U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 04 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

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

Thank you,

Michael T. Kelly
for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner describes itself as a manufacturer of specialized office equipment and states that it has five employees in the U.S. The petitioner is the U.S. subsidiary branch of a multinational corporation that employs approximately 200 employees worldwide, with the parent company headquartered in Taiwan. It seeks to employ the beneficiary in what it describes as a Financial Manager position. Accordingly, the petitioner endeavors to classify the beneficiary 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 record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the denial letter; and (5) the Form I-290B, with petitioner's brief and accompanying evidence. The AAO reviewed the record in its entirety before issuing its decision.

The director denied the petition, having determined that the proffered position was not a specialty occupation. To meet its burden of proof on the specialty occupation issue, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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. *Cf. 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 evidence in the record of proceeding establishes that the position as it would actually performed in the particular context of the petitioner's business operations 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.

As already noted, the petitioner seeks the beneficiary's services in what it designates as a financial manager position. The petitioner designated the proffered position as such in the Form I-129 and, as the supporting Labor Condition Application (LCA), submitted one that was certified for the "Financial Managers" occupational category and the related SOC code of 11-3031.00.

The Form I-129 and its allied documents and the LCA indicated that the beneficiary would work full-time at the petitioner's location at [redacted] City of Industry, California 91745. The petitioner indicated that it would pay the beneficiary at an hourly wage of $37.13 per hour, which would meet and exceed the Level I prevailing wage is $36.81 per hour, i.e., $76,565 per year.

At the outset, the AAO disagrees with, and therefore withdraws, the statement in the director's decision to the effect that a position's inclusion within the Financial Manager occupational classification is sufficient in itself to establish the position as a specialty occupation.[1]

In its letter of support dated March 31, 2011, the petitioner indicated that the beneficiary's job duties would involve overall responsibility for overseeing budgets, cash flow, [and] financial planning to ensure a stable base in order to increase sales, profitability, and market share for the [petitioner's] products. Also, the petitioner stated that the parent corporation, located in Taiwan, had established the U.S. branch to introduce marketing and branding in the North American market, and that the U.S. Specifically, the proffered position entails the following duties:

- Oversee the preparation of financial reports that conform to [U.S.] standards, which require[s] analysis of accounting records [and] financial statements to assess accuracy;

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[1] The thrust of the director's decision is that the petitioner failed to establish that the proffered position is that of a Financial Manager. As will be discussed in greater detail when this decision addresses the pertinent information in the U.S. Department of Labor's *Occupational Outlook Handbook*, the director erred in her reading of that publication's statements regarding the educational credentials acceptable for employment as a financial manager.

- Implement cash management strategies;
- Monitor and control the flow of cash receipts and disbursements to meet the business and investment needs of [the] firm;
- Assess whether or not loans must be obtained to meet cash requirements;
- Develop and analyze budgets, ensuring compliance with payment, [and] reporting and tax requirements;
- Develop systems to take advantage of both domestic and international tax laws and regulations that affect [the] industry;
- Analyze data to make recommendations for strategic planning;
- Consult and collaborate with sales and planning departments concerning budgets for advertising and hiring, to ensure cost compliance standards;
- Attend product development meetings and provide input and guidance to ensure development projects are designed to be within budget;
- Report to management regarding the finances of business operation; and
- Advise management about issues such as resource utilization, tax strategies, cost and revenue projections in consideration of market expansions and new product development.

The petitioner also stated that the position entails oversight of the accounting department and the sales department. The petitioner evidenced that the beneficiary possesses a U.S. bachelor of arts degree in business administration (finance), and maintained that the position requires, at a minimum, a bachelor's degree in business administration or finance. Following therefrom, the petitioner reasoned, the financial manager position is clearly a specialty occupation.

