

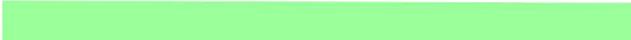


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **FEB 01 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 

Beneficiary: 

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

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. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an "Outdoor Living Furniture Manufacturer and Importer" with 14 employees. It seeks to employ the beneficiary in what it designates as a part-time "Bilingual Purchasing Specialist" position and 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 on the grounds that the petitioner failed to establish that the proffered position qualifies for classification as a specialty occupation.

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

The issue before the AAO is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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 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, or its equivalent, as the minimum for entry into the occupation, as required by the Act.

In support of the Form I-129, the petitioner submitted, *inter alia*, the following: (1) the petitioner's support letter dated September 30, 2010; (2) a certified Labor Condition Application (LCA); and (3) an "Employee List."

In its support letter, the petitioner stated that "[a]s a result of [its] growth and development, [it has] encountered various problems in managing purchasing orders and preparation of business contracts. Therefore, there is an intensifying need for a bilingual Purchasing Specialist to meet this business need." The petitioner provided the following list of duties of the proffered position:

1. Administrate, monitor and coordinate ongoing furniture raw materials purchasing orders, business contracts and transactions with existing outdoor furniture raw materials suppliers in foreign countries and U.S. customers. (20%)
 - a) Coordinating all furniture products for pre-execution, execution, and post-project execution, including all purchase orders, proactive expedites and turnaround progress reports.
 - b) Communication with existing furniture parts and raw materials suppliers in China to ensure that product style, design specifications, color, and size meet the customers' requirements.
 - c) Responsible for all business transactions, including ordering, purchasing, shipping, and handling.
2. Assisting [the petitioner] in the selection, negotiation and purchasing of outdoors [sic] furniture products from manufacturers or suppliers in China at the most favorable price consistent with quality and design requirements. (20%)
 - a) Negotiate change orders evaluating contractor and vendor claims.
 - b) Perform cost and market analysis of proposals and bids to determine pricing.
 - c) Clarification of contract terms, conditions, and intent.
3. Assist the management in establishing strategic contracts with suppliers and vendors in China. Develop draft of contract, subcontract and agreement. Make sure all the contracts adhere to company, local and international regulations. (10%)
4. Compile all relevant data and prepare report with statistical figures and evaluation of the market demands for each style of flooring product in the domestic market. (15%)

- a) Evaluate the current market trends and consumers' buying habit through examination of the data gathered.
 - b) Examine and evaluate statistical data to forecast future market trends in the U.S. flooring industry.
5. Analyze and monitor purchasing records and economic conditions. Prepare monthly purchasing contract and agreement reports, which include domestic and overseas purchase amounts, a detail line chart to show the purchasing trend of each month and existing business contracts and transaction. (15%)
 6. Data entry and update purchasing, financial and sales information into database system on a weekly basis, including existing and new suppliers' financial background, product variety and quality, information on new style products, sales volume and inventory. Make recommendations to the management about their decisions on production development, market development and business expansion. (20%)

The petitioner also stated that "as with the rest of [its] Purchasing staff," it requires "at least a bachelor's degree in a [sic] Business Administration or related majors such as marketing and economics" for the proffered position.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on February 1, 2011. The petitioner was asked to submit additional documentation to establish that the proffered position qualifies for classification as a specialty occupation as well as evidence pertaining to the beneficiary's status. The director outlined the specific evidence to be submitted.

In response to the director's RFE, the petitioner submitted *inter alia*: (1) an undated "affidavit" signed by [redacted] manager of [redacted] (2) a letter submitted to USCIS in support of an H-1B petition filed on behalf of [redacted] by [redacted] dated November 3, 2009; (3) a letter submitted to USCIS in support of an Form I-140, Immigrant Petition for Alien Worker (Form I-140) filed on behalf of [redacted] by [redacted] dated December 21, 2010; (4) a copy of a job advertisement posted in an unknown publication for a wholesale and retail purchasing specialist position with [redacted] (5) an undated "affidavit" signed by [redacted] owner of [redacted]; (6) a letter submitted to USCIS in support of a Form I-140 filed on behalf of [redacted] by [redacted] dated March 22, 2007; and (7) a letter submitted to USCIS in support of an H-1B petition filed on behalf of [redacted] by [redacted] dated March 19, 2007.

