evidence presented with it is all true and correct." However, the discrepancies regarding the petitioner's claimed income, and its failure to address these discrepancies on appeal, lead the AAO to conclude that the petitioner will not be in compliance with the terms and conditions of employment as set forth in the petition. For this additional reason, the petition will be denied.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if she shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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

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