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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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Date: **MAR 06 2012**

Office: VERMONT SERVICE CENTER

FILE

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

for Michael T. Kelly
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The acting service center director denied the nonimmigrant visa petition. Upon consideration of a timely motion to reopen and to reconsider, the director affirmed the prior decision denying the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is a “various retail convenience store/gas station establishments” firm with 22 employees, a gross annual income of \$6,859,586 and net annual income of \$240,085. To employ the beneficiary in what it designates as a Regional Manager position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director’s basis for denial was erroneous, and contended that the petitioner satisfied all evidentiary requirements.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the response to the RFE; (4) the director’s denial letter; (5) the argument and evidence submitted on motion; (6) the director’s decision on the motion; and (7) the Form I-290B and counsel’s brief in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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

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

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [(1)] requires theoretical and practical application

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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 a particular position meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (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.

With the visa petition, counsel submitted a letter, dated March 24, 2008, from [REDACTED] who represented himself to be the petitioner's owner.¹ He stated that the petitioner "consists of a network of retail establishments operating convenience stores/gas stations" He stated the duties of the proffered position as follows:

- Oversee and manage company's 22 employees[.]
- Confer with company's owner regarding budget proposals and cost control measures[.]
- Confer with company's owner regarding operating procedures[.]
- Manager inventory for all retail outlets[.]
- Negotiate with suppliers with regard to prices and purchasing of supplies[.]
- Oversee maintenance of each retail outlet and arrange for repairs or preventative maintenance when necessary[.]
- Monitor sales transactions and prepare monthly reports[.]
- Ensure that each establishment conforms to local regulations and licensure as required[.]
- Interview and hire employees[.]

[REDACTED] further stated, "The candidate who fills the above position must have acquired a minimum of a Bachelor's Degree in a management[-]related field (or its US equivalent)." Counsel also provided evidence that the beneficiary has a bachelor's degree in economics awarded by Gujarat University in India.

Because the evidence submitted was insufficient to demonstrate that the petitioner would employ the beneficiary in a specialty occupation, the service center, on June 18, 2008, issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the proffered position qualifies as a position in a specialty occupation. More specifically, the service center asked for evidence that a bachelor's degree in a specific field of study is a standard minimum requirement for the position, evidence of the number of people the petitioner has employed in the proffered position in the past, and evidence showing how many of them had bachelor's degrees. The service center also requested that the petitioner provide an evaluation showing that the beneficiary has a U.S. bachelor's degree or the equivalent.

In response, counsel provided another letter, dated July 22, 2008, from [REDACTED]. That letter describes the four stores the petitioner states that it owns or operates in the Richmond, Virginia area, and the petitioner's other assets. The letter also provided an expanded list of duties, which will be addressed in detail later in this decision.

¹ Tax returns in the record show that [REDACTED] is one of the petitioner's four owners.

again asserted that the proffered position must be filled by someone with a college education, but did not point to any particular duty or combination of duties that require such a degree, nor did he state that the requisite degree must be in any specific specialty.

stated that he had been performing the duties of the proffered position. He provided evidence that he received a bachelor of commerce degree in accounting and auditing, from the University of Baroda in India. He also provided an evaluation that stated that his degree is equivalent to three years of undergraduate education in business administration in the United States. The evidence does not show that has the equivalent of a U.S. bachelor's degree in any subject.

An evaluation of the beneficiary's Indian bachelor's degree states that it, too, is the equivalent of three years of undergraduate education in the United States, but does not specify any major course of study. It further stated that the beneficiary's education and employment experience, taken together, are equivalent to a bachelor of business administration degree.

The evidence submitted shows that the convenience stores the petitioner claims to own or operate are Tax returns submitted show that each of those stores is owned or operated, not by the petitioner, but by separate LLCs that file Form 1065 tax returns separate from that of the petitioner. Notwithstanding that they have similar names and some degree of common ownership,² there is no evidence of a parent, subsidiary, or affiliate relationship between the petitioner and any of the other companies.

The AAO further notes that, for the visa petition to be approvable, the petitioner, must show that it, the petitioner, that particular business association itself, has standing to file the visa petition and would employ the beneficiary in a specialty occupation.

The acting director denied the visa petition, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation position.

In the motion submitted in this matter, counsel asserted that the evidence provided demonstrates that the proffered position qualifies as a position in a specialty occupation and that the visa petition should be approved. With that motion, counsel submitted vacancy announcements, an evaluation of the proffered position, and a brief.