The petitioner also submitted a letter dated March 12, 2011. In that letter, the petitioner provided the following revised job description:

1. Assisting [the petitioner] in the selection, negotiation and purchasing of outdoor patio furniture products from manufacturers or suppliers in China at the most

favorable price consistent with quality and design requirements. (20%)

- a) Negotiate change orders evaluating contractor and vendor claims.
 - b) Perform cost and market analysis of proposals and bids to determine pricing.
 - c) Clarification of contract terms, conditions, and intent.
 - d) Notify the factory the shipping companies' information to book the space.
 - e) Communicate with the shipping company the estimated arrival date of the container so that the customer will be acknowledged the date of receiving.
2. Administrate, monitor and coordinate ongoing furniture raw materials purchasing orders, business contracts and transactions with existing outdoor furniture raw materials suppliers in foreign countries and U.S. customers. (20%)
- a) Coordinating all furniture products for pre-execution, execution, and post-project execution, including all purchase orders, proactive expedites and turnaround progress reports.
 - b) Communication with existing furniture parts and raw materials suppliers in China to ensure that product style, design specifications, color, and size meet the customers' requirements.
 - c) Responsible for the entire customer Sales Order Acknowledgement with the detail shipping date, business transactions, including ordering, purchasing, shipping, and handling.
3. Assist the management in establishing strategic contracts with suppliers and vendors in China. Develop draft of contract, subcontract and agreement. Make sure all the contracts adhere to company, local and international regulations. (10%)
4. Compile all relevant data and prepare report with statistical figures and evaluation of the market demands for each style of outdoor patio furniture product in the domestic market. (15%)
- a) Evaluate the current market trends and consumers' buying habit through examination of the data gathered.
 - b) Examine and evaluate statistical data to forecast future market trends in the U.S. outdoor patio furniture industry.
 - c) Analyze warehouse inventory stock status report and track all items for quantity on hand, quantity available, quantity on S/O and quantity on P/O from Sage Peachtree Accounting software.
 - d) Will be responsible of [sic] tracking Sales orders every day.
 - e) Feedback the product quality problem from the customers.
5. Analyze and monitor purchasing records and economic conditions. Prepare monthly purchasing contract and agreement reports, which include domestic and overseas purchase amounts, a detail line chart to show the purchasing trend of each month and existing business contracts and transaction. (15%)

6. Data entry and update purchasing, financial and sales information into Sage Peachtree Accounting software on a weekly basis, including existing and new suppliers' financial background, product variety and quality, information on new style products, sales volume and inventory. Make recommendations to the management about their decisions on production development, market development and business expansion. (20%)

The petitioner also stated that the duties of the proffered position are "specialized and complex." Citing to the Occupational Information Network (O*NET) and its "business necessity," the petitioner contended that the proffered position qualifies for classification as a specialty occupation.

Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the proffered position's duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on April 1, 2011. The petitioner submitted an appeal of the denial of the H-1B petition on April 29, 2011.

On appeal, the petitioner advances several arguments to support its contention that the proffered position qualifies for classification as a specialty occupation. First, the petitioner contends that although the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* "lists no degree requirement in a specialized area for employment as a wholesale or retail buyer," the AAO has "held that such positions are H-1B level occupation [sic] under normal circumstances." Second, the petitioner asserts that "[t]he job offered should be qualified as specialty occupation based upon the unique [sic] of the business and [the petitioner's] expansion plan." Third, the petitioner claims that two companies in a similar industry have the "**same degree requirement in parallel positions**"; thus, the petitioner's minimum degree requirement is "a standard minimum requirement in the similar industry." Fourth, the petitioner claims that it has satisfied the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) by submitting the diploma of [REDACTED]. Lastly, the petitioner asserts that the knowledge required by the proffered position is "very much complicated and it is impossible for the incumbent to have this ability to perform this complicate [sic] job duties without developing this knowledge from studying MBA academic programs."

The petitioner submitted, *inter alia*, a "Job Posting Notice" by [REDACTED] for a "Purchasing Specialist" position.

As a preliminary matter, the petitioner's claim that a bachelor's degree in business administration is a minimum requirement for entry into the proffered position is inadequate to establish that the proposed 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 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,

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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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 at 147.¹

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

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 *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

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 (Comm'r 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

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.² The petitioner claims in the LCA that the proffered position falls under the occupational category "Purchasing Agents." The *Handbook* describes the occupation of "Purchasing Agents" in its chapter on "Purchasing Managers, Buyers, and Purchasing Agents" which states the following:

What Purchasing Managers, Buyers, and Purchasing Agents Do

Purchasing managers, buyers, and purchasing agents buy products for organizations to use or resell. They evaluate suppliers, negotiate contracts, and review product quality.

