



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: APR 02 2013

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

The Form I-129 visa petition states that the petitioner is a recruiting firm. To employ the beneficiary in what it designates as a Recruiter – Entry Level 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 petitioner has demonstrated that 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 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 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. *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.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Recruiter – Entry Level position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1071.00 Employment, Recruitment, and Placement Specialists from the Occupation Information Network (O*NET).¹ This occupational code also corresponds to code 166.267-038 under 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, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in psychology from [REDACTED] in Florida, and a master's degree in organizational behavior from the [REDACTED]. Counsel did not then submit any evidence, or even assert, that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

On September 1, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*, (1) a vacancy announcement the petitioner placed on a popular job search website; (2) another vacancy announcement from another popular job search website; (3) an affidavit, dated November 21, 2011, from the petitioner's president; (4) counsel's own letter, dated November 22, 2011, and (5) a document titled, "Recruiter Job Analysis."

¹ According to O*NET, the title for SOC code 13-1071.00 is now Human Resources Specialist.

The petitioner's vacancy announcement states that it is for a recruiter position and that the position requires a bachelor's degree. It does not state that the position requires a degree in any specific specialty, or the equivalent.

The other vacancy announcement submitted states that it was placed by [REDACTED] for a recruiter. It states that the position requires a "Minimum of a Bachelor's degree from a top university." It does not state that the degree must, or even should, be in any specific specialty.

The November 21, 2011 affidavit from the petitioner's president states that the other vacancy announcement was placed by the petitioner's competitor, [REDACTED]. As to the proffered position, the petitioner's president stated: "The position is far too complex and rigorous to be undertaken by an individual with less than a baccalaureate degree." He also stated that the provided "Recruiter Job Analysis" document describes the proffered position and its complexities.

The Recruiter Job Analysis contains the following description of the duties of the position:

- Interview Applicants in order to obtain information on knowledge, skills and abilities (KSA's) such as work history, education, job skills and training **(daily)**
- Review and assess the qualifications of applicants or eligibility for specific licensing **(daily)**
- Conduct background and reference checks on applicants **(few times a week)**
- Advise Managers and employees on staffing policies and procedures **(few times a week)**
- Inform candidates on operations, benefits, and career opportunities in organizations **(daily)**
- Prepare and maintain employment records **(daily)**
- Establish and maintain good relationships with hiring managers and high level HR personnel to stay updated on hiring and business needs **(weekly)**
- Maintain current knowledge of the Equal Employment Opportunity (EEO) and affirmative action guidelines and laws, such as the Americans with Disabilities Act (ADA) **(daily)**
- Advise management on preparing, organizing and implementing recruiting and retention programs **(weekly)**
- Evaluate recruitment and selection criteria to ensure conformance to professional, statistical and testing standards, recommending revision as necessary **(daily)**
- Perform candidate testing using required tests and measures appropriate for job position **(daily)**
- Manage training for new recruitment hires at [the petitioner] **(as needed)**
- Handle any conflicts that arise with candidates pertaining to petitions. **(weekly)**

That document did not assert that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or that it requires any degree or its equivalent at all. Instead, it only generally describes the knowledge needed for the position.

The director denied the petition on February 28, 2012, 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 in part a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the evidence in the case satisfies several of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A). He stated: "The normal minimum requirement for a New York City recruiter is a baccalaureate or higher degree." He did not, however, state that such positions require a degree *in any specific specialty*.

In fact, neither counsel nor the petitioner has ever alleged that the proffered position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent as required by section 214(i)(1)(B) of the Act. The failure of the petitioner even to allege that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent is a sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

The AAO will 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)(1), 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 DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

In the "Human Resources Specialists" chapter, the *Handbook* provides the following description of the duties of those positions:

Human resources specialists recruit, screen, interview, and place workers. They also may handle human resources work in a variety of other areas, such as employee relations, payroll and benefits, and training.

Duties

Human resources specialists typically do the following:

² 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.

- Consult with employers to identify employment needs and preferred qualifications
- Interview applicants about their experience, education, training, and skills
- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions
- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Many specialists are trained in all human resources disciplines and do tasks throughout all areas of the department. In addition to recruiting and placing workers, these specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are types of human resources specialists:

Employment interviewers work in an employment office and interview potential applicants for job openings. They then refer suitable candidates to employers for consideration.

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll and benefits, training, and administration of human resources policies, procedures, and programs.

Labor relations specialists interpret and administer a labor contract, regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices. They also handle grievance procedures, which are a formal process through which employees can make complaints.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as **personnel recruiters**, find, screen, and interview applicants for job openings in an organization. They search for job applicants by posting job listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Human Resources Specialists," <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-2> (last visited March 25, 2013).

The duties stated in the Recruiter Job Analysis, which the petitioner's president stated describes the proffered position, are entirely consistent with the duties of human resources specialists and more particularly, recruitment specialists, as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a recruitment specialist position as described in the Human Resources Specialists chapter of the *Handbook*.

The *Handbook* states the following about the educational requirements of human resources specialist, including recruitment specialist, positions:

Most positions require that applicants have a bachelor's degree. However, the level of education and experience required to become a human resources specialist varies by position and employer.

Education and Work Experience

Most positions require a bachelor's degree. When hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field.

Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

Some positions, particularly human resources generalists, may require work experience. Candidates often gain experience as human resources assistants, in customer service positions, or in other related jobs.