One of the vacancy announcements submitted was placed by Topp Portable Air, of Aston, Pennsylvania, for a regional manager overseeing offices in Philadelphia, Pennsylvania; South Plainfield, New Jersey; Jessup, Maryland; and Boston, Massachusetts. That company states that it supplies portable temperature control equipment. That announcement states that the position requires a bachelor's degree in sales, marketing, or engineering, or the equivalent. The AAO observes that sales, marketing, and engineering do not delineate a specific specialty. That a degree in any of those fields would suffice for that position suggests that the position does not qualify as a position in a specialty occupation.

² for instance, has some interest in each of the companies.

Another announcement was placed by the Arlington, Virginia office of Vestergaard Frandsen, a Swiss company that provides disease control textiles and water purification tools to various countries. That announcement states that the position requires a bachelor's degree, but does not specify a field of study.

Another announcement was placed by an unidentified hotel in Scottsdale, Arizona for a hotel general manager. It states that the position requires a bachelor's degree in "Hotel Administration/Business Administration."

Another announcement was placed by an unidentified hotel in St. Petersburg, Florida for a hotel general manager. It states that the position requires a bachelor's degree, but does not specify a field of study.

Another announcement was placed by AutoAnything, an E-commerce retailer of automobile parts and accessories in San Diego, California, for an operations manager. One portion of that announcement states that the position requires a master's degree, but does not specify a field of study. Elsewhere, that announcement states that a bachelor's degree is preferred, rather than required and, again, does not specify a course of study.

Another announcement was placed by DavidBartonGym for general managers and assistant managers for locations in New York, Florida, and Illinois. It states that those positions require a bachelor's degree, but does not specify a course of study.

The final vacancy announcement submitted was placed by Wilson Hospitality for a hotel general manager to manage an 80-unit Hampton Inn in Tuscaloosa, Alabama. That announcement states that a college degree is preferred, rather than required, for the position.

The evaluation of the proffered position, dated September 15, 2008, was provided by [REDACTED] who is a professor in the Faculty of Management Information Systems and Business Administration of the University of Phoenix, Jersey City Campus and has various other academic honors. [REDACTED] gave a revised list of duties of the proffered position, and stated that those skills are developed in the junior and senior years of an undergraduate program in business administration. [REDACTED] stated that the proffered position requires a minimum of a bachelor's degree in business administration and qualifies, therefore, as a position in a specialty occupation.

In his appeal brief, counsel reiterated that [REDACTED] whom counsel again characterized as the petitioner's owner, has been performing the duties of the proffered position, and asserted that [REDACTED] as a bachelor's degree. Counsel also stated that the duties of the proffered position require a bachelor's degree, but did not specify any particular duty that could not be performed without such a degree, or indicate the specific specialty the degree must be in. Counsel also cited [REDACTED] evaluation as evidence that the proffered position requires a minimum of a bachelor's degree or the equivalent in business administration.

On April 15, 2009, the director issued the decision on the motion, which affirmed the earlier to deny the petition. In response, counsel filed the instant appeal. Counsel submitted no additional evidence with the appeal, but submitted a brief in which he asserted that the evidence previously submitted is sufficient to show that the visa petition should be approved.

In the appeal brief, counsel again asserted that [REDACTED] has a bachelor's degree and has been performing the duties of the proffered position. He asserted that the opinion of [REDACTED] was accorded insufficient weight in the determination of whether the proffered position qualifies as a specialty occupation.

[REDACTED] aforementioned letter of July 22, 2008, from [REDACTED] provided the following expanded list of the proffered position's duties:

- Monitor sales transactions at each location and prepare monthly reports.
- Review and analyze company policies to maximize profit.
- Analyze sales statistics to determine budgetary concerns.
- Confer with company's owner regarding proposals and cost control measures.
- Along with company owner, devise plans of operation for the management and staff of each property to follow.
- Keep in contact with management of each property to be certain operation of each location is in accordance with all company policies.
- Conduct site visits and oversee meetings with management on as-needed basis.
- Oversee the company's records and documents to ensure everything is in order, particularly in the fields of marketing, sales, finance, etc.
- Review local regulations and licensure requirements (such as ABC) and ensure that each location conforms to these requirements.
- Oversee maintenance of each retail outlet and arrange for repairs or preventive maintenance when necessary.
- Determine what equipment, supplies, and inventory need to be purchased or ordered for each location.
- Manage inventory.
- Negotiate with suppliers with regard to prices and purchasing of supplies.
- Order proper equipment and supervise hotel managers to ensure that they have taken proper delivery and achieved installation[.]
- Determine if and where new personnel is needed in any of our properties, including managers, assistant managers, and cashiers.
- Determine proper requirements for position and recruit on that basis.
- Interview potential candidates and hire/train newly hired managers; oversee the training of lower-level employees.

