

(b)(6)



U.S. Citizenship
and Immigration
Services

DATE: **AUG 26 2013** OFFICE: VERMONT SERVICE CENTER

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: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg" with a stylized flourish.

Ron Rosenberg
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 describes itself as a "beauty supplies, accessories wholesaler" with 8 employees, established in 2001. To continue to employ the beneficiary in what it designates as an Operations Analyst 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, the petitioner 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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and the petitioner's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as 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, a proposed 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and 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 an operations analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1111, Management Analysts from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in mechanical engineering from [REDACTED]. The record contains no evaluation of the beneficiary's education and degree in terms of a U.S. equivalent, an omission that will be addressed below.

The petitioner also submitted a letter of support, dated July 12, 2012, from its president, which contains the following description of the duties of the proffered position:

- Analyze, implement and manage business, sales and purchasing operations.
- Manage our client portfolio consisting of beauty salons and retailers.
- Negotiate purchase contracts with foreign distributors analyze product specifications such as price, chemical and/or natural compositions, product expiration dates, delivery/storage restrictions and warranty conditions.
- Maintain and apply import tariffs, taxes and custom fees and restrictions.
- Identify unexpected market demand for certain products and manages purchasing operations to meet demand in a profitable and expeditious manner.
- Determine and apply analytical formulations in order to study statistical data from sales, currency exchange rates and operating expenses to forecast and evaluate business activity.

The petitioner also stated:

[The beneficiary] earned a bachelor degree in mechanical engineering from [REDACTED] in February 2003. From July 7, 2003 to November 19, 2008, [the beneficiary] was employed by [REDACTED] [He] was in charge of negotiating contracts with providers determining schedule

delivery of products, brands, and specifications. He analyzed reports and purchasing statistics determining market tendencies, amongst other specialized duties. [The beneficiary's] academic credentials combined with his specialized work experience is equal to a U.S. bachelor degree in business administration.

On August 22, 2012, 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, the petitioner submitted a letter, dated October 2, 2012, from its president and two evaluations of the proffered position.

In his October 2, 2012 letter, the petitioner's president reiterated the duty description previously provided, except that he eliminated the duty pertinent to maintaining and applying import tariffs, taxes, and customs fees and restrictions.

The two evaluations provided both state that the proffered position requires a minimum of a bachelor's degree in business administration or the equivalent.

The director denied the petition on November 13, 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 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, the petitioner submitted a letter, dated December 10, 2012, from its president, and two letters from officers of other beauty supply wholesalers. Both of the industry letters state that hiring an operations analyst with a bachelor's degree in business administration or the equivalent is standard in their industry.

In his December 10, 2012 letter, the petitioner's president reiterated the description of duties he provided in response to the RFE, and cited the two industry letters as evidence that the proffered position qualifies as a specialty occupation position. He noted that the instant visa petition is a petition to extend the beneficiary's current H-1B status with the petitioner working in the same position, and cited the petitioner having previously employed the beneficiary in the proffered position as evidence that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

The petitioner's president also cited the Educational and Training Code of "4" and the Specific Vocational Preparation (SVP) ranking of 7.0 < 8.0 accorded to management analyst positions by O*NET OnLine as evidence that they require a minimum of a bachelor's degree.

As a preliminary matter, the petitioner's claim that a bachelor's degree in "business administration or a related field" is a minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. Even if such a

requirement were established by the evidence of record, the requirement of a bachelor's degree in business administration would be inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

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

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

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.

The petitioner claimed in the LCA that the proffered position corresponds to SOC code and title 13-1111, Management Analysts from O*NET. The petitioner's president claims, on appeal, that the inclusion of the proffered position within that occupation demonstrates that it requires a bachelor's degree and is therefore a specialty occupation, because O*NET assigns management analyst positions an SVP ranking of $7.0 < 8.0$ and the Foreign Labor Certification Online Wage Library (OWL) accords it an Educational and Training Code of "4."

However, O*NET indicates that a ranking of SVP 7 indicates that an occupation requires "Over 2 years up to and including 4 years" of preparation, and SVP 8 indicates a requirement of "Over 4 years up to and including 10 years" of preparation. An SVP rating of $7.0 < 8.0$, then, indicates that a position may require as little as two years of preparation. Further, an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience. Thus, an SVP rating of $7.0 < 8.0$ does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned.²

Additionally, reference to the Foreign Labor Certification Online Wage Library's explanation of Education and Training Codes at <http://www.flcdatacenter.com/TrainingCodes.aspx>, maintained under contract with the DOL, shows that Education and Training Code 4 is defined as:

Work Experience, plus a Bachelor's or Higher Degree
Most occupations in this category are managerial occupations that require experience in a related non-managerial position.

