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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



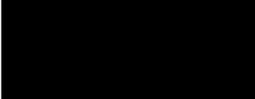
U.S. Citizenship  
and Immigration  
Services



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Date: **MAR 08 2012**

Office: VERMONT SERVICE CENTER

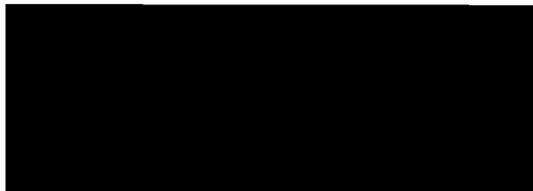
FILE: 

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:



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 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 a car dealer and parts exporter with one employee. To employ the beneficiary in what it designates as an administrator 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.

As will be discussed below, the AAO has determined that the director's decision to deny the petition on the specialty occupation issue was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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 notice of intent to deny (NITD); (3) the response to the NITD; (4) the director's denial letter; and (5) the Form I-290B counsel submitted on 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 employ 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.

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 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 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.

In a letter, dated May 1, 2009 and provided with the visa petition, the petitioner's managing member noted that the U.S. Department of Labor has placed "administrator" positions in Standard Vocational Preparation (SVP) Job Zone Four, and asserted that this means the position requires a bachelor's degree. Counsel reiterated that assertion in his own May 1, 2009 letter.

On September 8, 2009, the director issued an NITD in this matter, noting that the evidence submitted did not demonstrate that the proffered position qualifies as a specialty occupation by virtue of requiring a minimum of a bachelor's degree or the equivalent in a specific specialty.

In a letter, dated October 9, 2009 and submitted in response to the NITD, counsel stated, "The [proffered position] qualifies as a specialty occupation that requires at least a bachelor's degree in business management or business-related field." Counsel asserted that the duties of the proffered position had previously been performed by the petitioner's owners.

Counsel also described the duties of the proffered position as follows:

It's for the convenience of the company to hire an administrator manager who will be able to plan, coordinate supportive services of the company; and to analyze internal [sic] processes, recommend [sic], and implement procedural and police [sic] changes to improve the operations of the company. Someone who has the expertise on computers to run and maintain the company's website, that has knowledge in the automotive parts business, that has knowledge on foreign care markets (mainly, South America), who has the capacity to design and develop a sales network, who has the capacity to hire personnel who will replace the jobs of the contractors, resulting on [sic] better profits.

The AAO notes that description of duties was provided by counsel. It contains no indication of how counsel generated that list or who provided it to counsel.

Counsel also submitted an evaluation prepared by a professor in business administration at Seattle Pacific University.<sup>1</sup> That evaluation includes its own description of the duties of the proffered position, entirely unrelated to the description provided by counsel. Again, it contains no indication of who provided that list of duties to the evaluator or of how the evaluator generated that list of duties. The evaluator stated that, in the proffered position, the beneficiary would be responsible for the following duties:

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<sup>1</sup> Previously, with the visa petition, counsel provided an evaluation from an assistant professor of business administration at Mercy College in New York. That evaluation, however, addresses only the beneficiary's qualifications for the proffered position, rather than the requirements of the proffered position itself, and is not directly relevant to whether 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.

- Monitor the facility to ensure that it remains safe, secure, and well-maintained.
- Set goals and deadlines for the department.
- Prepare and review operational reports and schedules to ensure accuracy and efficiency.
- Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes or the disposal of records.
- Plan, administer and control budgets for contracts, equipment and supplies.
- Hire and terminate clerical and administrative personnel.
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems.

The evaluator stated that the duties of the proffered position closely correspond to the duties described in the Administrative Services Manager chapter of the U.S. Department of Labor, Bureau of Labor Statistics (DOL) *Occupational Outlook Handbook (Handbook)*.<sup>2</sup> The evaluator further stated, *inter alia*: "The [proffered position] . . . requires at least a bachelor's degree in business, management or [a] business-related field."

The director denied the petition on November 18, 2009, finding, as was noted above, that the petitioner had not demonstrated that it would employ the beneficiary in a specialty occupation. On the Form I-290B appeal form, counsel stated:

[USCIS] denied this H-1b basing its decision that the beneficiary [sic] job duties are not complex enough that they could be considered professional in nature. In other words that the Job did not require as a minimum a Bachelors [sic] Degree. Furthermore, it was established by a third party provider that the position of Administrator requires such. As stated in his professional opinion as an expert, he determine [sic] that this job position requires speciality [sic] knowledge and a bachelors [sic] degree, as well as the fact that [the beneficiary] has those qualifications. This third party provider is the associate dean & Director of Graduate Programs for the School of Business and Economics in Seattle Pacific University. As an expert in his field, having worked for more than 32 years as a professor, his evaluation of this case has far more weight than [USCIS] has placed on such evaluation. It is clear and evident that [USCIS] did not consider his expert testimony and as a third[-]party provider his opinion is less biased than that of the [petitioner] nor [sic] [USCIS]. For such reason we are appealing the decision and a brief will follow within 60 days of the filing of this appeal.