Duties

Purchasing managers, buyers, and purchasing agents typically do the following:

- Evaluate suppliers based on price, quality, and delivery speed
- Interview vendors and visit suppliers' plants and distribution centers to examine and learn about products, services, and prices
- Attend meetings, trade shows, and conferences to learn about new industry trends and make contacts with suppliers
- Analyze price proposals, financial reports, and other information to determine reasonable prices
- Negotiate contracts on behalf of their organization
- Work out policies with suppliers, such as when products will be delivered
- Meet with staff and vendors to discuss defective or unacceptable goods or services and determine corrective action
- Evaluate and monitor contracts to be sure that vendors and supplies comply with the terms and conditions of the contract and to determine need for changes
- Maintain and review records of items bought, costs, deliveries, product performance, and inventories

Purchasing managers, buyers, and purchasing agents buy farm products, durable and nondurable goods, and services for organizations and institutions. They try to get the best deal for their organization—the highest quality goods and services at the lowest cost. They do this by studying sales records and inventory levels of current stock, identifying foreign and domestic suppliers, and keeping up to date

² The director's decision referred to the 2010-2011 edition of the *Handbook*. All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

with changes affecting both the supply of, and demand for, products and materials.

Purchasing agents and buyers consider price, quality, availability, reliability, and technical support when choosing suppliers and merchandise. To be effective, purchasing agents and buyers must have a working technical knowledge of the goods or services to be bought.

Evaluating suppliers is one of the most critical functions of a purchasing manager, buyer, or purchasing agent. Many organizations now run on a lean manufacturing schedule and use just-in-time inventories, so any delays in the supply chain can shut down production and potentially cost the organization customers.

Purchasing managers, buyers, and purchasing agents use many resources to find out all they can about potential suppliers. They attend meetings, trade shows, and conferences to learn about new industry trends and make contacts with suppliers.

They often interview prospective suppliers and visit their plants and distribution centers to assess their capabilities. For example, they may discuss the design of products with design engineers, quality concerns with production supervisors, or shipping issues with managers in the receiving department.

They must make certain that the supplier can deliver the desired goods or services on time, in the correct quantities, and without sacrificing quality. Once they have gathered information on suppliers, they sign contracts with suppliers who meet the organization's needs, and they place orders.

Buyers who purchase items to resell to customers largely determine which products their organization will sell. They need to be able to predict what will appeal to their customers. If they are wrong, they could jeopardize the profits and reputation of their organization.

The following are examples of types of purchasing managers, buyers, and purchasing agents:

Wholesale and retail buyers purchase goods for resale to consumers. Examples of these goods are clothing and electronics. Purchasing specialists who buy finished goods for resale are commonly known as *buyers* or *merchandise managers*. Buyers who work for large organizations usually specialize in one or two lines of merchandise (for example, men's clothing or women's shoes or children's toys). Buyers who work for small stores may be responsible for buying everything the store sells.

Purchasing agents and buyers of farm products buy agricultural products for further processing or resale. Examples of these products include grain, cotton, and tobacco.

Purchasing agents, except wholesale, retail, and farm products buy items for the operation of an organization. Examples of these items include paper, pens, and industrial equipment.

Purchasing managers plan and coordinate the work of buyers and purchasing agents, and they usually handle more complicated purchases. Those employed by government agencies or manufacturing firms usually are called *purchasing directors, managers, or agents*; sometimes they are known as *contract specialists*. Some purchasing managers, called *contract or supply managers*, specialize in negotiating and supervising contracts for supplies.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Purchasing Managers, Buyers, and Purchasing Agents," <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-2> (last visited January 29, 2013).

A review of the *Handbook's* education and training requirements for this occupation, however, indicates that, as a category, it does not normally require a bachelor's or higher degree in a specific specialty or its equivalent for entry into the position. While the *Handbook* reports that a baccalaureate degree is "usually" the minimum educational requirement for a purchasing manager position, it does not indicate that the degrees held by such workers must be in a specific specialty, as would be required for the occupational category to be recognized as a specialty occupation. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Purchasing Managers, Buyers, and Purchasing Agents," <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited January 29, 2013). More specifically, the *Handbook's* discussion in the "How to Become a Purchasing Manager, Buyer, or Purchasing Agent" section of its chapter on "Purchasing Manager, Buyer, or Purchasing Agent," does not specify a minimum requirement of a bachelor's degree in any specific specialty or its equivalent for entry into the occupation.