As a matter critically important in its determination of the merits of this appeal, the AAO finds that, as reflected in the descriptions of the position as quoted above, the petitioner describes the proposed duties, and by extension, the proffered position, in terms of generalized and generic functions that do not convey either the substantive nature of the work that the beneficiary would actually perform, or

any particular body of highly specialized knowledge that would have to be theoretically and practically applied to perform it, or the educational level of any such knowledge that would be necessary to perform the position.³ Accordingly, the AAO also finds, that to the extent that they are described, neither the above duty descriptions nor any others in this record of proceeding are in themselves sufficient to establish the proffered position as a specialty occupation as defined at section 214(i)(1) of the Act and at 8 C.F.R. § 214.2(h)(4)(ii), which are quoted earlier in this decision.

In this regard, the AAO observes that the proposed duties are not in themselves self-evidently ones that would, even in the aggregate, require the theoretical and practical application of a body of highly specialized knowledge in a specific specialty requiring attainment of a at least a bachelor's degree, or the equivalent, in such specialty. Not only are the insufficiently explained functions presented as comprising the proffered position not in themselves indicative of the need for attainment of a particular educational level of a body of highly specialized knowledge in a specific specialty, but, the AAO further finds, the petitioner has not supplemented its descriptions of the duties of the proffered position with documentary evidence remedying this critical evidentiary deficiency.

The lack of substantive detail about the duties that would comprise the proffered position, as well as the lack of evidence of a necessary correlation between those duties and a requirement for at least a bachelor's degree, or the equivalent, in a specific specialty, precludes the AAO from finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties of the proffered position into each basis discussed below for dismissing the appeal.

The AAO will now address the first alternative criterion, at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which would be satisfied if the petitioner established that the particular position proffered in the petition is one that normally requires at least a baccalaureate or higher degree, or the equivalent, in a specific specialty.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety

³ Illustrative examples of such abstractly described duties include "[m]onitor[ing] sales transactions," "[p]repar[ing] monthly reports," "[r]eview[ing] and analyz[ing] company policies to maximize profit," and "[m]anaging inventory." Such descriptions do not establish any particular level of a body of highly specialized knowledge in a specific specialty that would have to be theoretically and practically applied to perform the duties or the position to which they relate. As so generally described, the proposed duties fail to establish not only the substantive scope of work that the beneficiary would actually perform, but also a correlation between whatever that substantive work would be and a requirement for the theoretical and practical application of a particular minimum educational, or education equivalent, level of a body of highly specialized knowledge in a specific specialty.

of occupations that it addresses.⁴ The *Handbook* describes the duties of general and operations managers, in the chapter entitled “Top Executives,” as follows:

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

The duties of the proffered position, although they consider some supervision of personnel, largely fit neatly into the description of general and operations managers. The AAO finds that, as described in the record of proceeding, the proffered position substantially comports with general manager or operational manager positions as described in the *Handbook*.

The *Handbook* describes the educational requirements of Top Executive positions, including general and operational manager positions as follows:

Many top executives have a bachelor's or master's degree in business administration, liberal arts, or a more specialized discipline. The specific type and level of education required often depends on the type of organization for which top executives work. College presidents and school superintendents, for example, typically have a doctoral degree in the field in which they originally taught or in education administration.

That passage does not suggest that Top Executive positions or, more specifically, general and operational manager positions, constitute an occupational class that categorically requires a minimum of at least a bachelor's degree or the equivalent in a specific specialty. Rather, the passage indicates that the educational credentials actually required for a particular position would depend upon the substantive performance requirements generated by the particular business operations that the beneficiary would manage. In this occupational context, and in light of the fact that it is the petitioner's burden to establish that its proffered position is a specialty occupation, it is incumbent upon this petitioner to provide substantive evidence that its proffered position in convenience-stores management requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. This the petitioner has failed to do.