In the RFE dated April 19, 2011, the director requested additional information to establish that the proffered position is in fact a specialty occupation. Specifically, the director requested more detailed evidence on each of the following: the nature of the position, along with an organizational chart; that the position of financial manager is a common position required by similarly sized offices with similar annual incomes; job listings to establish that a degree requirement is common to the industry in parallel positions among similar organizations; industry-related professional association documentation demonstrating that a bachelor's degree in a specific specialty is a requirement for entry into the field; and letters or affidavits from firms or

individuals in the industry that attest that firms similar to the petitioner's routinely employ and recruit degreed individuals in a specific specialty; and the petitioner's past employment practices. Additionally, the RFE requested evidence that the employer normally requires a degree or the equivalent for the position as evidenced by a position announcement and past employment practices, and the RFE also requested more information that differentiates the petitioner's products or services from others in the industry. Additionally, the RFE requested evidence regarding the nature of the petitioner's business; federal income taxes for 2008 and 2009; a quarterly wage report; the company profile; as well as evidence pertaining to the beneficiary's qualifications.

In a letter dated May 25, 2011 submitted in response to the RFE, the petitioner addressed some, but not all, of the director's evidentiary requests. The petitioner reaffirmed the job duties, but added the following duties:

- [A]lign U.S. financial systems with banking transactions for international transfers of capital and goods, along with calculation of freight between countries;
- [Analyze] the information provided by accountants and/or outside accounting firms, as well as making strategic recommendations to grow the company;
- [Exercise] discretion [regarding] decision making and critical thinking;
- [W]ork closely with the CEO of the company and make demands from the worldwide operations concerning finance and operations;
- Make findings and recommendations, adhere to budget, correct financial vagaries, and maintain cash flow;
- [O]versee in-house accountant, [and] manage any financial services that [he/she] [may] outsource;
- Collect information and interact with other branches of the company, specifically with the sales department;
- [O]versee the budget for a growing U.S. company that imports from foreign countries, deals with international trade practices, transacts with foreign accounting systems, handles foreign currency exchange, hedges against commodities/parts price fluctuations, calculates import duties/tariffs ramifications, and [determine] how all of the above impacts the final selling price of the product[s] and the budget forecasts; and

- [A]llocate monetary resources to market the petitioner's products and to manage possible credit lines needed to maintain proper supply and avoid defaults on outstanding bills.

At the outset, the AAO finds that, as reflected in both of the above-quoted description of duties from the petitioner's letter of support and also in the additional duties included in the petitioner's response to the RFE, the petitioner describes the duties of the proffered position in terms of generalized functions that appear generic to the financial management occupation in general. As such, the AAO finds that they do not distinguish the proposed duties, or the proffered position that they comprise, as more unique, specialized, and/or complex than financial manager positions which may share those same generalized functions as asserted in this petition and yet not require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, which requirement is essential for a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner stated in both the initial support letter and in the RFE response letter that the position requires a bachelor's degree in business administration or finance. When describing the nature of the position, the petitioner also stated that the position encompasses the duties of other specialized occupations, such as Accountants and Market Analysts. In support of this assertion, the petitioner cited the occupational classification section on "Financial Managers" in the 2010-2011 edition of the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*), and submitted it as an attachment to its RFE response. In pertinent part, the sections cited by the petitioner state, "Most financial managers need a bachelor's degree," and "[a]lmost every firm, government agency, and other type of organization employs one or more financial managers." According to the petitioner, these provisions are important because they indicate that the size of an employer bears no rational relationship to the need of a professional in the H-1B context.

In response to the director's request for evidence that a degree requirement is common to the industry in parallel positions among similar organizations, the petitioner submitted four job-advertisements. The petitioner stated that the position at issue here is similar to other financial manager positions, and provided four job advertisements from manufacturing entities in support of its assertion. The advertisements are for financial manager positions, and each of the advertisements specifies at least a four-year degree in Finance or Business Administration as a hiring requirement. The AAO will address these job advertisements later in its decision.

