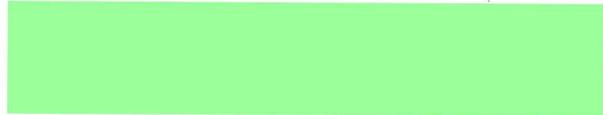




U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 01 2013**

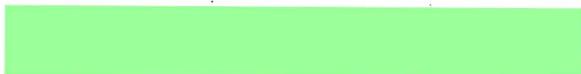
Office: CALIFORNIA SERVICE CENTER

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:

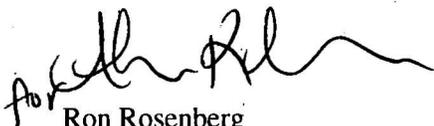


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting 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 "[d]esign, create, adjust, repair, appraise jewelry made of gold, silver, other precious metals, or gems" firm with two employees. To employ the beneficiary in what it designates as a Master Jeweler 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 did not err in her decision to deny the petition on the specialty occupation issue. 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 request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is whether the proffered 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 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.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular 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 directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a master jeweler position, and that it corresponds to Standard Occupational Classification (SOC) code and title 51-9071.00, Jewelers and Precious Stone and Metal Workers from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL).

In a June 8, 2011 letter submitted with the visa petition, counsel stated:

The career field of Jewelers and precious stone and metal workers is one of a professional nature, as demonstrated by the supporting documentation listed below. It is not, however, a field in which one can attain a bachelor's degree to support their professionalism. As stated in the [DOL's *Occupational Outlook Handbook (Handbook)*] page, "jewelers have traditionally learned their trade through several months of on-the-job training." [The beneficiary] more than meets the "three-for-one" rule in substituting years of experience for a bachelor's degree. After receiving his training through a jewelry apprenticeship in 1979 from the [REDACTED] he has worked in jewelry design and repair for most of his life.

Counsel also submitted a support letter dated April 28, 2011, from the petitioner's president, who stated that the proffered position "entails the custom design, creation, adjustment, repair, and appraisal of jewelry made of all kinds of precious metals and stones." That letter contains the following additional description of the duties of the proffered position:

80% of time:

- Overseeing design, set up and management of the factory
- Continuously developing new methods of jewelry making including:
 - New uses of metal for new creations, requiring a level 5 jeweler
 - Advanced strategies for use of molding rubber in the design of jewelry improving the calculation of shrinkage during heating in fractions of millimeters to the right size. (This is crucial for the precious stones molded in the metal during vacuum molding or hand-mounted later to the finished jewelry. Only a highly skilled jeweler can accomplish this with minimal waste of precious metals and stones.)
- Exclusive manufacturing of individual orders from concept to finished product.

20% of time

Reproductive manufacturing including:

- Filling casting flasks with gypsum products
- Preparing the gypsum mold with the vacuum casting machine for casting
- Calculating the cycle time and temperature of melting metal.
- Casting of metal products
- Finishing and polishing of cast products
- Hand setting of stones in the product
- Hand-engraving of items
- Managing the associates hired to perform finishing and polishing as the business expands.

As to the requirements of the proffered position, the petitioner's president stated:

The minimum requirements for this position are completion of a jewelry apprenticeship and documented progressive skill and experience equal to a level 5 master jeweler with at least 12 years experience. The position requires artistic creativity, knowledge of metals and precious stones, skill and innovation design and manufacturing methods[.]"

On June 20, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted. In response, counsel submitted, *inter alia*, (1) three vacancy announcements; (2) printouts of content of Internet web sites maintained by five other jewelers; (3) a comparison of the petitioner to the five other jewelers; and (4) a letter, dated July 26, 2011, from the petitioner's president. The web content, the comparison, and the vacancy announcements are discussed below.

In his July 26, 2011 letter, the petitioner's president stated that the petitioner will produce custom jewelry, and that, "In order to produce custom jewelry, it is critical to have a Master Jeweler with advanced skills and experience in the areas of materials, processes, and design along with creative and artistic talent."

The director denied the petition on August 10, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. 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).

On appeal, counsel cites the evidence submitted and contends that the petitioner produces high-quality jewelry that requires the services of a master jeweler with many years of experience, and that the beneficiary's vast experience in custom jewelry design and manufacture renders him eminently qualified for a master jeweler position. Counsel also contends that the proffered position "**requires**

someone with at least one year of training and twelve years of experience" and that the proffered position is complex.

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 AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

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.¹ In the "Jewelers and Precious Stone, and Metal Workers" chapter, the *Handbook* describes those positions as follows:

What Jewelers and Precious Stone and Metal Workers Do

Jewelers and precious stone and metal workers design, manufacture, and sell jewelry. They also adjust, repair, and appraise gems and jewelry.