The petitioner's reliance upon the evaluation that it procured from [REDACTED] is misplaced. This evaluator asserted that the proffered position requires a minimum of a bachelor's degree or the equivalent in business administration or a related field, as the skills requisite to the position are,

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2010 – 2011 edition available online.

according to the evaluator, gained in the last two years of an undergraduate program in business administration.

did not indicate which of the duties of the proffered position are not taught in, for instance, an associate's degree program in business administration.

Further, despite his self-endorsement, neither the professor's letter nor any other evidence in the record of proceeding substantiates that he is a recognized authority on the recruiting and hiring practices of convenience stores for the type of position at issue here. .

Further still, opinion addressed the duties of regional manager positions exclusively in general and generic terms that reveal nothing about the actual work that the beneficiary would perform within the context of this particular petitioner's business; and does not demonstrate knowledge of the petitioner's particular business operations. The record does not indicate that has observed the petitioner's operations and so familiarized himself with the duties of the manager position and the skills required to perform it that his opinion of the education necessary for the position should be accorded much evidentiary weight.

Yet further, there is no extrinsic evidence of expertise in the area, such as scholarly research conducted by the professor on the specific area upon which he is opining; books, articles, or treatises authored by him in the area of claimed expertise; or recognition by professional organizations as an authority on the convenience store supervisor positions. As the professor has not established his credentials as an expert on industry recruiting and hiring standards for the type of position proffered in this petition, his opinion in this area merits no special weight and is not persuasive.

Even further, opinions are conclusory. He did not cite studies, treatises, surveys, or any other factual basis for them.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In the instant case, scant weight can be accorded Dr. Jelen's opinion that the proffered position requires a minimum of a bachelor's degree or the equivalent in business administration, and the AAO finds that the opinion has no probative value with regard to the issue of whether or not the proffered position is a specialty occupation within the meaning of the pertinent statutes and regulations.

Additionally, a requirement of a bachelor's degree in business administration is inadequate to establish that a 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. 1988). To prove

that a job requires the theoretical and practical application of a body of specialized knowledge in a specific specialty 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).

Neither the *Handbook*, nor [REDACTED] evaluation, nor any other evidence in the record demonstrates that this particular proffered position of managing convenience stores is one that normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Therefore, petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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.

Neither the *Handbook*, nor [REDACTED] evaluation, nor any other evidence in the record demonstrates that this particular proffered position of managing convenience stores requires a minimum of a bachelor's degree or the equivalent in a specific specialty. Therefore, petitioner has not demonstrated that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position and has not, therefore, demonstrated that the proffered position qualifies as a specialty occupation pursuant to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

The *Handbook*, as was noted above, does not report that, for hiring in the proffered position, this petitioner's industry requires at least a bachelor's degree, or the equivalent, in a specific specialty. The record of proceeding contains no evidence that any professional association related to the type of position that is the subject of this petition has made a bachelor's degree, or the equivalent, in a specific specialty an entry requirement.

Further, counsel submitted no affidavits or letters from firms or individuals in the convenience store industry attesting to its recruiting and its hiring standards for the type of position that is the subject of this petition.

Next, the AAO finds that the vacancy announcements submitted into the record are not probative evidence that the proffered position is a specialty occupation. None of those vacancy announcements were for positions in the petitioner's industry. Two did not require a bachelor's degree. Three required bachelor's degrees, but did not require that the degrees be in any specific specialty. One required a bachelor's degree in hotel administration, rather than in specific specialty related to the proffered position in the instant case. None of those vacancy announcements required a bachelor's degree in any specific specialty that is related to the position proffered in this case.

Further, AAO notes that the generalized and generic level of the duty descriptions in the record of proceeding do not provide a meaningful basis for measuring and establishing parallelism in any substantial sense between the proffered position and the positions for which the submitted advertisements were published. Additionally, there is no evidence in the record of proceeding that establishes the vacancy announcements as representative of the exclusive recruiting and advertising practices of the firms that placed the announcements.

