

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



D2

Date: **MAR 08 2012**

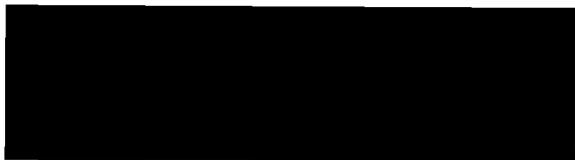
Office: VERMONT SERVICE CENTER

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:



INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The director of the Vermont Service Center denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a non-full service hotel that claims to have twelve employees. It seeks to employ the beneficiary as a human resources manager pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition concluding that the petitioner failed to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the director's RFE; (4) the director's denial decision; and (5) the Form I-290B. The AAO reviewed the record in its entirety before issuing its decision.

The AAO will therefore consider whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

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 particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

In this matter, the petitioner seeks the beneficiary’s services as a human resources manager. With the filing of the instant petition, the petitioner attached a copy of the job description to its support letter which indicates the proffered position would require the beneficiary to:

- Serve as a link between management and employees by handling questions, interpreting and administering contracts and helping resolve work-related problems.

- Analyze and modify compensation and benefits policies to establish competitive programs and ensure compliance with legal requirements.
- Advise managers on organizational policy matters such as equal employment opportunity and sexual harassment, and recommend needed changes.
- Perform difficult staffing duties, including dealing with understaffing, refereeing disputes, firing employees, and administering disciplinary procedures.
- Plan and conduct new employee orientation to foster positive attitude toward organizational objectives.
- Identify staff vacancies and recruit, interview and select applicants.
- Plan, direct, supervise, and coordinate work activities of subordinates and staff relating to employment, compensation, labor relations, and employee relations.
- Plan, organize, direct, control or coordinate the personnel, training, or labor relations activities of an organization.
- Represent organization at personnel-related hearings and investigations.
- Administer compensation, benefits and performance management systems, and safety and recreation programs.

The support letter goes on to state that the petitioner's new hotel will reach its full capacity of 230 visitors beginning next spring and capacity is anticipated to be full through the summer tourist season; that the hotel anticipates that it will need to hire an additional 15-20 workers to serve as desk clerks, housekeepers, maintenance, crew and other ancillary services personnel; and that due to a need for increased hiring and training of these new workers, the petitioner has a need for a talented individual who can serve as a human resources manager. According to the letter, the proffered position requires a minimum of a bachelor's degree in human resource management or a related discipline, but it does not further define the related discipline. The petitioner submitted the beneficiary's master's degree in Information Systems from Stratford University, Bachelor of Commerce degree with concentration in financial accounting and auditing from the University of Mumbai, and an evaluation report dated September 25, 2009 from the Foundation for International Services, Inc.

The Labor Condition Application (LCA) was submitted for a human resources specialist to work full-time at the petitioning hotel at an annual salary of \$36,400.

On October 28, 2009, the director requested additional information from the petitioner to establish that the proffered position is a specialty occupation.

Counsel's response provided a more detailed job description of a human resource manager/human resource coordinator with a brief description about each calendar listed task based on human resources (HR) duties and a breakdown of the percentage of time spent on each of job duties which indicates that the beneficiary will spend 20% of his time on hiring and recruiting, 20% on coaching, training and development, 10% on communication, 5% on performance management, 25% on process and policy recommendation, 5% on salary and benefits, 10% on employee relations and team building, and 5% on leadership.

Counsel submitted an expert opinion letter from [REDACTED]

██████████ states that “[t]he position of Human Resources Manager for ██████████ would be considered a Specialty Occupation with specific duties that are so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of at least a baccalaureate degree in Human Resources Management, or a closely related field.” ██████████ states that “[t]he duties that have been specified by ██████████ for a Human Resources Manager require professional theoretical and practical application of a specialized body of knowledge in the business areas covered in the course work of a U.S. Bachelor’s Degree in Human Resources Management, or a closely related degree.” ██████████ also states that “[t]he industry standard for this position requires the attainment of a U.S. Bachelor’s Degree in Human Resources Management, or a closely related field.”

