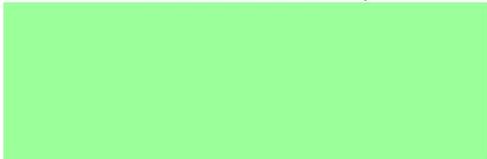




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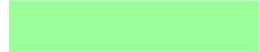


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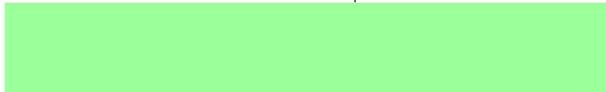
FILE:



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 Real Estate Developer/Commercial and Residential Property Lessor. To employ the beneficiary in what it designates as a Real Estate Property Manager position, the petitioner endeavors to classify her 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 his 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 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 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. 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 Real Estate Property Manager position, and that the position corresponds to Standard Occupational Classification (SOC) code and title 11-9141.00 Property, Real Estate, and Community Association Managers from the *Dictionary of Occupational Titles (DOT)* maintained by the United States Department of Labor (DOL). The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary earned a "Diploma of Junior Specialist" degree in "Tourism/Service Management in Hotels and Tourist Centers" from the [REDACTED] in the Ukraine. No evidence was submitted at that time pertinent to the equivalence of that degree to any U.S. degree.

Counsel also submitted a letter, dated December 22, 2010, with the visa petition, in which he stated:

The responsibilities of the position will include management of all aspects of commercial/residential property leasing for 8 properties that include 320 residential units and 20,000 square feet of commercial space as well as executive suite style offices and virtual office operations. Responsibilities will include marketing, budgeting, hire/fire/manage of the staff (currently 20 employees), as well as manage renovations/construction management for the buildings and real properties. The position will require constant monitoring of the leasing markets for the business to remain current and competitively placed within the high-end, high level position it currently occupies as a provider of premiere space and office related services. The position is a full-time position.

A property and real estate manager, as the position is contemplated by Petitioner and recognized within the industry, oversees the operation of income-producing commercial or residential properties and ensures that real estate investments achieve their expected revenues. The property manager must also understand and comply with pertinent legislation, such as the Americans with Disabilities Act, the Federal Fair Housing Amendment Act, and local fair housing laws as well as assure that the spaces meet local codes.

As to the educational qualifications of the proffered position, counsel stated:

The [person in the proffered position] must be fluent in the fields of accounting, marketing, personnel management, business administration, and the legal aspects of the business enterprise as well as in negotiating and extending contracts on behalf of the business.

Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as support for the proposition that the proffered position requires a bachelor's degree or higher.

On March 21, 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 service center also requested an evaluation of the beneficiary's foreign education and degree in terms of its equivalence to a U.S. education and degree, and evidence that the beneficiary was in a valid immigration status when the petitioner filed the instant visa petition.

In response, counsel submitted (1) an evaluation of the proffered position, and (2) counsel's own letter, dated May 4, 2011. The evaluation states that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in tourism. In his May 4, 2011 letter, counsel again cited the *Handbook* for the proposition that the proffered position requires a bachelor's degree. Counsel stated:

As the majority of employers require a bachelors [sic] degree or above as requirement [sic] to entry [sic] to the position, it follows that the underlying duties for the majority of the positions within this field will require a level of education consistent with the requirements of the H-1b definition of "specialty occupation." In reviewing the [*Handbook*] it appears that the sphere of specialized knowledge appropriate to the position will be within several different disciplines. The obvious focus of the educational requirements are [sic] on business-type fields such as administration, accounting, finance, real estate or public administration. In addition, liberal arts education with appropriate coursework, which no doubt means business/real estate coursework, will suffice.

The director denied the petition on June 8, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

On appeal, counsel again cited the *Handbook* for the proposition that the proffered position requires a bachelor's degree, referring, more specifically, to the chapter entitled, "Property, Real Estate, and Community Association Managers." Paraphrasing the *Handbook*, counsel stated that a bachelor's degree in business administration, accounting, finance, real estate, or public administration would be a sufficient qualification for the proffered position, as would a liberal arts degree, if the subjects studied included coursework relevant to the proffered position, which, he further stated, "no doubt means business/real estate related coursework."

Counsel further stated:

The fact that the appropriate field of specialized knowledge can be gained or found within several different disciplines does not disqualify the position for inclusion of specialty occupation. It simply means that several disciplines have the requisite focus within their sphere of education.

The AAO observes that counsel did not assert that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

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 "Property, Real Estate, and Community Association Managers" chapter, the *Handbook* provides the following description of the duties of those positions:

What Property, Real Estate, and Community Association Managers Do

Property, real estate, and community association managers take care of the many aspects of residential, commercial, or industrial properties. They make sure the property looks nice, operates smoothly, and preserves its resale value.