Duties

Jewelers and precious stone and metal workers typically do the following:

- Examine and grade diamonds and other gems
- Create jewelry from gold, silver, and precious gemstones
- Shape metal to hold the gems when making individual pieces
- Make a model with carved wax (a mold) or with computers, and then make (cast) pieces with the model
- Solder pieces together and insert stones
- Smooth joints and rough spots and polish smoothed areas
- Inspect finished products to ensure proper gem spacing and metal shine
- Repair jewelry by replacing broken clasps, enlarging or reducing ring sizes, resetting stones, or soldering pieces together

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

New technology is helping to produce high-quality jewelry at a reduced cost and in less time. For example, lasers are often used for cutting and improving the quality of stones, for intricate engraving or design work, and for inscribing personal messages or identification on jewelry. Jewelers also use lasers to weld metals together with no seams or blemishes, improving the quality and appearance of jewelry.

Some manufacturing firms use computer-aided design and manufacturing (CAD/CAM) to make product design easier and to automate some steps. With CAD, jewelers can create a model of a piece of jewelry on the computer and then see the effect of changing different aspects—the design, the stone, the setting—before cutting a stone or taking other costly steps. With CAM, they then create a mold of the piece, which makes producing many copies easy.

Individual jewelers also use CAD software to design custom jewelry. They let the customer review the design on the computer and see the effect of changes so the customer is satisfied before committing to the expense of a customized piece of jewelry.

Jewelers and precious stone and metal workers usually specialize:

Precious metal workers expertly manipulate gold, silver, and other metals.

Gemologists analyze, describe, and certify the quality and characteristics of gem stones. After using microscopes, computerized tools, and other grading instruments to examine gem stones or finished pieces of jewelry, they write reports certifying that the items are of a particular quality.

Jewelry appraisers carefully examine jewelry to determine its value and then write appraisal documents. They determine value by researching the jewelry market and by using reference books, auction catalogs, price lists, and the Internet. They may work for jewelry stores, appraisal firms, auction houses, pawnbrokers, or insurance companies. Many gemologists also become appraisers.

Bench jewelers usually work for jewelry retailers, doing tasks from simple jewelry cleaning and repair to making molds and pieces from scratch.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Jewelers and Precious Stone and Metal Workers," <http://www.bls.gov/ooh/production/jewelers-and-precious-stone-and-metal-workers.htm#tab-2> (last visited March 25, 2013).

The duties the petitioner's president attributed to the proffered position are consistent with the duties of jewelers as described in the *Handbook*. The AAO finds that the proffered position is a jeweler position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of jeweler, precious stone and metal worker positions:

How to Become a Jeweler or Precious Stone and Metal Workers

Jewelers have traditionally learned their trade through long-term on-the-job training. This method is still common, particularly in jewelry manufacturing, but a growing number of workers now learn their skills at trade schools.

Education

Many trade schools offer training for jewelers. Course topics can include introduction to gems and metals, resizing, repair, and computer-aided design (CAD). Programs vary from 6 months to 1 year, and many teach students how to design, cast, set, and polish jewelry and gems, as well as how to use and care for a jeweler's tools and equipment. Graduates of these programs may be more attractive to employers because they require less on-the-job training.

Some students earn a bachelor's degree in fine arts or a master's degree in jewelry design.

Work Experience

Some workers gain their skills through related work experience. This may include previous experience as a sales person in retail jewelry stores.

Training

In jewelry manufacturing plants, workers develop their skills through informal apprenticeships and on-the-job training. The apprenticeship or training lasts up to 1 year, depending on the difficulty of the specialty. Training usually focuses on casting, setting stones, making models, or engraving.

Advancement

Advancement opportunities are limited and depend on an individual's skill and initiative. In manufacturing, some jewelers advance to supervisory jobs, such as master jeweler or head jeweler. Jewelers who work in jewelry stores or repair shops may become managers; some open their own business.

Jewelers and precious stone and metal workers who want to open their own store should first establish themselves and build a reputation for their work within the jewelry trade. After they get sufficient sales, they can acquire the necessary inventory for a store from a jewelry wholesaler. Also, because the jewelry business is highly

competitive, jewelers who plan to open their own store should have sales experience and knowledge of marketing and business management.

Important Qualities

Artistic ability. Jewelers must have the ability to create designs that are unique and beautiful.

Detail oriented. Creating designs requires concentration and patience. Jewelers and precious stone and metal workers must be detail oriented to stay focused on their tasks.

Fashion sense. Jewelry designers must know what is stylish and attractive because that is what people are likely to buy.

Finger dexterity. Jewelers and precious stone and metal workers must precisely move their fingers in order to grasp, manipulate, and assemble very small objects.

Interpersonal skills. Whether selling products in stores or at craft shows, jewelers and precious stone and metal workers interact with customers.

Visualization skills. Jewelers and precious stone and metal workers must imagine how something might look after its shape is altered or when its parts are rearranged.

Id. at <http://www.bls.gov/ooh/production/jewelers-and-precious-stone-and-metal-workers.htm#tab-4> (last visited March 25, 2013).

