

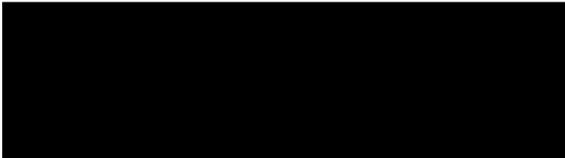
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W. MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



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Date: **MAR 06 2012**

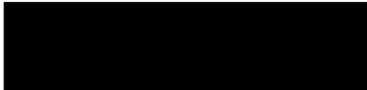
Office: CALIFORNIA SERVICE CENTER

FILE: 

IN RE:

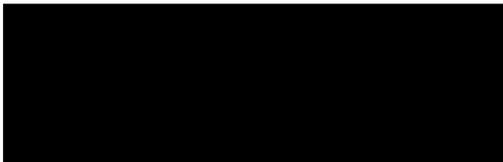
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:

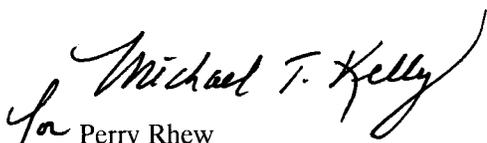


INSTRUCTIONS:

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

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

Thank you,

  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition the petitioner stated that it is an aerospace distributor with 17 employees. To employ the beneficiary in what it designates as an international business analyst 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. In support of these contentions, counsel submitted a brief and additional evidence.

The AAO bases its decision upon its review of the entire record of proceedings, 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; and (5) the Form I-290B and counsel's brief and attached exhibits 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 (5<sup>th</sup> 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 petition, counsel submitted a letter, dated March 26, 2009, from the petitioner's president. That letter states the duties of the proffered position as follows:

. . . conduct international economics research and business analyses for the company's international trade and operation; study the company's business systems; devising methods and procedures to collect data; perform international cost and price analysis; evaluate policies and other factors to aid in market interpretation and finding solutions of company's international trade problems; advise the company on internal cost analysis and international trade risk analysis as well as import/export processes including currency rates and exchanges, international banking and insurance; draft and prepare commercial and technical proposals, identify and explore existing and future product lines with highest business potential in the Eastern European markets; promote the Business Development unit, sign up potential clients and agent accounts; plan and direct activities such as sales, promotions, coordinating with other department heads as required; determine goods and services to be sold, and set prices and credit terms, based on forecasts of customer demand; analyze and document processes for business functions; and create and manage project schedules and budgets.

As to the education the position required, the petitioner's president stated:

This position is a specialty occupation because it usually requires the worker to have at least a bachelor's degree in Business or Economics as well as 1-2 years of experience in the International Business field or in a related area. A minimum of a Bachelor's degree is required because the worker will utilize his training in academic courses such as: business law; management and risks in international economic affairs; strategies of international economic relations; bases of international management; principles of accounting; analysis of economic-financial activity; international trade; corporate finances; planning and managing economic entities; negotiations in international economic affairs; international marketing; trade policies; bases of marketing; international transport; etc. Without basic training in the specialty field of business or economics, the worker will not be able to perform the job duties as assigned.

That a bachelor's degree in business administration would satisfy the educational requirement of the proffered position demonstrates that the position does not qualify as a specialty occupation position. 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 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).

Thus, the petitioner's recognition of a bachelor's degree in business, without additional specification, as a sufficient educational qualification for the proffered position, is tantamount to an admission that performance of the proffered position does not require at least a bachelor's degree, or the equivalent, in a specific specialty. This is sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

On May 12, 2009, issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty.

In his response, counsel provided vacancy announcements printed from web content of popular job search sites, apparently implying that the jobs they describe are similar to the proffered position in the instant case. Counsel also provided diplomas of two people. In a letter dated June 16, 2009, counsel stated that all of the jobs listed in the vacancy announcements require a minimum of a bachelor's degree or the equivalent in a specific specialty and that the people named on the diplomas provided are other business analysts employed by the petitioner. The vacancy announcements provided will be addressed below.