While inclusion in Education and Training Code 4 indicates that such positions require a minimum of a bachelor's degree, it does not indicate that they require a minimum of a bachelor's degree *in a specific specialty* or its equivalent, and does not, therefore, indicate that a position qualifies as a specialty occupation position by virtue of its inclusion in that Education and Training Code.

The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Management Analysts," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of management analysts:

What Management Analysts Do

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.

² For an explanation of SVP levels, see OWL at <http://www.flcdatacenter.com/svp.aspx>.

Duties

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Management Analysts," [http:// http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2](http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2) (last visited August 20, 2013).

The *Handbook* appears to contemplate, in general, management analysts working on a contract basis with organizations that need a specific problem solved, and then leaving when they have solved it. Further, the description in the *Handbook* does not suggest that the services of a management analyst would be useful in a wholesale beauty supply company with eight employees. The record does not demonstrate that the petitioner's business operations are sufficiently complex to employ a management analyst. The AAO believes that, in the petitioner's business, the duties described would be performed by an Administrative Services Manager, as described in the *Handbook*. However, the AAO will assume, *arguendo*, that the proffered position is a management analyst position, so as to reach the petitioner's assertions as to those positions.³

The *Handbook* states the following about the educational requirements of management analyst positions:

How to Become a Management Analyst:

Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.

Education

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

Certification

³ The AAO observes, however, that analyzing the proffered position as an Administrative Services Manager position would not have improved the visa petition's prospects for approval.

[REDACTED] offers the [REDACTED] designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the [REDACTED] Code of Ethics. Management consultants with a [REDACTED] designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

Work Experience

Many analysts enter the occupation with years of work experience. Organizations that specialize in certain fields try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

Advancement

As consultants gain experience, they often take on more responsibility. At the senior level, consultants may supervise teams working on more complex projects and become more involved in seeking out new business. Those with exceptional skills may eventually become partners in their consulting organization and focus on attracting new clients and bringing in revenue. Senior consultants who leave their consulting company often move to senior management positions at non-consulting organizations.

Important Qualities

Analytical skills. Management analysts must be able to interpret a wide range of information and use their findings to make proposals.

Communication skills. Management analysts must be able to communicate clearly and precisely in both writing and speaking. Successful analysts also need good listening skills to understand the organization's problems and propose appropriate solutions.

Interpersonal skills. Management analysts must work with managers and other employees of the organizations where they provide consulting services. They should work as a team toward achieving the organization's goals.

Problem-solving skills. Management analysts must be able to think creatively to solve clients' problems. Although some aspects of different clients' problems may be similar, each situation is likely to present unique challenges for the analyst to solve.

Self-confidence. Management analysts work under fairly high pressure. They should be confident and self-motivated when working with clients.

Time-management skills. Management analysts often work under tight deadlines and must use their time efficiently to complete projects on time.

Id. at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited August 20, 2013).

The *Handbook* makes clear that management analyst positions do not require a minimum of a bachelor's degree *in a specific specialty* or its equivalent for entry into the occupation, as it indicates that a general degree in business is sufficient for entry into a management analyst position. As was explained above, 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, supra.* The requirement of such a degree is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the *Handbook* indicates that a degree in management, accounting, marketing, economics, statistics, computer and information science, or engineering may be a sufficient educational qualification for a management analyst position. That wide array of fields does not delineate a specific specialty. A requirement of any degree from such a wide array is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, engineering, like business administration, is too general to delineate a specific specialty. The field of engineering is a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as engineering, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates, supra.* That the *Handbook* indicates that an otherwise unspecified degree in engineering may be a sufficient educational qualification for a management analyst position is yet another way in which the *Handbook* falls short of indicating that management analyst positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. That a degree in any field of engineering may be a sufficient educational qualification for a management analyst position is another indication that management analyst positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet 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 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. Even if the proffered position had been demonstrated to be a management analyst position, the classification of the proffered position as a Level I management analyst position would 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* indicates that some management analyst positions do not require such a degree.

Additionally, 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 business management, but do not establish any particular level of formal, postsecondary 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.