Moreover, it also indicates that some positions in manufacturing firms prefer, as opposed to require, degrees in a general field, such as business. This conclusion does not lead to the finding that this occupation normally requires a bachelor's or higher degree *in a specific specialty* or its equivalent for entry into the occupation. In addition, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as business and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is an amalgamation of these different specialties.³ Section 214(i)(1)(B) (emphasis

³ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a

added). This is something the petitioner, who has the burden of proof in this proceeding, has simply failed to do. Finally, the *Handbook* indicates that some facilities hire individuals who possess on-the-job experience in lieu of formal education. The *Handbook* states in relevant part:

Buyers and purchasing agents need a high school diploma and on-the-job training. Purchasing managers need a bachelor's degree and work experience as a buyer or purchasing agent.

Education

Educational requirements usually vary with the size of the organization. A high school diploma is enough at many organizations for entry into the purchasing agent occupation, although large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

Purchasing managers usually have at least a bachelor's degree and some work experience in the field. A master's degree may be required for advancement to some top-level purchasing manager jobs.

Training

Buyers and purchasing agents typically get on-the-job training for more than 1 year. During this time, they learn how to perform their basic duties, including monitoring inventory levels and negotiating with suppliers.

Certification

There are several recognized credentials for purchasing agents and purchasing managers. These certifications involve oral or written exams and have education and work experience requirements.

The Certified Professional in Supply Management (CPSM) credential covers a wide scope of duties that purchasing professionals do. The exam requires applicants to have a bachelor's degree and 3 years of supply management experience.

The American Purchasing Society offers two certifications: the Certified Purchasing Professional (CPP) and Certified Professional Purchasing Manager

minimum entry requirement, degrees in more than one closely related specialty. As just indicated, this includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable field of study is directly related to the duties and responsibilities of the particular position.

(CPPM). These certifications require at least 3 years of purchasing-related experience or a combination of education and experience.

The Association for Operations Management (APICS) offers the Certified Supply Chain Professional (CSCP) credential.

The National Institute of Governmental Purchasing offers workers in federal, state, and local government, two certifications: Certified Professional Public Buyer (CPPB) and Certified Public Purchasing Officer (CPPO).

Work Experience

Purchasing managers typically must have at least 5 years of experience as a buyer or purchasing agent. At the top levels, purchasing manager duties may overlap with other management functions, such as production, planning, logistics, and marketing.

Advancement

An experienced purchasing agent or buyer may become an assistant purchasing manager before advancing to purchasing manager, supply manager, or director of materials management.

Important Qualities

Analytical skills. When evaluating suppliers, purchasing managers and agents must analyze their options and choose a supplier with the best combination of price and quality.

Decision-making skills. Purchasing managers and agents must have the ability to make informed and timely decisions in choosing products that will sell.

Math skills. Purchasing managers and agents must possess basic math skills. They must be able to compare prices from different suppliers to ensure that their organization is getting the best deal.

Negotiating skills. Purchasing managers and agents often must negotiate the terms of a contract with a supplier. Interpersonal skills and self-confidence, in addition to knowledge of the product, can help lead to successful negotiation.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Purchasing Managers, Buyers, and Purchasing Agents," <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited January 29, 2013).

It is noted that the petitioner concedes and is thereby in agreement with the AAO that the *Handbook* does not indicate that a bachelor's degree in a specific specialty is a minimum entry requirement for this occupational category; however, the petitioner's alternative argument that the proffered position should be found to qualify for classification as a specialty occupation based upon prior AAO decisions is unsupported by the record.

Specifically, copies of these allegedly approved petitions were not included in the record. If a petitioner wishes to have unpublished service center or AAO decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

Again, the petitioner in this case failed to submit copies of these petitions and their respective approval notices. As the record of proceeding does not contain any evidence of the allegedly approved petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the director nor the AAO was required to request and/or obtain a copy of the allegedly approved petitions cited by the petitioner.