Moreover, even if all of those vacancy announcements were for positions in similar organizations in the petitioner's industry and each required a minimum of a bachelor's degree or the equivalent in a specific specialty, six vacancy announcements is insufficient to demonstrate an industry-wide degree standard for the type of convenience-store management position that is the subject of this petition. Thus, while relevant to this proceeding, the job postings submitted by counsel are insufficient to establish the petitioner's degree requirement as an industry norm in parallel positions among similar organizations, and they do not satisfy the requirements of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The duties [REDACTED] attributed to the proffered position are described exclusively in terms of generalized and generic functions (such as, for instance, "Monitor sales transactions"; "[P]repare monthly reports;" "Oversee the company's records and documents to ensure everything is in order, particularly in the fields of marketing, sales, finance, etc.," and "Determine what equipment, supplies, and inventory need to be purchased or ordered for each location.") As abstract as they are, these descriptions do not distinguish the proffered position from general or operational manager

positions that may be fully performed without at least a bachelor's degree, or the equivalent, in a specific specialty, and they do not establish the level of complexity or uniqueness required to satisfy this criterion.

Counsel and [REDACTED] assert that [REDACTED] has been managing the petitioner's convenience stores. The record does not suggest that anyone else has ever held the proffered position. The evidence shows that [REDACTED] has a three-year Indian bachelor's of commerce degree. An evaluation in the record shows that [REDACTED] degree is equivalent to three years of undergraduate education in the United States, but not that it is equivalent to a U.S. bachelor's degree in business administration.

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Rather than supporting the proposition that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty and qualifies as a position in a specialty occupation, the evidence in the record of proceeding strongly suggests that the proffered position does not require such a degree and is not a position in a specialty occupation, as its duties have heretofore been performed by someone without a minimum of a U.S. bachelor's degree or the equivalent in a specific specialty. Further, even if the evidence demonstrated that [REDACTED] had the equivalent of a U.S. bachelor's degree in business administration, that would not suggest that the proffered position is a position in a specialty occupation. This is because, as was explained above, an otherwise undifferentiated degree in business administration is not a degree in a specific specialty. Further, the credentials of one employee is not sufficient to establish a recruiting and hiring history sufficient to satisfy this criterion. For all of these reasons, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position and that the position qualifies as a position in a specialty occupation pursuant to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4). This is because the record of proceeding does not establish that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty.

As was noted above, the description of the duties of the proffered position appear to be the duties of a Top Executive position, and such positions, and their duties, generally do not require a minimum of a bachelor's degree or the equivalent in a specific specialty. Despite the conclusory assertions of [REDACTED] and counsel, the record contains insufficient evidence that any of the duties of the proffered position require a bachelor's degree, let alone at least a bachelor's degree in a specific specialty, which is the threshold for a specialty occupation position.

As reflected in the earlier discussion of the limited information about them, the proposed duties have not been described with sufficient specificity to convey a level of specialization and complexity that

requires a particular content and level of formal education, or the equivalent, in any specific specialty.

In sum, the AAO finds that the acting director and the director were correct in their determinations that the record before them failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the evidence and argument submitted with the motion, and the submissions on appeal, have not remedied that failure.

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 record suggests additional grounds for dismissal that were not addressed in the decision of denial.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree or the equivalent in a specific specialty, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate that the beneficiary has a minimum of a bachelor's degree or the equivalent in that specific specialty.

In the instant case, the beneficiary has a three-year Indian bachelor of commerce degree. The record contains an evaluation, dated July 30, 2008, of the beneficiary's credentials. That evaluation was provided by [REDACTED] who also provided the September 15, 2008 evaluation of the proffered position, described above.

[REDACTED] evaluation of the beneficiary's qualifications stated that the beneficiary's three-year Indian degree is equivalent to three years of education toward a U.S. bachelor's degree in business administration. That evaluation further stated that the beneficiary's education, combined with his employment experience, is equivalent to a bachelor's degree in business administration.

USCIS will not accept an evaluator's opinion of the college-credit equivalent of a particular person's work experience and/or training unless authoritative, independent evidence from the official's college or university, such as a letter from the appropriate dean or provost, establishes that the evaluator was, at the time he or she produced the evaluation for the petitioner, authorized to grant college-level credit for training and/or experience in the pertinent specialty at that institution in a program at that institution for granting such credit based on a person's training or experience. *See generally* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D) and, more specifically, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). No such evidence appears in the instant case, and [REDACTED] opinion that the beneficiary's education coupled with his employment experience is equivalent to a U.S. bachelor's degree will be accorded no weight. The evidence does not, therefore, show that the beneficiary has a minimum of a bachelor's degree or the equivalent. If the proffered position had been shown to require a minimum of a bachelor's degree or the equivalent in a specific specialty – and it has not – then the beneficiary would not have been shown to be qualified for the position.

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

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).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it 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 at 1043, *aff'd*, 345 F.3d 683.

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.