As the director pointed out in the RFE, where the petitioner alleges a unique business model to substantiate specialized or complex duties, it is helpful for the petitioner to further explain what separates the petitioner's business operations from others in the industry. On this point, the petitioner failed to provide sufficient distinct details regarding its business model. The AAO observes that the petitioner submitted financial reports of its branches in the Philippines, Singapore, and mainland China, and explains that each branch is responsible for making recommendations based on financial information, forecasting modeling, and making inherent strategic financial calculations. The petitioner states that it provided the financial reports for

illustration purposes to demonstrate the range of the company's finances on a global scale, and to evidence the amount of information that a financial manager must analyze and distill in order to offer cogent strategic recommendations concerning the company's direction. This responsibility, the petitioner alleges, is a specialized and complex task. On this point, the AAO observes that each of the financial reports appear to be balance sheets reflecting the respective branch's assets, liabilities, expenses, year-end cash, and year-end balance.

Upon reviewing the entirety of evidence on record, the AAO observes that the petitioner provided evidence that conflicts with statements elsewhere in the petition. Specifically, the petitioner repeatedly described itself as a manufacturer of specialized office equipment, but this is contradicted by its Schedule K of its federal tax returns for 2008 and 2009, which show that the petitioner is a wholesale & import business, not a manufacturer, as claimed by the petitioner. While this is not singularly determinative of the case outcome, it creates an inconsistency within the record of proceedings, and ambiguity regarding the proffered position within the nature of the petitioner's business. 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).

Further compounding the inconsistency discussed above is the fact that the petitioner presented an unclear company structure as represented by the petitioner's organizational chart. The AAO finds that the chart does not capture precisely where the beneficiary would fit within the employer's hierarchy. Notably, the proffered position appears twice on the organizational chart, and the petitioner offers no elaboration to explain its organization chart within its response to the RFE. The organization chart for petitioner reflects four levels within the hierarchy, and the proffered position first appears at the second level, immediately under the company's president, and it shows that the financial manager would oversee three departments. The proffered position appears again for a second time in the fourth, and lowest level of the hierarchy on the organizational chart. Additionally, the organizational chart contains employees in excess of the five employees stated on the nonimmigrant visa petition. Given the conflicting evidence and the inaccurate statements, the petitioner's structure, and the proffered position's placement within the petitioner's structure remains unclear.

On June 2, 2011, the director denied the petition, and observed that the evidence of record failed to demonstrate that the proffered position was that of a financial manager or that the petitioner's enterprise appears to embody a scope or complexity that would require the services of a financial manager. The director also concluded that the petitioner had not established the proffered position as a specialty occupation because the duties of the beneficiary in relation to the petitioner's business failed to demonstrate that the position required the specialized and complex knowledge of a degreed financial manager.

On appeal, the petitioner asserts in its brief dated June 28, 2008 that the director's denial was erroneous. Specifically, the petitioner correctly noted that that the director - incorrectly, the AAO finds - conceded that the job category of Financial Managers is a specialty occupation; and the petitioner also claims that the director erred by determining that the petitioner's business was

not of a size and scope that would require the services of a financial manager and by using size as a determinative factor in its decision. Also, counsel points to the *Handbook* as an authority stating that almost every firm, government agency, or other type of organization employs one or more financial managers. As will be evident in the analysis below, the AAO is not persuaded by the petitioner's arguments. Also, as reflected in the discussions below, the AAO bases its decision not on the petitioner's size *per se*, but on the lack of substantive and probative evidence substantiating the petitioner's claim that the proffered position is a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns to the supplemental criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The AAO will now look at the U.S. Department of Labor's *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*) which the AAO recognizes as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[2]

The AAO finds that the constellation of generalized and generically described functions that the petitioner ascribed to the proffered position do include some that align with the general description of Financial Managers provided in the *Handbook's* chapter on that occupational category. (The AAO notes that the petitioner also described the position as one that that encompasses duties of other occupations, such as Accountants and Market Research Analysts.[3] The AAO will also address this aspect, in turn.)

The *Handbook* describes the Financial Manager occupational category as follows:

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[2] 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.