Id. at <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-4>

The *Handbook* indicates that "most" human resources specialist positions require a bachelor's degree. That does not indicate that a bachelor's degree is a normal requirement for such positions. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of human resources specialist positions require at least a bachelor's degree, it could be said that "most" human resources specialist positions require such a degree. It cannot be found, therefore, that a baccalaureate degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position offered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

Further, the *Handbook* does not indicate that, even among those positions that may require a bachelor's degree, the degree must be in any specific specialty. In fact, the *Handbook* states that "candidates with a high school diploma may qualify" for some positions. In addition, for positions that may require a bachelor's degree, it indicates that an otherwise undifferentiated degree in business could be a preferred and therefore sufficient educational qualification for such positions.

A degree with a generalized title, such as business or business administration, without further specification, is not a degree in a specific specialty. See *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.

Further still, the *Handbook* indicates that several years of work may be an adequate substitute for a degree. There is no indication, however, that those several years of work when combined with a high school diploma would be equivalent to a bachelor's degree in the specific specialty pursuant to the salient regulations. See generally 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D).

For all of those reasons, the *Handbook* does not support the proposition that human resources specialist or recruitment specialist positions in general normally require a minimum of a bachelor's degree in any specific specialty or its equivalent for entry into those occupations in the United States.

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 human resources and recruitment, 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.

Finally, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. 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, especially as the *Handbook* does not suggest that human resources specialist positions require such a degree.

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 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*, or any other authoritative, objective, and reliable resource, reports a standard 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.

Counsel did submit six vacancy announcements. They are for positions entitled Recruiter, Recruiting Coordinator, Junior Executive Recruiter, and Junior Recruiter. The descriptions of the duties of those positions suggest that they are positions similar to the proffered position.

None of those vacancy announcements, however, makes clear that the positions announced require a minimum of a bachelor's degree in a specific specialty or its equivalent. Some state that they require a bachelor's degree or a four-year degree, but do not specify that it must be in any specific specialty. One states that the requisite degree should be in a "related field," but does not state what field or fields the hiring authority would consider to be related to that position. As such, even that vacancy announcement does not contain sufficient information from which the AAO could make an independent judgment that the position announced requires a degree directly related to the duties of the position to satisfy the specialty occupation requirements for H-1B nonimmigrant classification.

Thus, based upon a complete review of the record, the petitioner has not established 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. Further, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and all required a minimum of a bachelor's degree in a specific specialty or its

equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from six announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I employment, recruitment, and placement specialist positions, entry-level positions requiring only a basic understanding of such positions, require a minimum of a bachelor's degree in a specific specialty or its equivalent for entry, the proposition of which is not supported by the *Handbook*.

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 the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains little evidence that would differentiate the work of the proffered position from the work of other human resources specialist positions. The duties of the proffered position (such as interviewing applicants; reviewing and assessing their qualifications; conducting background checks; advising managers on staffing policies and procedures; describing operations, benefits, and career opportunities to candidates; and preparing and maintaining personnel records) are described in terms of functions common to human resources specialist positions in general, and so have not been

³ 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 six job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of recruiter - entry level for a twenty-person recruitment firm 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 does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

shown to be more complex or unique than the duties of other human resources specialist positions, an occupational category for which the *Handbook* does not indicate a minimum entry requirement of 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 certified for a Level I Employment, Recruitment, and Placement Specialist, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the duties of such a position. 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 bachelor's degree or its equivalent in a specific specialty directly related to the duties of the proffered position, especially as the *Handbook* suggests that human resources specialist positions do not require such a degree as a minimum for entry into the occupation.

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

Next, the AAO will address the alternative requirement 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 position.⁴

The vacancy announcement the petitioner placed for a recruiter position states that the position requires a bachelor's degree, but not that the degree must be in any specific specialty, nor even that it must be within any range of subjects.

In his November 21, 2011 affidavit, the petitioner's president stated that the proffered position requires a bachelor's degree but, again, did not allege that the degree must be in any specific specialty or even in within any specified array of specialties.

In his March 28, 2012 affidavit, the petitioner's president stated that a degree in science, math, engineering, or computer science would not satisfy the petitioner's degree requirement, but yet again, did not otherwise define the list of subjects that would be considered necessary. Although the petitioner's president did indicate that individuals with degrees in psychology, business administration, labor relations, and human resource administration are sought after as they are

⁴ 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").

"better and more qualified," she stops short of stating that only persons with such degrees or their equivalent could perform the job duties of the proffered position. Even if she did and even if such an assertion had been corroborated by the evidence of record, the requirement of a general degree in business or business administration without more is, again, insufficient to qualify such a position as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Further, an organizational chart in the record shows that the petitioner employs four Accounting/Finance Recruiters and two Administrative Recruiters, in addition to employing the beneficiary in a position denoted, on that chart, as an "Admin/HR Recruiter" position. Counsel provided no evidence pertinent to the educational qualifications of the petitioner's other six recruiter positions.

The record contains no evidence pertinent to anyone the petitioner has ever previously hired to fill the proffered position or any similar position, nor is there any other evidence in the record that suggests that the petitioner normally requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent for the proffered position. The petitioner has not, therefore, satisfied 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 bachelor's 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. The duties of the proffered position (such as establishing and maintaining good relationships with hiring managers and high level human resources personnel; maintaining current knowledge of laws pertinent to recruitment and hiring; advising management on preparing, organizing and implementing recruiting and retention programs; evaluating recruitment and selection criteria; testing candidates; managing training for new hires; and handling any conflicts that arise with candidates) do not contain any indication of a nature so specialized and complex that they require knowledge usually associated with at least a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of human resources specialist or recruitment specialist positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I Employment, Recruitment, and Placement Specialist position, a position for a beginning level employee with only a basic understanding of such a position. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to employment, recruitment, and placement specialist positions, especially as the *Handbook* indicates that human resources specialist positions do not require such a degree.

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For the reason discussed above, the petitioner has not 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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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