Counsel also submitted copies of memos from the operations manager stating that there is a need for the human resources manager position at the petitioning hotel due to the need for new policies and procedures and hiring needs due to the projected occupancy for 2010.

The director denied the petition, finding that the evidence of record does not establish that the job offered qualifies as a “specialty occupation” pursuant to section 101(a)(15)(H)(i)(b) of the Act.

On appeal, counsel contends in the Form I-290B that the director erred in concluding that the job duties associated with the position of human resource manager are not so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree or its equivalent. Counsel asserts that the position of human resource manager is classified by the U.S. Employment Training Administration under SOC code 11-3040.00 and most of these occupations require a four year bachelor’s degree. Counsel also contends that the submitted expert opinion letter concludes that the industry standard for a position of human resource manager for a firm such as Aarti Hospitality Management is filled through recruiting a college graduate.

With the brief in support of the instant appeal, counsel also submitted four advertisements from ██████████. The advertisement from ██████████ is for a human resources consulting manager and requires a four year college degree majoring in Human Resources Management, Psychology or other related field. The ██████████ advertisement for human resources manager indicates a hospitality four year degree or Human Resources certification strongly preferred. The third advertisement is for human resources generalist at ██████████ which requires BA/BS in Human Resources, Business or related field as minimum qualifications for the position. However, none of these three advertisements describe the advertising employer’s size or organizational structure. While the advertisement from ██████████ is for human resources manager, it states that ideal candidates will possess a bachelor’s degree in Business Administration, Human Resources or equivalent. According to the advertisement, ██████████ is a world leader in providing award-winning food and facilities management services to health care institutions, universities and school districts, stadiums and arenas, international and domestic corporations, as well as providing uniform and career apparel.

To make its determination whether the proffered position, as described in the initial petition, in response to the director's RFE and on appeal, qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations, or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Although the job description includes some non-HR managing duties, the AAO agrees with counsel for the petitioner that the proffered position most closely resembles the position of human resources manager as generally described in the *O*Net* when compared to the main duties described by the petitioner. According to the *Handbook*, the position of human resources manager in the *O*Net* is covered in the chapter titled Human Resources, Training, and Labor Relations Managers and Specialists in the *Handbook*. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2010-11 ed., available at <http://www.bls.gov/oco/ocos021.htm> (last accessed February 21, 2012). Nevertheless and for the reasons discussed in greater detail *infra*, the AAO finds that the position of human resources manager as covered in the *Handbook's* chapter on Human Resources, Training, and Labor Relations Managers and Specialists does not categorically qualify as a specialty occupation.

Here and in accordance with the *Handbook's* descriptions of human resources managers, the record's descriptions of the proposed duties are limited to generic and generalized functions which, even when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically. Specifically, the *Handbook's* description of a human resources manager under the section on Human Resources, Training, and Labor Relations Managers and Specialists provides in pertinent part:

There are many types of human resources, training, and labor relations managers and specialists. In a small organization, a human resources generalist may handle all aspects of human resources work, and thus require an extensive range of knowledge. The responsibilities of human resources generalists can vary widely, depending on their employer's needs.

In a large corporation, the director of human resources may supervise several departments, each headed by an experienced manager who most likely specializes in one human resources activity, such as employment and placement, compensation and

benefits, training and development, or labor relations. The director may report to a top human resources executive.

Id. In the instant case, the petitioner claims to have 12 employees. The description provided above for a human resources generalist in a small organization encompasses the duties of the proffered position as described by the petitioner and counsel.

For the description of education and training for Human Resources, Training, and Labor Relations Managers and Specialists, the *Handbook* states:

The educational backgrounds of human resources, training, and labor relations managers and specialists *vary considerably*, reflecting the diversity of duties and levels of responsibility. *In filling entry-level jobs, many employers seek college graduates who have majored in human resources, human resources administration, or industrial and labor relations.* Other employers look for college graduates with a technical or business background or a well-rounded liberal arts education.

Education and training. Although a bachelor's degree is a typical path of entry into these occupations, many colleges and universities do not offer degree programs in personnel administration, human resources, or labor relations until the graduate degree level. However, many offer individual courses in these subjects at the undergraduate level in addition to concentrations in human resources administration or human resources management, training and development, organizational development, and compensation and benefits.