[3] The AAO notes that the petitioner stated, "Market Analyst," but the *Handbook* job classification is for "Market Research Analyst." Although not material to the outcome of this appeal, it is noted that where a petitioner seeks to employ a beneficiary in more than one distinct occupational category, the petitioner may wish to consider filing separate petitions, requesting concurrent, part-time employment for each occupation. Such action might be useful in light of the possibility that, where a single petition is filed for what are essentially jobs of more than one occupational category, the job aspects belonging to only one occupational category would meet the specialty-occupation requirements, while the job aspects of the other occupational categories would not. In such a situation, which is not the case here, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore, and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation. *See generally 8* C.F.R. § 214.2(h); *DOL, Employment and Training Administration's Prevailing Wage Determination Policy Guidance (Revised Nov. 2009).* Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

> Financial managers perform data analysis and advise senior managers on profit-maximizing ideas. Financial managers are responsible for the financial health of an organization. They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization.

The *Handbook* further states, in part:

> Financial managers typically do the following:
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> - Prepare financial statements, business activity reports, and forecasts
> - Monitor financial details to ensure that legal requirements are met
> - Supervise employees who do financial reporting and budgeting
> - Review company financial reports and seek ways to reduce costs
> - Analyze market trends to find opportunities for expansion or for acquiring other companies
> - Help management make financial decisions

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at http://www.bls.gov/ooh/management/print/financial-managers.htm (accessed January 14, 2013).

The AAO finds, however, that, as reflected earlier in this decision's comments regarding the director's mistake in treating Financial Managers as a specialty occupation category in itself, the petitioner's reliance upon the proffered position as belonging to the Financial Managers occupational group is mistaken. Even if it is correct to align the proffered position with the Financial Managers occupational category, that would not in itself establish the proffered position as one for which the normal requirement for entry is at least a bachelor's degree, or the equivalent, in a specific specialty.

The following sections, excerpted from the *Handbook's* "Financial Managers" chapter, indicate that attainment of at least a bachelor's degree, or the equivalent, in a specific specialty is not normally a requirement for entry into this occupational category.

> **How to Become a Financial Manager**
>
> Financial managers usually have experience in another business or financial occupation such as a loan officer, accountant, auditor, securities sales agent, or financial analyst.
>
> Financial managers must usually have a bachelor's degree and more than 5 years of experience in another business or financial occupation, such as loan officer, accountant, auditor, securities sales agent, or financial analyst.

Education

A bachelor's degree in finance, accounting, economics, or business administration is often the minimum education needed for financial managers. However, many employers now seek candidates with a master's degree, preferably in business administration, finance, or economics. These academic programs help students develop analytical skills and learn financial analysis methods and software.

Certification

Professional certification is not required, but some financial managers still get it. The CFA Institute confers the Chartered Financial Analyst (CFA) certification to investment professionals who have at least a bachelor's degree, have 4 years of work experience, and pass three exams. The Association for Financial Professionals confers the Certified Treasury Professional credential to those who pass a computer-based exam and have a minimum of 2 years of relevant experience.

Work Experience

Financial managers usually have experience in another business or financial occupation, such as loan officer, accountant or auditor, securities sales agent, or financial analyst.

In some cases, companies provide formal management training programs to help prepare highly motivated and skilled financial workers to become financial managers.

Advancement

Because financial management is so important in keeping business operations efficient, experienced financial managers who display a strong grasp of the operations of various departments within their organization may be promoted to management positions. Some financial managers transfer to closely related positions in other industries. Those with extensive experience may start their own consulting firms.

Occupational Outlook Handbook, 2012-13 ed., "Financial Managers," http://www.bls.gov/ooh/management/print/financial-managers.htm (accessed January 14, 2013).

The AAO finds the following pertinent implications of what the *Handbook* reports in the above excerpts. While a bachelor's degree is usually a minimum requirement for entry into this

occupation, it is not an occupation-wide standard requirement. Moreover, although a bachelor's degree is a usual requirement, that the degree be in a specific specialty, or within a range of closely related specialties, is not.