The *Handbook* makes clear that entry into a position as a jeweler does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. One may enter the position after training at a trade school or through training received on the job. Even promotion to a supervisory or master jeweler position does not require any college education or degree, nor does it require experience that has been shown to be equivalent to a degree.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of jewelry, including knowledge of designing, manufacturing, adjusting, repairing, and appraising jewelry, but do not establish any particular level of formal, post-secondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 calls for a petitioner to establish that a requirement of a bachelor's or higher 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.

In determining whether there is 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 already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The web content pertinent to other jewelers, submitted in response to the RFE, indicates that those other jewelers employ master jewelers with many years, and sometimes with decades, of experience in the industry. None of that web content suggests that any of the master jeweler positions requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The comparison of the petitioner to those other jewelers states that the requirements of the proffered position are equal to, or even greater than, the requirements of the master jeweler positions with those other jewelers. That comparison does not indicate that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common in the petitioner's industry for parallel positions in the jewelry designing and manufacturing industry with companies similar to the petitioner.

Counsel also provided three vacancy announcements, which are for positions entitled Master Jeweler and Master Craftsman.

The Master Jeweler vacancy announcement posted by [REDACTED] states that the position requires "at least 10 years experience." The Master Jeweler vacancy announcement posted by [REDACTED] states that the position requires a "[m]inimum of five (5) years of experience in jewelry repair and assembly" and a "High School diploma or equivalent." The Master Craftsman vacancy announcement posted by [REDACTED] states that the position requires "[f]ive to ten years related experience." None of the three advertisements indicate that a bachelor's degree in a specific specialty is a requirement for entry into those positions. 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.

Further, even if all of the vacancy announcements indicated a bachelor's degree in a specific specialty or the equivalent to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from three announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficiency of each vacancy announcement has been addressed.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied 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 other jeweler, or master jeweler, positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, 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.

The record contains no evidence that would differentiate the work of the proffered position from the work of jewelers in general. The duties of the proffered position (such as designing jewelry and either manufacturing jewelry or supervising others in jewelry production) are described in terms of generalized functions generic to jeweler positions in general, and so have not been shown to be more complex or unique than the duties of other jeweler positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

² 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 three job postings with regard to determining the common educational requirements for entry into parallel positions at similar jewelers. 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 jeweler or master jeweler for a designer and manufacturer or custom jewelry 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 may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Thus, the petitioner has not, therefore, satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO will address the 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 minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.³ Some evidence in the record suggests that the petitioner has never previously hired anyone in the proffered position. In any event, the record contains no evidence pertinent to anyone the petitioner has ever previously hired to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Designing, manufacturing, adjusting, repairing, and appraising jewelry contains no indication of specialization and complexity beyond the ken of a jeweler without a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been shown to be more specialized and complex than the duties of jeweler positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent, and the petitioner has not, therefore, satisfied the criterion 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.

Beyond the decision of the director, even if the petitioner had provided sufficient documentation to demonstrate that the position is a specialty occupation, the petition may not be approved because the petitioner failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.

³ 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").

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

The record indicates that the beneficiary does not hold a bachelor's degree. Therefore, absent (1) an actual U.S. bachelor's or higher degree from an accredited college or university, (2) a foreign degree determined to be equivalent to such a degree, or (3) a pertinent license, the only remaining avenue for the beneficiary to qualify for the proffered position is pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(C)(4).

Under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the petitioner must establish both (1) that the beneficiary's combined education, specialized training, and/or progressively responsible experience are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, *and* (2) that the beneficiary has recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

For purposes of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following to determine whether a beneficiary has achieved a level of knowledge, competence, and practice in the specialty occupation that is equal to that of an individual who has a baccalaureate or higher degree in the specialty:

- (1) An evaluation from an official who 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;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁴
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

In accordance with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5):

⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or work experience.

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

It is always worth noting that, by its very terms, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) is a matter strictly for USCIS application and determination, and that, also by the clear terms of the rule, experience will merit a positive determination only to the extent that the record of proceeding establishes all of the qualifying elements at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) – including, but not limited to, a type of recognition of expertise in the specialty occupation.

As the petitioner has failed to satisfy any of the criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1)-(4), the AAO will next perform a Service evaluation pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). When USCIS determines an alien's qualifications pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two

recognized authorities in the same specialty occupation⁵;

- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

While the record contains evidence of the beneficiary's work experience, there is no evidence in the record that the beneficiary has recognition of expertise in the industry, membership in a recognized association in the specialty occupation,⁶ or published material by or about the beneficiary. Thus, absent corroborating evidence as outlined in 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), the AAO cannot conclude that the beneficiary's past work experience included the theoretical and practical application of a body of highly specialized knowledge in a field related to the proffered position or that the beneficiary has recognition of expertise in the industry.

The petitioner, therefore, has failed to establish that the beneficiary is qualified to perform the duties of a specialty occupation. For this additional reason, the petition will be denied.

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

⁵ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

⁶ As discussed above, the proffered position has not been demonstrated to be a specialty occupation.