Because an interdisciplinary background is appropriate in this field, a combination of courses in the social sciences, business administration, and behavioral sciences is useful. Some jobs may require more technical or specialized backgrounds in engineering, science, finance, or law. Most prospective human resources specialists should take courses in principles of management, organizational structure, and industrial psychology; however, courses in accounting or finance are becoming increasingly important. Courses in labor law, collective bargaining, labor economics, and labor history also provide a valuable background for the prospective labor relations specialist. As in many other fields, knowledge of computers and information systems is useful.

An advanced degree is increasingly important for some jobs. Many labor relations jobs require graduate study in industrial or labor relations. A strong background in industrial relations and law is highly desirable for contract negotiators, mediators, and arbitrators; in fact, many people in these specialties have law degrees. *A master's degree in human resources, labor relations, or in business administration with a concentration in human resources management is highly recommended for those seeking general and top management positions.*

The duties given to entry-level workers will vary, depending on whether the new workers have a degree in human resource management, have completed an internship, or have some other type of human resources-related experience. Entry-level employees commonly learn by performing administrative duties—helping to enter data into computer systems, compiling employee handbooks, researching information for a supervisor, or answering phone calls and handling routine questions. Entry-level workers often enter on-the-job training programs in which they learn how to classify jobs, interview applicants, or administer employee benefits; they then are assigned to specific areas in the human resources department to gain experience. Later, they may advance to supervisory positions, overseeing a major element of the human resources program—compensation or training, for example.

Id. (emphasis added).

According to the *Handbook*, although a bachelor's degree is a typical path of entry into these occupations, a broad arrange of majors or a combination of courses in the social sciences, business administration, and behavioral sciences may be accepted for Human Resources, Training, and Labor Relations Managers and Specialists because many colleges and universities do not offer degree programs in personnel administration, human resources, or labor relations until the graduate degree level and an interdisciplinary background is appropriate in this field.

Even though the *Handbook* states that a bachelor's degree is a typical path of entry into these occupations, the bachelor's degree is not required for certain types of positions in this field to be in a specific specialty as required under Section 214(i)(1) of the Act. To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. When a range of degrees, e.g., the liberal arts, or a degree of generalized title without further specification, e.g., business administration, can perform a job, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, even a generalist position of human resources, training, and labor relations managers and specialists which may require at most a bachelor's degree in liberal arts, business administration, or engineering or a combination of courses in various fields does not qualify as a specialty occupation under the first criterion.

The petitioner filed and the DOL certified an LCA for the proffered position under the SOC Code 13-1079.00 – Human Resources, Training and Labor Relations Specialists. According to DOL's public online database at <http://www.onetonline.org/find/quick?s=13-1079.00> (last accessed February 21, 2012), the SOC Code 13-1079.00 - Human Resources, Training, and Labor Relations Specialists, All Other, is no longer in use and is divided into 13-1071.00 (Human Resources Specialists) and 13-1075.00 (Labor Relations Specialists). The Human Resources Specialist position falls within Job Zone Four requiring "considerable preparation." DOL assigns a standard education requirement that "Most of these occupations require a four-year bachelor's degree, but some do not." *O*Net OnLine* does not indicate any specific specialty most of these occupations require the bachelor's degree to be in. *See* <http://www.onetonline.org/link/summary/13-1071.00> (last accessed February 21, 2012).