As stated earlier, 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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 did submit two letters from people in the petitioner's industry. However, they both indicate that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for an operations analyst position. As was explained above, a requirement of an otherwise unspecified degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Those letters do not support the proposition that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how 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 particular position here.

Therefore, even if the proffered position were demonstrated to be a management analyst position, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be 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.⁴

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.

The petitioner's president observed that the petitioner filed a previous H-1B visa petition for the beneficiary, which was approved, and that the petitioner has been employing the beneficiary pursuant to that visa petition. The petitioner's president cited that employment of the beneficiary as evidence that the evidence satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

The petitioner stated, on the instant visa petition, that it was established in 2001. The record contains copies of the petitioner's 2010 and 2011 tax returns, which indicate, more specifically, that the petitioner incorporated on January 20, 2001. The previous visa petition to which the petitioner's president referred was approved for employment from October 1, 2009 to September 30, 2012. The petitioner has provided no evidence pertinent to whomever worked in the proffered position, or performed the duties of the proffered position, from January 20, 2001 to October 1, 2009, and no information pertinent to the educational qualifications of such person or people. Without such evidence, the petitioner cannot be said to have shown that it *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, provided evidence that satisfies 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. The petitioner's president has stated that, in the proffered position the beneficiary would, for instance, analyze and manage the petitioner's sales and purchasing operations, manage the petitioner's client portfolio, negotiate contracts, and study statistical data to evaluate and forecast the petitioner's business activity. However, those duties are explained without sufficient detail to demonstrate that, in the context of the petitioner's business, those duties would be so specialized and complex that they would require knowledge associated with a minimum of 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 management analyst position, a position for a beginning level employee with only a basic understanding of management analysis. 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

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").

specialty or its equivalent, directly related to management analysis, especially as the *Handbook* indicates that some management analyst positions require no such degree.

For the reasons 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.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

Evidence shows that the beneficiary has a bachelor's degree in mechanical engineering from a university in the Republic of Korea. The petitioner's president states in his July 12, 2012 letter that the beneficiary's education and his experience, considered together, are equivalent to a U.S. bachelor's degree in business administration. That statement by the petitioner's president makes clear that the petitioner intended to rely on the beneficiary's education and employment experience, considered together, to demonstrate that the beneficiary is qualified for the proffered position.

If the petitioner will rely on a combination of education and experience to show that the beneficiary is qualified to work in a specialty occupation position, the petitioner is obliged to provide "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." See 8 C.F.R. § 214.2(h)(4)(iii)(D). The record contains no evaluation from anyone competent, pursuant to that regulation, to evaluate the beneficiary's education and employment experience, considered together, to determine its equivalence to a U.S. degree. As such, if the proffered position requires a minimum of a bachelor's degree in a specific specialty, other than mechanical engineering, or its equivalent, then the evidence provided cannot show that the beneficiary is qualified to work in the proffered position.

Further, even if the petitioner intended to rely solely on the beneficiary's foreign bachelor's degree in mechanical engineering, the petitioner would be obliged to provide "an evaluation of [the beneficiary's] education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials." The record contains no such evaluation from "a reliable credentials evaluation service which specializes in evaluating foreign educational credentials."

Because the petitioner has not demonstrated that the beneficiary is qualified to work in a specialty occupation either by reference to his education alone, or by reference to his education and employment experience, considered together, the petitioner has not demonstrated that the beneficiary is qualified to work in any specialty occupation.

Yet further, even if the petitioner had demonstrated that the beneficiary has the equivalent of an otherwise unspecified bachelor's degree in business administration, as the petitioner's president alleged, that would be insufficient to show that he is qualified to work in any specialty occupation position. As was explained above, an otherwise unspecified bachelor's degree in business administration is not a degree in a specific specialty. Such a degree does not, therefore, qualify one to work in any specialty occupation position.

For all of the reasons discussed, the petitioner has not demonstrated that the beneficiary is qualified to work in any specialty occupation position. The petition must be denied for this additional reason.

As a final note, the AAO recognizes the petitioner's claim on appeal that (1) it previously filed an H-1B petition on behalf of the beneficiary for the proffered position, and (2) the previously filed H-1B petition was approved. It must be noted that the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). If the previous nonimmigrant petition was approved based on the same description of duties and assertions that are contained in the current record, it would constitute material and gross error on the part of the director. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved a nonimmigrant petition on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.