Property, real estate, and community association managers typically do the following:

- Meet with, and show properties to, prospective renters
- Discuss the lease and explain the terms of occupancy
- Collect monthly fees from tenants
- Inspect all building facilities, including the grounds and equipment
- Arrange for new equipment or repairs as needed to keep up the property
- Pay or delegate paying of bills, such as mortgage, taxes, insurance, payroll, and cleaning
- Contract for trash removal, swimming pool maintenance, landscaping, security, and other services

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.

- Investigate and settle complaints, disturbances, and violations
- Keep records of rental activity
- Prepare budgets and financial reports
- Know and comply with relevant laws such as the Americans with Disabilities Act, the Federal Fair Housing Amendment Act, and local fair housing laws; not discriminate when renting or advertising

When owners of homes, apartments, office buildings, or retail or industrial properties lack the time or expertise needed for the day-to-day management of their real estate properties, they often hire a property or real estate manager or a community association manager. Managers are employed either directly by the owner or indirectly through a contract with a property management firm.

The following are examples of occupational specialties:

Property and real estate managers oversee the operation of income-producing commercial or residential properties and ensure that real estate investments achieve their expected revenues. They handle the financial operations of the property, making certain that rent is collected and that mortgages, taxes, insurance premiums, payroll, and maintenance bills are paid on time. They may oversee financial statements, and periodically report to the owners on the status of the property, occupancy rates, expiration dates of leases, and other matters. When vacancies occur, property managers may advertise the property or hire a leasing agent to find a tenant. They also may suggest to the owners what rent to charge.

Community association managers manage the communal property and services of condominiums, cooperatives, and planned communities through their homeowner or community associations. Like property managers, community association managers collect monthly fees, prepare financial statements and budgets, negotiate with contractors, and help to resolve complaints. Usually hired by a volunteer board of directors of the association, they manage the daily affairs and supervise the maintenance of property and facilities that the homeowners use jointly through the association. Community association managers also help the board and owners comply with association and government rules and regulations.

Onsite property managers are responsible for the day-to-day operation of a single property, such as an apartment complex, an office building, or a shopping center. To ensure that the property is safe and properly maintained, onsite managers routinely inspect the grounds, facilities, and equipment to determine whether maintenance or repairs are needed. They meet with current tenants as needed to handle requests for repairs or to resolve complaints. They also meet with prospective tenants to show vacant apartments or office space. In addition, onsite managers enforce the terms of rental or lease contracts. They make sure that tenants pay their rent on time, follow

restrictions on parking or pets, and follow procedures when the lease is up. Other important duties of onsite managers include keeping accurate, up-to-date records of income and expenditures from property operations and submitting regular expense reports to the senior-level property manager or the owner(s).

Real estate asset managers plan and direct the purchase, sale, and development of real estate properties on behalf of businesses and investors. They focus on long-term strategic financial planning, rather than on the day-to-day operations of the property. In deciding to acquire property, real estate asset managers consider several factors, such as property values, taxes, zoning, population growth, transportation, and traffic volume and patterns. Once a site is selected, they negotiate contracts to buy or lease the property on the most favorable terms. Real estate asset managers review their company's real estate holdings periodically and identify properties that are no longer financially profitable. They then negotiate the sale of or end the lease on those properties.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Property, Real Estate, and Community Association Managers," <http://www.bls.gov/ooh/management/property-real-estate-and-community-association-managers.htm#tab-2> (last visited March 25, 2013).

The duties counsel attributed to the proffered position are consistent with the duties of property and real estate managers as described in the *Handbook*. The AAO finds that the proffered position is a property or real estate manager position as claimed by counsel and as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of property, real estate, and community association manager positions:

How to Become a Property, Real Estate, and Community Association Manager

Although many employers prefer to hire college graduates, a high school diploma or equivalent is enough for some jobs. Some property, real estate, and community association managers have vocational training. Knowledge of property management is required.

Education

Many employers prefer to hire college graduates for property management positions, particularly for offsite positions dealing with a property's finances or contract management. Employers also prefer to hire college graduates to manage commercial properties. A bachelor's or master's degree in business administration, accounting, finance, real estate, or public administration is preferred for these positions. Managers of commercial properties and those dealing with a property's finances and contract management increasingly are finding that they need a bachelor's or master's degree in

business administration, accounting, finance, or real estate management, especially if they do not have much practical experience.

Work Experience

Experience in real estate sales is a good background for onsite managers because real estate sales people also show properties to prospective tenants or buyers.

Licenses

Real estate managers who buy or sell property must be licensed by the state in which they practice. In a few states, property association managers must be licensed. Managers of public housing subsidized by the federal government must hold certifications.