On that form, counsel checked a box indicating that a brief or additional evidence would be submitted within 30 days. No additional evidence or argument was provided either with that appeal or subsequently.

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<sup>2</sup> Whether the evaluator is referring to the duties he attributed to the proffered position or those attributed to it by counsel is unclear.

The AAO notes, initially, that neither counsel, nor the petitioner, nor the evaluator has asserted that the proffered position requires a minimum of a bachelor's degree or the equivalent in any specific specialty. Counsel and the petitioner's managing member stated that the position requires a minimum of a bachelor's degree, but not that the degree must be in any particular field. The evaluator stated that the proffered position requires a bachelor's degree in business, management or business-related field.

Even the evaluator's statement does not indicate that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. This is because a requirement of an otherwise undifferentiated bachelor's degree in business 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 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).

The failure of the petitioner even to allege that the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty is a 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.

The AAO will next address the additional, supplemental requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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 establishing (1) 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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)*, cited by the evaluator, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> The *Handbook* describes the duties of administrative service manager positions as follows:

*Administrative services managers* plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. They might, for example, coordinate space allocation, facilities maintenance and operations, and major property and equipment procurement. They also may oversee centralized operations that meet the needs of multiple departments, such as information and data processing, mail, materials scheduling and distribution, printing and reproduction, records management, telecommunications management, security, recycling, wellness, and transportation services. Administrative services managers also ensure that contracts, insurance requirements, and government regulations and safety standards are followed and up to date. They may examine energy consumption patterns, technology usage, and personal property needs to plan for their long-term maintenance, modernization, and replacement.

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/ocos002.htm> (last accessed December 19, 2011).

The description of the duties of the proffered position provided by both counsel and the evaluator are so abstract that determining whether they correspond to the duties of an administrative services manager's duties, as described in the *Handbook*, which description is also very general, is impossible. However, the AAO will analyze the requirements of the proffered position based on the assumption, made *arguendo*, that the proffered position is an administrative services manager position as claimed by the evaluator and as described in the *Handbook*. The *Handbook* describes the educational requirements of such positions as follows:

Specific education and training requirements vary by job responsibility. Office managers in smaller operations or lower-level administrative services managers with fewer responsibilities may only need a high school diploma combined with appropriate experience, but an associate degree is increasingly preferred.

The AAO notes that the petitioner, which has only one employee, might be described as a small operation. The *Handbook* indicates that such a position may only require a high school diploma.

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<sup>3</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.

Further, even in larger organizations, the *Handbook* offers no support for the proposition that an administrative services manager position categorically requires anything more than an associate's degree.

Further still, even as to those administrative services manager positions that may require a bachelor's degree, the *Handbook* does not indicate that the degree must be in any specific specialty. The *Handbook* does not, therefore, support the assertion that the proffered 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.

Counsel and the petitioner's managing member both stated that the U.S. Department of Labor's *O\*Net Online* includes the proffered position in Job Zone Four which, they asserted, indicates that such positions require a minimum of a bachelor's degree. *O\*Net Online* does not contain an occupational group entitled "Administrator." The occupation and code from which counsel and the petitioner's managing member extracted their information is unclear. In any event, counsel and the petitioner's managing member have mischaracterized the meaning of a position being included in Job Zone Four.

A Job Zone Four rating groups an occupation among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, *O\*Net Online* does not indicate that the four-year bachelor's degrees required by most Job Zone Four occupations must be in a specific specialty closely related to the requirements of that occupation. Therefore, the *O\*Net Online* information is not probative of the proffered position's being a specialty occupation.

The record contains no other evidence that the particular position proffered in the instant case normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty. 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, or any other, requires administrative services managers to possess a minimum of a bachelor's degree or the equivalent in a specific specialty. The record contains no evidence pertinent to a professional association of administrative services managers 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 record contains no evidence pertinent to the educational requirements of administrative services manager positions in other organizations within the petitioner's industry.

Thus, 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 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 demonstrates that, notwithstanding that other administrative services manager 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 a degree.

The evaluation is the only evidence provided to show that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a degree. That evaluation, however, does not list any reference materials on which the evaluator relied as a basis for his conclusion that the proffered position requires a bachelor's degree. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective and uncorroborated judgment. Further, as was noted above, which description of duties the evaluator relied upon and the source of that description are both unclear.