Further, the AAO notes that while the *Handbook* does not state that a bachelor's degree in Business Administration is categorically a minimum entry requirement for a financial manager position, it does indicate that such an undifferentiated degree without additional specification may be sufficient to enter this occupation. Since there must be a close correlation between the required specialized studies and the position, however, even 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).

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 139, 147 (1st Cir. 2007).[4]

The *Handbook* does indicate that financial manger positions "often" require a bachelor's degree. In order to show that the proffered position qualifies as a specialty occupation position, however, the petitioner must demonstrate that it requires a minimum of a bachelor's degree or the equivalent *in a specific specialty*. As reflected previously in this decision, the evidentiary record consists of generalized duties lacking a contextual grounding in the multinational scope of the petitioner's business. Moreover, the petitioner has failed to present cogent and consistent

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[4] 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: elsewise, 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.

Id.

evidence regarding the nature of its business, and following therefrom, it has failed to establish the proffered position as one of those positions for which a bachelor's degree would be required.

Further, the bachelor's degrees noted in the *Handbook* as "often required," are in finance, accounting, economics, and business administration. These fields of study span disparate bodies of knowledge, and as such, they are not in a specific specialty. Thus, the *Handbook* does not support the assertion that the particular position proffered in the instant case normally requires a minimum of a bachelor's degree or the equivalent in a specific specialty. 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 alleged requirement of a degree in several disparate fields does not establish the position as a specialty occupation. *See* § 214(i)(1) of the Act (requiring in pertinent part the "application of *a* body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in *the* specific specialty" (emphasis added)); *cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

As the *Handbook* indicates that entry into the Financial Managers occupation does not normally require at least a bachelor's degree, or the equivalent, in a specific specialty, the *Handbook* does not support the petitioner's contention that the proffered position's inclusion in the Financial Manager's occupational category would be sufficient to establish it as a position for which the minimum entry requirement is usually at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO also finds that the record of proceeding lacks evidence establishing that the proffered duties, so generally described therein, comprise a position within the Financial Managers occupation that must be grouped with a subset of positions for which a bachelor's or higher degree in a specific specialty would be normally required for entry.

The AAO acknowledges the additional duties that the petitioner asserts for the proffered position in the RFE response. However, the AAO also observes that, significantly, the petitioner has not provided any substantive information about the nature of the finances particular to its specific business operations and about what, if any, complexities and challenges they would present for the beneficiary that would require 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 total number of duties that the petitioner lists for the proffered position notwithstanding, the AAO finds that the petitioner still presents the proffered position and its constituent duties on a relatively abstract level, that is, in terms of functions that appear generic to the Financial Managers occupation in general and that, therefore, do not distinguish the proffered position or its duties as more complex, specialized, or unique than financial manager positions that do not require at least a bachelor's degree, or the equivalent, in a specific specialty.

Next, the AAO will address counsel's assertion on appeal that the proffered position could also be titled as an accountant and that an accountant qualifies as a specialty occupation.

In this instance, even if the proffered position was an accountant position, which it is not, it is

noted that the *Handbook* only states that "[m]ost accountant and auditor positions require at least a bachelor's degree in accounting or a related field." *See* U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Accountants and Auditors," http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-4 (accessed January 14, 2013). The *Handbook* does not indicate that such a degree is a normal minimum entry requirement for accountant and auditor positions.[5] Moreover, the AAO notes that the *O*NET* Summary Report for 13-2011.01 - Accountants only states that most of these occupations require a four-year bachelor's degree. The quote does not reference any specific specialty for the degree. Further, the provided *O*NET* survey indicates that 12 percent of respondents do not even have a bachelor's degree, much less a bachelor's degree in a specific specialty. As such, even if the proffered position were determined to be an accountant position, it cannot be concluded based on the *Handbook* or *O*NET* that the position categorically qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in accounting or a related field.