Further, counsel asserts on appeal that the proffered position most closely resembles that of SOC Code 11-3040.00 – Human Resources Managers, which has been recoded under 11-3121.00 – Human Resources Managers, *see* <http://www.onetonline.org/find/quick?s=13-1079.00> (last accessed February 21, 2012), As counsel stated, the human resources manager position is accorded an SVP range of 7.0 to 8.0, i.e., “most of these occupations require a four year bachelor’s degree,” however, it continues “but some do not.” Like the position of Human Resources Specialists under the SOC Code 13-1071.00, *O*Net OnLine* does not indicate any specific specialty most of these occupations require the bachelor’s degree to be in. *See* <http://www.onetonline.org/link/summary/11-3121.00> (last accessed February 21, 2012). Therefore, *O*NET* does not establish that a Human Resources Specialist position or Human Resources Manager position normally requires a bachelor’s degree in a specific specialty as a minimum requirement. Counsel’s assertion to the contrary is therefore misplaced.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty closely related to the position's duties, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor’s degree in a specific specialty for entry into the occupation. In response to the RFE, counsel for the petitioner submitted an expert opinion letter from [REDACTED] asserting that this letter states that “the industry standard” for the proffered position requires the attainment of a U.S. Bachelor’s Degree in Human Resources Management, or a closely related field. However, [REDACTED]’s letter does not contain and discuss any information or industry statistics that support or otherwise corroborate [REDACTED] conclusions regarding the industry standard. This letter does not show that the industry’s professional association has made a degree a minimum entry requirement. Nor does [REDACTED] attest that the firms he served before “routinely employ and recruit only degreed individuals.” In a word, this letter does not refute the *Handbook*’s report that a degree in a wide variety of fields is acceptable for human resources managers. Therefore, [REDACTED] opinion letter does not demonstrate that the proffered position is a specialty occupation requiring at least a U.S. bachelor’s

degree or the equivalent in a specific specialty.

On appeal, counsel for the petitioner submitted copies of four advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the hospitality industry. The advertisements provided, however, establish at best that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a specific specialty. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, while the three job postings from Hilton Worldwide, Wyndham, and The Seattle Hilton Hotel are for positions in the same industry, they appear to be for (1) a corporate level job for a large chain hotel, (2) a job overseeing two large full-service hotels, and (3) a position at a large full-service hotel. Therefore, these positions cannot be found to be parallel positions in similar organizations. Moreover, the fourth advertisement from Aramark is for a position in a different industry and a dissimilar organization and, thus, it also cannot be found to be a parallel position. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.¹

The petitioner has also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The evidence of record does not refute the *Handbook's* information to the effect that a bachelor's degree is not required in a specific specialty. Neither the petitioner nor its counsel has provided evidence to distinguish the proffered position as unique from or more complex than Human Resources Manager or Specialist positions as described in the *Handbook* or *O*NET*, that can be performed by persons without a specialty degree or its equivalent.

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) -- the employer normally requires a degree or its equivalent for the position. The record shows that the petitioning hotel

¹ 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 four job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the hospitality industry. 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 position of human resources manager for a 70-room, non-full service hotel required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

opened in July 2009 and currently employed 12 employees when the instant petition was filed. The record does not contain any evidence showing that the petitioner has employed a Human Resources Manager/Specialist before. The petitioner did not submit any information regarding its other workers, if any, who fill or previously filled positions similar to the one proffered in this petition. As the record has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).²

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. While [REDACTED] concludes that "[t]he position of Human Resources Manager for [the petitioner] would be considered a Specialty Occupation with specific duties that are so specialized and complex that knowledge required to perform these duties is usually associated with the attainment of at least a baccalaureate degree in Human Resources Management, or a closely related field," the record does not contain any evidence to distinguish the proffered position as unique from or more complex than human resources manager positions, such as those described in the *Handbook*, that can be performed by persons without a specialty degree or its equivalent. To the extent that they are depicted in the record, the duties of the proposed position do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. The AAO, therefore, concludes that the petitioner has not established that it meets the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined. Therefore, the AAO need not and will

² While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

not address the beneficiary's qualifications further, except to note that, in any event, the combined evaluation of the beneficiary's education and work experience submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, as the claimed equivalency was based in part on experience, there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience and that the beneficiary also has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in any specific specialty, or its equivalent, the petition could not be approved for this additional reason even if eligibility for the benefit sought had been otherwise established.

Finally, beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, as noted above, the LCA was certified under Level I, entry-level "Human Resources, Training, and Labor Relations Specialists," currently SOC Code 13-1071.00 or 13-1075. The job as titled and as described by the petitioner and counsel, however, is classified as a "Human Resources Manager," currently SOC Code 11-3121.00. As such, the petitioner was required to provide at the time of filing an LCA certified for a human resources manager (then SOC Code 11-3040.00), in order for it to be found to correspond to the petition.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

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.