More importantly, the AAO finds that neither the body of the "Expert Opinion Evaluation" nor its attached resume establishes that the evaluator is an expert in the area in which he represents himself as such. Neither the evaluation nor any other evidence in the record of proceeding establishes that the evaluator has in any way attained such knowledge about the actual performance requirements of positions such as the one proffered here that his opinion should be accorded any deference by USCIS.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). For all of the above reasons, the AAO accords no probative weight to the evaluation provided.

Moreover, the evaluator found that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or a related field. Even if established by the evidence of record, which it is not, the requirement, even in the alternative, of a bachelor's degree in

business administration, as was explained above, 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'r 1988).

In addition to proving 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 also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring 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).

The petitioner has not demonstrated that the particular position proffered is so complex or unique that it can be performed only by an individual with a degree; and has not, therefore, met the requirements of the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position. Although counsel asserted that the petitioner's owners had previously performed the duties of the proffered position, he provided no evidence that the petitioner's owners have a minimum of a bachelor's degree or the equivalent in a specific specialty closely-related to the proffered position. The petitioner has not, therefore, provided any evidence for analysis under the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner demonstrates that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform those duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

As was observed above, who generated the two descriptions of the duties of the proffered position, one provided by counsel and one provided by the evaluator, is unclear. As such, the basis for asserting that either of those two disparate lists describes the duties of the proffered position is similarly unclear.

Further, to the extent that they are described, the proposed duties do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or

a usual association between such knowledge and the attainment of a particular educational level in a specific specialty.

Planning and coordinating supporting services; analyzing internal processes, recommending and implementing procedural and policy changes, maintaining the company's website, monitoring the facility to ensure that it remains safe, secure, and well-maintained; setting goals and deadlines; analyzing internal processes; recommending and implementing procedural or policy changes; planning, administering, and controlling budgets; hiring and terminating personnel; and overseeing the maintenance and repair of machinery, equipment, and electrical and mechanical systems contain no indication of requiring knowledge usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the record contains no evidence that knowledge of the automotive parts business and knowledge of car markets in South America and elsewhere is usually associated with a minimum of a bachelor's degree or the equivalent in a specific specialty.

The vague descriptions provided contain no indication of complexity or specialization that would demand a minimum of a bachelor's degree or the equivalent in a specific specialty, especially relative to other administrative services manager positions that, according to the *Handbook*, normally do not have such a minimum entry requirement.

As the petitioner has not established that the proffered position's specific duties are so specialized and complex as to require knowledge usually associated with the attainment of a baccalaureate or higher degree, or the equivalent, in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

In fact, 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.

The AAO finds that the director was correct in his determination that the record before him failed to establish that the beneficiary would be employed in a specialty occupation position, and it also finds that the appeal has not remedied that failure. Accordingly, the appeal will be dismissed and the petition denied on this basis.

Beyond the decision of the director, the AAO finds that the petition must also be denied on an additional basis, which will now be discussed, that was not addressed in the director's decision. The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir.

2004), and it was in the exercise of this function that the AAO identified this additional basis for denying the petition.

The record does not indicate that the beneficiary has any college degree. Rather, the petitioner is relying on the beneficiary's employment experience being equivalent to a bachelor's degree. Counsel provided two evaluations of the beneficiary's qualifications, one with the visa petition and one in response to the NITD, to demonstrate that the beneficiary should be considered to have experience equivalent to a degree. Deficiencies exist in that evidence.

First, although section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2)(C) permits a petitioner to demonstrate that a beneficiary has experience in the specialty equivalent to the completion of the requisite degree, it requires that the beneficiary's expertise in the specialty be recognized through progressively responsible positions relating to the specialty. Although both evaluators characterized the beneficiary's employment experience as progressively more responsible, neither provided any analysis on that point. They provided no corroboration or substantiation for their conclusion that the beneficiary's employment experience was "progressively responsible" within the meaning of section 214(i)(2)(C) of the Act.

Second, 8 C.F.R. § 214.2(h)(4)(iii)(D) requires that, in order to demonstrate that the beneficiary's employment experience is equivalent to a bachelor's degree, the petitioner must provide an evaluation from an official who has authority to grant college-level credit for experience in the specialty at an accredited college or university which has a program for granting such credit based on individual's work experience. The record contains no evidence that either of the evaluators in the instant case has authority to grant college-level credit for experience in any subject at any college or university, or that the universities at which they work have programs for granting credit based on work experience.

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 the specific specialty required by the proffered position. *See Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

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 analyze the beneficiary's qualifications in detail.

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.



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