In fact, even if the *Handbook* indicated that the proffered position required a minimum of a bachelor's degree or the equivalent in business administration, and allowed for no alternative degrees, it would still not demonstrate that the proffered position qualified as a specialty occupation position. If the educational requirement of a position may be satisfied by an otherwise undifferentiated degree in business administration, then the position does not qualify as a specialty occupation position.

The AAO will now analyze the position with respect to the "Accountants" chapter in the 2012-2013 edition of the Handbook describes the duties of an accountant, in part as follows:

> Accountants and auditors typically do the following:
>
> - Examine financial statements to be sure that they are accurate and comply with laws and regulations
> - Compute taxes owed, prepare tax returns, and ensure that taxes are paid properly and on time
> - Inspect account books and accounting systems for efficiency and use of accepted accounting procedures

[5] It is noted that the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in accounting or a closely related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

- Organize and maintain financial records
- Assess financial operations and make best-practices recommendations to management
- Suggest ways to reduce costs, enhance revenues, and improve profits

In addition to examining and preparing financial documentation, accountants and auditors must explain their findings. This includes face-to-face meetings with organization managers and individual clients, and preparing written reports.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at http://www.bls.gov/ooh/Business-and-Financial/Accountants-and-auditors.htm#tab-2 (last accessed January 14, 2013).

The petitioner expressly states that the position entails accountant duties, and the AAO concurs with that statement. And, now, the AAO looks to the accountants education section of the *Handbook* which states, in pertinent part:

> Most accountants and auditors need at least a bachelor's degree in accounting or a related field. Certification within a specific field of accounting improves job prospects. For example, many accountants become Certified Public Accountants (CPAs).
>
> **Education**
>
> Most accountant and auditor positions require at least a bachelor's degree in accounting or a related field. Some employers prefer to hire applicants who have a master's degree, either in accounting or in business administration with a concentration in accounting.
>
> A few universities and colleges offer specialized programs, such as a bachelor's degree in internal auditing. In some cases, graduates of community colleges, as well as bookkeepers and accounting clerks who meet the education and experience requirements set by their employers, get junior accounting positions and advance to accountant positions by showing their accounting skills on the job.
>
> Work experience is important for getting a job, and most states require experience before an accountant can apply for a CPA license. Many colleges help students gain practical experience through summer or part-time internships with public accounting or business firms.

Id.

The petitioner did not present any arguments that the proffered position is a specialty occupation based on the Accountants chapter of the Handbook. The AAO observes that the *Handbook* indicates that accountants do not constitute an occupational group that normally requires a specialty occupation level of education, that is, at least a U.S. bachelor's degree, or the

equivalent, in a specific specialty for entry into the occupation in the United States. Therefore, despite the petitioner's assumption to the contrary, a postion's inclusion in the Accountants occupational group is not in itself sufficient to establish that that particular position is one for which a bachelor's or higher degree, or the equivalent, in accounting or a closely related specialty is normally the minimum requirement for entry.

More specifically, the introduction to the "Training, Other Qualifications, and Advancement" section of the *Handbook* states that "[m]ost accountants and auditors need at least a bachelor's degree in business, accounting, or a related field." *Id.* This does not support the view that accountant positions qualify as specialty occupations. "Most" is not indicative that a particular position within the wide spectrum of accountant jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)), or that a particular accountant position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*)).[6]

In light of the petitioner's contention regarding the Market Research Analysts job category as an aspect of this position, the AAO will also now address that occupational category. The "Market Research Analyst" chapter in the 2012-2013 edition of the *Handbook* describes the duties of market research analysts, in part, as follows:

> Market research analysts study market conditions in local, regional, or national areas to examine potential sales of a product or service. They help companies understand what products people want, who will buy them, and at what price.
>
> **Duties**
>
> Market research analysts typically do the following:
>
> - Monitor and forecast marketing and sales trends
> - Measure the effectiveness of marketing programs and strategies
> - Devise and evaluate methods for collecting data, such as surveys, questionnaires, or opinion polls
> - Gather data about consumers, competitors, and market conditions
> - Analyze data using statistical software

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

- Convert complex data and findings into understandable tables, graphs, and written reports
- Prepare reports and present results to clients or management

Market research analysts perform research and gather data to help a company market its products or services. They gather data on consumer demographics, preferences, needs, and buying habits. They collect data and information using a variety of methods, such as interviews, questionnaires, focus groups, market analysis surveys, public opinion polls, and literature reviews.