Nevertheless, even if this evidence had been submitted and even if it had been determined that the facts in those cases were analogous to those in this proceeding, those decisions are not binding on USCIS. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. 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). 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).

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 the nonimmigrant petitions, 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).

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* 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.⁴ Furthermore and for the reasons discussed below, the petitioner's reliance upon the job vacancy

⁴ The petitioner did submit an affidavit from the owner of [REDACTED] claiming that this company requires at least an "MBA degree" for a purchasing specialist position. As explained above, however, the requirement of a general degree in business administration, 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 at 147. Therefore, this evidence does not support a finding that the petitioner has satisfied the first prong of the regulatory criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Moreover, the approval by USCIS of an I-140 immigrant petition for an advanced degree professional position filed by [REDACTED] is also irrelevant to whether the proffered position in this matter qualifies as an H-1B nonimmigrant specialty occupation pursuant to 101(a)(15)(H)(i)(b) of the Act. The AAO notes that the current, primary, and fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or its equivalent, to be *in a specific specialty*. Thus and by way of example, while "teachers in elementary or secondary schools" are specifically identified as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it separately meets the definition of that term at section 214(i)(1) of the Act.

advertisements it submitted is misplaced.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate, evidentiary basis to corroborate such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of two advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions. Specifically, the petitioner submitted advertisements for the following positions:

1. Purchasing Specialist for Modus Furniture International requiring a "Bachelor [sic] degree in Communication or Mass Communication or English . . . "; and
2. Wholesale and Retail Purchasing Specialist for T.H. Sunglasses Corp requiring a "Master [sic] degree in Business Administration"

The documentation provided does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.⁵ Specifically, the information contained in the advertisements is so limited that it

⁵ 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 just two job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. 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 bilingual purchasing specialist for an outdoor living furniture manufacturer and importer required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the 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.

cannot be determined that the advertised positions are parallel positions and that the advertising organizations are similar to the petitioner. For instance, as the petitioner has not provided any probative evidence to demonstrate that the advertised positions are parallel to the proffered position, it has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. Furthermore, it cannot be determined where and when the job advertisements were posted. In addition, there is insufficient evidence to establish how either Modus Furniture International or T.H. Sunglasses Corporation is similar to the petitioner. While the former appears to be in the same industry as the petitioner, the latter by its very name does not appear to even be within the same industry as the petitioner. Lastly, as previously explained, T.H. Sunglasses Corporation's apparent requirement of a master's degree in business administration, 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 at 147.

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." The petitioner claims that the duties of the proffered position are complex. However, the record does not demonstrate any complexity or unique nature of the proffered position that distinguishes it from similar but non-degreed or non-specialty degreed employment under the second prong of the criterion. 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 or its equivalent.

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 it claims are so complex and unique. While a few related courses may be beneficial, or even required, to perform certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate degree in a specific specialty, or its equivalent is required to perform the duties of the particular position here proffered.

Therefore, 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 social science coursework, not necessarily leading to a degree in a specific specialty, acceptable for purchasing agent positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than purchasing agents or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of bilingual purchasing specialist is so complex or unique relative to other positions in the occupation 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).

Next, the record of proceeding does not establish that the petitioner normally requires a bachelor's or higher degree in a specific specialty or its equivalent for the proffered position. While the petitioner claims that it has previously hired a purchasing specialist, [REDACTED] with a bachelor's degree in economics, [REDACTED] credentials are irrelevant as the petitioner itself now claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. In any event, previously hiring only one employee with a bachelor's degree in economics does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree or the equivalent in a specific specialty for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁶

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than purchasing agent positions that are not usually associated with at least a baccalaureate degree in a specific specialty.⁷

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

⁷ The petitioner argues on appeal that the proffered position's duties are complex and unique. Again, however, the duties as described lack sufficient specificity to distinguish the proffered position from other purchasing agent positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, it is noted that 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. Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level

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 notes that the O*NET Summary Reports, referenced by the petitioner, are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty or its equivalent. On January 9, 2013, the AAO accessed the pertinent section of the O*NET OnLine Internet site relevant to 11-1023.00 – Purchasing Agents, Except Wholesale, Retail, and Farm Products. Contrary to the assertions of the petitioner, O*NET OnLine's information is not probative of the proffered position being a specialty occupation as it does not state a requirement for a bachelor's degree in a specific specialty directly or its equivalent directly related to the occupation.

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

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.

position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).