The diplomas provided show that [REDACTED] has a bachelor's degree in Business Administration (International Business) and that [REDACTED] has a bachelor's degree from the Purdue University School of Management. Quarterly wage reports provided show that the petitioner employed them during the first quarter of 2009. No evidence was provided to corroborate counsel's assertion that they are in positions similar to the proffered position.

The unsupported assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Unsupported assertions of counsel are, therefore, not probative.

Counsel further stated:

The beneficiary will spend most of his time[] collecting, reviewing and analyzing business data, then make recommendations for implementation of his ideas. In order to perform these duties, the worker must have at least a bachelor's degree in the specialized field of business. Without at least an academic degree in business related specialty, the worker will not be able to analyze data for the international trade operation, perform international cost and price analysis, advise on international trade risk analysis etc. A person with less than a college degree or a degree not in the specialty of business will not have the comprehensive training that will enable him/her to design and develop the applicable business system, evaluate business/economic and finance policies to aid the company in expanding its business especially to the Eastern Europe region.

Counsel yet further stated, ". . . business analyst positions require workers with degrees in the specific specialty of business." Again, the AAO observes that, as was explained above, an otherwise undifferentiated degree in business is not a degree in a specific specialty, and a requirement of such a degree does not mark a position as a specialty occupation position.

Further still, counsel stated:

The job duties of the proffered position are similar to those of a "management analyst[,"] or an "economist" or a "marketing research analyst[."]" Pursuant to [the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*], all these occupations require a minimum of a bachelor's degree in [a] business[-]related field for entry into the occupations[].

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> The AAO will further address the job descriptions in the *Handbook* below.

The director denied the visa petition on July 6, 2009 finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. More specifically, the director found that the petitioner had satisfied none of the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In her analysis, the director found that the proffered position is akin to a management analyst position as described in the *Handbook*, and further found that the evidence does not suggest that the petitioner's business is sufficiently complex to require the services of a management analyst.

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<sup>1</sup> 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, accessed December 6, 2010.

On appeal, notwithstanding that he had previously stated that the duties of the proffered position are similar to those of a management analyst, counsel contested the director's treatment of the proffered position as akin to a management analyst position, arguing that the proffered position is more similar to an economist position than a management analyst position.

The AAO will now discuss the application of the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The description of the duties of the proffered position is very abstractly stated. For instance, the duties include business analysis, including cost analysis and analysis of international trade factors, but the record contains no indication of the substantive nature of the analysis contemplated. "International cost and price analysis" may, for instance, be as simple as numeric conversion of one country's currency to that of another. If the beneficiary would perform more complex analysis, then the duties should have been more concretely described.

Other duties are described so abstractly that the president's meaning is entirely unclear. What the petitioner's president means by "promot[ing] the Business Development unit" and "document[ing] processes for business functions," for instance, is unknown to the AAO. The substantive nature of those duties is therefore also unknown to the AAO. Whether those duties require a minimum of a bachelor's degree or the equivalent in a specific specialty is not revealed by the evidence.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner's normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Nevertheless, the AAO will review those alternative requirements individually, in order to identify other evidentiary deficiencies that preclude approval of this petition.

We will first address the supplemental, alternative requirement of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which is satisfied if the petitioner demonstrates that the normal minimum entry requirement for the proffered position is a bachelor's or higher degree in a specific specialty or its equivalent. In this instance, the petitioner may be able to meet this criterion by (1) establishing the occupational classification under which the proffered position should be classified and (2) providing evidence that the *Handbook* supports the conclusion that this occupational classification normally requires a bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation in the United States.

To determine whether a particular job qualifies as a specialty occupation position, however, the AAO does not solely rely on the job title. Critical factors for consideration are the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence about the substantive work that the alien will likely perform for the entity or entities ultimately determining the work's content.

Counsel now asserts that the proffered position should be analyzed as an economist position. In the chapter entitled "Economists," the *Handbook* provides the following descriptions of the duties of those positions:

*Economists* study how society distributes resources, such as land, labor, raw materials, and machinery, to produce goods and services. They conduct research, collect and analyze data, monitor economic trends, and develop forecasts on a wide variety of issues, including energy costs, inflation, interest rates, exchange rates, business cycles, taxes, and employment levels, among others.