Analysts help determine a company's position in the marketplace by researching their competitors and analyzing their prices, sales, and marketing methods. Using this information, they may determine potential markets, product demand, and pricing. Their knowledge of the targeted consumer enables them to develop advertising brochures and commercials, sales plans, and product promotions.

Market research analysts evaluate data using statistical techniques and software. They must interpret what the data means for their client, and they may forecast future trends. They often make charts, graphs, or other visual aids to present the results of their research.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., at http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-2 (last accessed on January 14, 2013).

Although the petitioner asserts that the proffered position encompasses duties of this job category, the AAO finds that the job duties presented by the petitioner do not bear similarity to the duties associated with this job classification. And as a result, the AAO will therefore not address the educational requirements of this job classification, as it deems the information irrelevant to the analysis of this decision.

Upon review and consideration of all of the statements submitted by the petitioner with regard to the proffered position and its constituent duties, the AAO notes that there is no documentary evidence in the record of proceeding that specifically illustrates or concretely describes the practical and theoretical applications of specialized knowledge in a specific specialty that the beneficiary would have utilize to carry out the stated duties.

To prove 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 establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, 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. 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).

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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is 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 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava,* 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As was observed above, the *Handbook* does not report an industry-wide requirement for a minimum of a bachelor's degree or the equivalent in a specific specialty. In response to the RFE, the petitioner submitted four Internet job postings for positions it claims are parallel to the proffered position in similar organizations to that of the petitioner. The AAO, however, does not find these postings sufficient to meet the requirements of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO incorporates its earlier discussion regarding the nature of the petitioner's business, namely that it claims it is a manufacturer of specialized products in the petition, but its tax returns reflect that it is wholesaler and importer of goods. Following from this uncertainty, there is no evidence included in the record that would establish the advertising entities as similar organizations, i.e., that they are wholesalers, importers, manufacturers, or multinational corporations with worldwide operations consisting of several branches.

Further, the AAO finds, that neither the postings themselves nor the petitioner's descriptions of the proffered position are presented in sufficiently specific and substantive detail to establish that the advertised positions are substantially similar to the proffered position.

Further still, the AAO additionally finds that, in the absence of authoritative evidence documenting that the advertisements are representative of the recruiting and hiring requirements common to the industry, the advertisements are not probative evidence towards satisfying this

particular criterion. The job postings, then, are not persuasive evidence that at least a bachelor's degree, in a specific specialty, is commonly required, for positions parallel to the one proffered here, by organizations similar to the petitioner in its industry.

For the reasons discussed above, the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

In the alternative, the petitioner may show under the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*) that the proffered position is so complex or unique that only an individual with at least a bachelor's degree in a specific specialty can perform the work associated with the position.

The petitioner does not claim that the position is so complex or unique; to the contrary, it points out the *Handbook* 2010-2011 edition states that almost every firm, government agency, and other type of organization employs one or more financial managers. Based on the record of proceedings, no further detail had been provided by the petitioner.

The AAO hereby incorporates into its analysis of this criterion its earlier comments and findings regarding the generality and lack of substantive detail provided with regard to the proffered position and the duties comprising it. As reflected in those comments and findings, the petitioner has not developed relative complexity or uniqueness as attributes of the proffered position, let alone as attributes so substantial as to require the services of a person who has attained at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, as already noted, the LCA that the petitioner submitted in support of this petition identified the proffered position as a Level I wage-level position, which is appropriate for an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). This Level I wage-level designation is inconsistent with the level of relative complexity or uniqueness required to satisfy this criterion.