Certification

Many property, real estate, and community association managers get professional certification showing competence and professionalism. Oftentimes, employers require managers to attend formal training programs from various professional and trade real estate associations. Employers send managers to these programs to develop their management skills and expand their knowledge of specialized fields, such as how to run and maintain mechanical systems in buildings, how to improve property values, insurance and risk management, personnel management, business and real estate law, community association risks and liabilities, tenant relations, communications, accounting and financial concepts, and reserve funding. Managers also participate in these programs to prepare themselves for positions of greater responsibility in property management. With related job experience, completing these programs and receiving a satisfactory score on a written exam can lead to certification or the formal award of a professional designation by the sponsoring association.

Obtaining these certifications also can help in getting a job.

Advancement

Many people begin property management careers as assistants, working closely with a property manager. In time, many assistants advance to property manager positions.

Some people start as onsite managers of apartment buildings, office complexes, or community associations. As they gain experience, they may advance to positions of greater responsibility. Those who excel as onsite managers often transfer to assistant offsite property manager positions, in which they can gain experience handling a broad range of property management responsibilities.

The responsibilities and pay of property, real estate, and community association managers increase as these workers manage more and larger properties. Property managers are responsible for several properties at a time. As their careers advance, they gradually are entrusted with larger properties that are more complex to manage. Some experienced managers open their own property management firms.

Important Qualities

Customer-service skills. Property, real estate, and community association managers must provide excellent customer service to keep existing clients and expand their business with new ones.

Interpersonal skills. Because property, real estate, and community association managers interact with people every day, they must have excellent interpersonal skills.

Negotiating skills. Real estate asset managers must be adept at persuading and working with people and good at analyzing data to assess the value of potential future value of a property.

Organizational skills. Property, real estate, and community association managers must be able to plan, coordinate, and direct multiple contractors at the same time, often for multiple properties.

Speaking skills. Property, real estate, and community association managers must understand leasing or renting contracts and must be able to clearly explain and answer any questions a tenant may have.

Tact. Property, real estate, and community association managers must be able to mediate disputes or legal issues between residents, homeowners, or board members.

See *id.* at <http://www.bls.gov/ooh/management/property-real-estate-and-community-association-managers.htm#tab-4> (last visited March 25, 2013). That "many" employers prefer to hire college graduates for property management positions does not indicate that it is a minimum requirement for such positions. That employers "prefer" to hire college graduates to manage commercial properties does not mean that a bachelor's degree is a minimum requirement for commercial property management positions. Even if the *Handbook* indicated that property manager positions, or some type of property manager positions, required a bachelor's degree, a *preference* for a degree in business administration, accounting, finance, real estate, or public administration would not be a *requirement* of a degree in one of those fields. Yet further, even if property manager positions *required* a bachelor's degree, and the degree was *required* to be in business administration, accounting, finance, real estate, or public administration, that would not constitute a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent for two reasons. First, business administration, accounting, finance, real estate, and public administration do not,

collectively, delineate a specific specialty. Second, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

For all of those reasons, the *Handbook* makes clear that property, real estate, and community association manager positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, it does not support the proposition that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of real estate and property management. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that the *Handbook* suggests that some real estate and property management positions do not require such a degree.

Yet 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 property management, 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)(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 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 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 real estate and property management 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 real estate and property manager positions in general. The duties of the proffered position (such as managing commercial and residential properties; marketing and budgeting the rental properties; hiring, managing, and firing staff; and managing renovations) are described in terms of generalized functions generic to real estate and property manager positions in general, and so have not been shown to be more complex or unique than the duties of other real estate and property manager positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. While related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate that an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I real estate, property, or community association manager, an indication that the proffered

position is an entry-level position for an employee who has only a basic understanding of real estate, property, or community association management. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* suggests that some real estate, property, or community manager positions do not require such a degree.

For the reasons explained above, the petitioner has not satisfied 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, 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).²

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. Monitoring leasing markets, overseeing the operation of commercial or residential properties, and complying with pertinent laws are among the duties of property and real estate managers in general. The duties as described contain no indication of a nature so specialized and complex that they require knowledge associated with a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that other real estate and property manager positions require no such degree. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than property and real estate manager positions that are not usually associated with at least a bachelor's

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 a 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").

degree in a specific specialty or its equivalent. 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.

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 whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further, except to note that, in any event, even if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968). An examination of the various descriptions of the duties of the proffered position suggests that those duties are closely related to real estate and property management. The beneficiary, however, has a foreign degree found to be equivalent to a U.S. bachelor's degree in tourism. As such, since evidence was not presented that the beneficiary has at least a bachelor's degree or the equivalent in a specific specialty directly related to the duties and responsibilities of the proffered position, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 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.