The referenced section of the U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos055.htm> (last accessed January 20, 2012).

That description of the job duties of economists does not correspond closely to the description of the duties of the proffered position provided by the petitioner's president. According to the descriptions of the duties of the proffered position, the beneficiary would not study how resources are distributed, but, rather, would study the operation of the petitioner's business with an eye toward improving profitability.

Moreover, if in fact the beneficiary would be performing duties that comprise an economist position, then the petitioner has failed to provide an LCA corresponding to that position and likewise has failed to commit to paying the wage required for said position, as required by the specialty occupation regulations. The AAO notes that, according to the U.S. Department of Labor's Foreign Labor Certification Data Center's *Online Wage Library*, the level 1 prevailing wage for Economists for the pertinent location and time was substantially more than the \$18.40 hourly wage specified in the LCA.

Some of the duties of the proffered position might be attributed to a cost estimator position. Others appear to be related to sales management, management analysis, or marketing research analysis. The position does not fit neatly, or even approximately, into any of the positions described in the *Handbook*. The *Handbook*, therefore, offers no evidence that the particular position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner's president attributes to the proffered position indicate a need for

a range of knowledge of business matters, but do not establish any particular level of formal education as minimally necessary to attain such knowledge.

Further still, as was noted above, the petitioner's president indicated that an otherwise undifferentiated degree in business administration would satisfy the educational requirement of the proffered position.

For all of these reasons, the 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, satisfied 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)).

As was observed above, the *Handbook* provides no support for the proposition that the petitioner's industry normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty for the proffered position. The record contains no evidence pertinent to a professional association related to the proffered position that requires a minimum of a bachelor's degree or the equivalent in a specific specialty as a condition of entry. The record contains no letters or affidavits from others in the petitioner's industry.

The petitioner did, as was noted above, provide 12 vacancy announcements in response to the RFE.

One of the vacancy announcements provided was placed by a recruiting company for an international business analyst to work for an unidentified "Well-recognized skin care/cosmetics co" in Los Angeles, California. Rather than requiring a minimum of a bachelor's degree in business or economics, that announcement states, "Preferring Bachelor's degree in Accounting/Finance or related." The AAO observes that a preference for a bachelor's degree is not a minimum requirement.

Another vacancy announcement was placed by another recruiting company for an "Analyst" to work for an unidentified utility company in Irwindale, California. That announcement states that the position requires a college degree in finance, accounting, or statistics. It does not state that the degree must be a minimum of a bachelor's degree.

Another recruiting service placed a vacancy announcement for a business analyst and an analyst for an unidentified company in the Tampa/St. Petersburg area of Florida. The nature of that company's industry is unknown to the AAO. That announcement states that the positions require a bachelor's degree in a business-related field. For the reasons described above, a requirement of a bachelor's degree in a business-related field is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

Another vacancy announcement is for a business analyst to work for netPolarity of Carlsbad, California, which described itself as a technology company. That announcement states that the position requires a bachelor's degree in engineering, computer science, business administration or a related discipline. Again, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

Another announcement was placed for a Financial Business Analyst to work for Ubisoft of San Francisco, California, which described itself as "a global leader in the video games and entertainment software industry." That announcement states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement is for a "Pricing/Business Analyst (Finance)" to work for LRN Corporation of Los Angeles, California, a company that offers education in legal and regulatory compliance to employees of other companies. That announcement states that the position requires a minimum of a bachelor's degree, but not that the degree must be in any specific specialty.

Another announcement is for a business analyst to work for Southern California Edison, a utility company in Fullerton, California. That announcement states that the position requires a bachelor's degree in business, computer science, or a related field. As was observed above, such a requirement is not a requirement of a minimum of a bachelor's degree or the equivalent in a specific specialty.

Another announcement is for a Business Analyst – Intern to work for Orange Labs SF of South San Francisco, California. The industry of that company is unknown to the AAO. That announcement states that the position requires a minimum of a bachelor's degree "in relevant fields of study."