The proffered position as described by the petitioner does not indicate that it is 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 evidence in the record of proceeding has not established that the particular position proffered in this petition is so complex or unique that it can be performed only by an individual with a at least a bachelor's degree in the specific specialty, or the equivalent, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

In the instant matter, the proffered position is a newly created position, and as such, there is no prior history of past employment practices. On this point, petitioner cites *Young China Daily v.*

Chappel, 742 F. Supp. 552 (N.D. Cal. 1989) for the proposition that it is not relevant for the service to consider the past hiring practices of the employer in circumstances where the employer is creating a newly created position. The case cited by the petitioner can be distinguished from the instant matter, in that the petitioner in *Young China Daily* had applied for the "distinguished merit and ability" standard set forth in the Act that no longer applies in the H-1B nonimmigrant context. *Young China Daily* predates Immigration Act of 1990 (IMMACT90) PL 101-649, 104 Stat. 4978 (Nov. 29, 1990), which substantially altered the H-1B nonimmigrant classification that is in effect now, and applicable to the instant matter.

In any event, as the proffered position is being offered by the petitioner for the first time, the petitioner has not submitted any evidence for consideration under this criterion. Consequently, this criterion cannot be satisfied within the context of the present petition. [7]

As the record contains no material evidence on point, the petitioner has not met the burden at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

Next, the AAO considers the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*) that requires a petitioner to establish that the nature of the specific duties of its position is so specialized and complex that the knowledge required to perform these duties is usually associated with the attainment of a baccalaureate or higher degree.

The AAO hereby incorporates into its analysis of this criterion its earlier comments and findings regarding the generality and lack of substantive detail provided with regard the duties comprising the proffered position. As reflected in those comments and findings, the petitioner has not developed relative specialization and complexity as distinguishing aspects of the nature of the proposed duties. The AAO finds that, notwithstanding their number, the proposed duties were

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[7] It is worth noting that to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

not developed with sufficient specificity to establish that their substantive nature, as generated by the particular performance requirements of the particular position here proffered, is so specialized and complex as to require the application of knowledge usually only gained by attainment of at least a bachelor's degree in a specific specialty.

Regarding the size of the petitioner, and as alluded to earlier in this decision, differing information had been presented at the initial stage of filing on Form I-129 and on the petitioner's organization chart, and on the petitioner's payroll summary. While these inconsistencies raise some question about the petitioner's size, structure, and scope of operations, ultimately it is the lack of substantive evidence that is decisive with regard to the AAO's determinations with regard to this and the other criteria.

In reaching its decision, the AAO has again considered the petitioner's letter dated March 31, 2011 and its response to the RFE dated May 25, 2011. As indicated earlier in this decision, both letters provide a generalized overview of the proffered position's duties. That level of presentation does not provide a factual foundation to support a finding that the nature of the proposed duties is sufficiently specialized and complex as to satisfy this criterion.

The AAO acknowledges that the petitioner provided financial documentation for several of its branches to illustrate the company's finances on a global scale, and to show the amount of information that must be analyzed. Each financial report bears the unit of currency corresponding to the country of origin, without a common denominator or comparison to the U.S. dollar. The financial documents add little value to bolstering the petitioner's claim that the position satisfies this or any of the other criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), as they do not demonstrate specific, substantive work that would comprise a position meeting any criterion.

The AAO is not persuaded that the nature of the specific duties of the proposed position is more specialized and complex than the nature of the duties of a non-degreed financial specialist position, however titled, or that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree or its equivalent in a specific specialty.

As the totality of the evidence of record does not establish the nature of the specific duties of the proffered position as so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

As the evidence in the record of position fails to satisfy at least one criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition. The appeal will be dismissed, and the petition will be denied.

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 establish that it is a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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