Another announcement was placed by a recruiting company for a Business Analyst II to work for an unidentified healthcare management company in San Francisco, California. That announcement states that the position requires a "Bachelor's degree or equivalent combination of education and experience," and further states, "Coursework in information technology, healthcare, or business administration preferred." That announcement does not require a minimum of a bachelor's degree or the equivalent in any specific specialty.

Another announcement is for a business analyst to work for Ricoh Innovations, Inc. of Menlo Park, California. The industry of that company is unknown to the AAO. That announcement states that the position requires an MBA.

Another announcement was placed by Strategic Resource Partners of Los Angeles, California for a business analyst. The industry of that company is unknown to the AAO. That announcement states: "Desired Education Bachelor of Science," but does not state that the degree is a minimum requirement or that it should be in any specific specialty.

The final vacancy announcement was placed by McKesson Corp., of San Francisco, California, a healthcare company, for a Financial/Business Analyst. That announcement states that the position requires a "4-year degree in finance or related field or equivalent experience."

Those announcements appear to have been submitted to support the proposition that the proffered position qualifies as a position in a specialty occupation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The AAO notes, however, that some of the positions were posted by companies in different industries, and some do not require a minimum of a bachelor's degree or the equivalent in any specific specialty. Whether the duties of those positions are similar to the duties of the proffered position is unknown. Therefore, none of those vacancy announcements has been shown to be for a position parallel to the proffered position in the petitioner's industry with a similar organization and to require a degree in a specific specialty. They do not, therefore, support the proposition that the proffered position, by virtue of some similarity to those positions, requires a minimum of a bachelor's degree or the equivalent in a specific specialty and qualifies as a specialty occupation position.

Further, even if all 12 positions were demonstrated to be for parallel positions in the petitioner's industry with organizations similar to the petitioner and unequivocally required a minimum of a bachelor's degree or the equivalent in a specific specialty, the submission of the 12 announcements is statistically insufficient to demonstrate an industry-wide requirement.<sup>2</sup> The record contains no independent evidence that the announcements are representative of common recruiting and hiring practices for the proffered position in the petitioner's industry.

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<sup>2</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from a dozen job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the proffered position required a bachelor's or higher degree in a specific specialty or its equivalent, it could not be found that such a limited number of postings that may have been consciously selected could credibly demonstrate that such a position requires at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or the equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that similar positions in the petitioner's industry may not require a minimum of a bachelor's degree, or the equivalent, in a specific specialty, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

Again, the duties attributed to the proffered position by the petitioner's president are insufficiently specific to demonstrate a degree of complexity or uniqueness such that the proffered position can only be performed by an individual with a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the petitioner's president, by acknowledging that the educational requirement of the proffered position can be satisfied by an otherwise undifferentiated degree in business administration, has, in effect, conceded that it does not require a minimum of a bachelor's degree or the equivalent in a specific specialty. For these reason, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next the AAO will consider the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.

Counsel provided diplomas issued to two people and asserted that they work for the petitioner in positions similar to the proffered position. Counsel provided evidence that they work for the petitioner, but no evidence that their duties are similar to the duties of the proffered position.

In any event, one of those diplomas is in business administration with a concentration in international business, and the other was awarded by the Purdue University School of Management. The major course of study of the Purdue University degree is not stated.<sup>3</sup> There is no indication that those two degrees are in the same specific specialty. Even if the petitioner had demonstrated that those two people have positions similar to the proffered position, the evidence would not suggest that the petitioner requires a minimum of a bachelor's degree or the equivalent *in a specific specialty* for such positions. The petitioner has not satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>4</sup>

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<sup>3</sup> The AAO notes that a school of management might award degrees in, for instance, accounting, economics, or industrial management.

<sup>4</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific specialty. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The vague description provided contains no indication of complexity or specialization that would demand a minimum of a bachelor's degree or the equivalent in a specific specialty. Therefore, the petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), by not developing the proposed duties to an extent establishing their nature as so specialized and complex that their performance would require knowledge usually associated with the attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO finds that the director did not err in her determination that the record before her failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the submissions on appeal have not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

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. The appeal will be dismissed and the petition denied.

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

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artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").