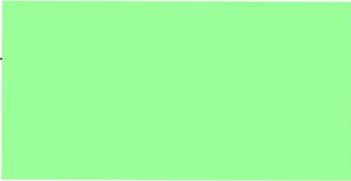




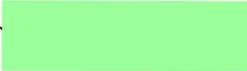
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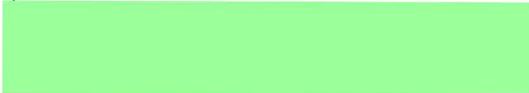


Date: **FEB 25 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: 

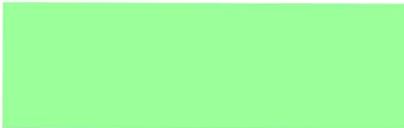
IN RE:

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,

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 a "Wholesale/Distribution of Video Game Accessories and related electronics" firm with 29 employees. It seeks to employ the beneficiary as a full-time "Product Manager" and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The director denied the petition 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 following 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 as the minimum for entry into the occupation, as required by the Act.

The petitioner submitted, *inter alia*, the following documents with the Form I-129: (1) a certified Labor Condition Application (LCA); (2) a copy of the beneficiary's Bachelor of Science in Commerce, Major in Computer Information Systems Management diploma awarded by [REDACTED] [REDACTED] (3) a copy of the beneficiary's [REDACTED] transcript; (4) the beneficiary's resume; (5) letters from the beneficiary's former employers; and (6) a support letter from the petitioner dated April 3, 2010.

In its support letter, the petitioner states that it is "growing tremendously" and, therefore, it is "looking for a product manager to help [it] answer the product management requirements of the business." The petitioner states the following with respect to the beneficiary's job duties:

As a product manager, the beneficiary's duties shall consist primarily of coordinating with factories and vendors abroad for pre-production to post-production and organize the workflow of [the petitioner's] product shipping and delivery; assisting in sourcing factories and buying materials for OEM and ODM production; developing [the petitioner's] Project Management and coordinating workflow for clients, vendors, sales and warehouse managers, and the design team; designing and art-directing product design concepts, product packaging, the company's websites, video presentations and marketing collaterals; and managing and supervising Multimedia, Web and Graphic Designers for various projects.

The petitioner also states that its minimum requirements for the proffered position include a "Bachelor's degree in Management and one year experience in the related field."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on September 26, 2010. The petitioner was asked to submit documentation to establish that the proffered position qualifies for classification as a specialty occupation. The director outlined the specific evidence to be submitted. The director also requested that the petitioner submit a foreign educational credentials evaluation as well as further information regarding the petitioner's annual income, current number of employees, and type of business that the petitioner is engaged in.

On November 4, 2010, in response to the director's RFE, the petitioner's counsel submitted, *inter alia*, the following documents: (1) a letter from counsel dated October 25, 2010; (2) an evaluation by [REDACTED] of the beneficiary's foreign degree equivalency dated October 18, 2010; (3) the petitioner's line-and-block organizational chart; (4) copies of the petitioner's 2008 and 2009 Form 1120S U.S. Income Tax Return for an S Corporation; (5) copies of the petitioner's State of California Quarterly Wage and Withholding Reports for quarters ending 09/30/2009 and 06/30/2010; (6) a copy of the petitioner's State of California Seller's Permit; (7) a copy of the petitioner's City of Los Angeles Tax Registration

Certificate; (8) print-outs from the petitioner's website; and (9) brochures regarding the petitioner's products and services.

The evaluation of the beneficiary's foreign degree equivalency states that the beneficiary holds the equivalent of a U.S. "Bachelor's degree in Business Administration with a major in Management Information Systems."

In his letter, counsel stated that in addition to the petitioner's wholesale/distribution of video game accessories and related electronics business, the petitioner "also offers complete sourcing for video game accessories and general merchandise, such as but not limited to, custom tooling and engineering, Prototype Development, Package & Print Design, and Engineering Services."

Counsel also provided the following duties of the proffered position:

- a. Create, update and improve branding and identity of [the petitioner's] products and develop strategies to create and increase brand awareness and loyalty; research, study, compare and develop products based on current trends and technology on consumer electronics. (30% or 12 hours/week);]
- b. Manage the outsourcing and purchasing of vendors/items in Asia; regularly visit, inspect, coordinate and work closely with factories and vendors in China to check product prototypes and to supervise pre-production and post-production needs for [the petitioner's] products; organize and communicate the workflow and logistics of [the petitioner's] product shipping, forwarding and delivery; assisting in sourcing factories and buying materials for OEM and ODM production; (30% or 12 hours/week);]
- c. Design and art-direct product design concepts, product packaging, the company's websites, video presentations and marketing collaterals; manage and supervise Multimedia, Web and Graphic Designers for various projects. (20% or 8 hours/week); and]
- d. Monitor, control and supervise different departments and multiple projects within the company; develop, execute and manage the [sic] establish an effective and efficient operations workflow for clients, vendors, sales and warehouse managers; formulate and design database systems analysis using programming, MIS and IT concepts. (20% or 8 hours/week).

The director denied the petition on December 29, 2010, concluding that the evidence of record does not establish that the job offered qualifies as a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Act. Finding that the proffered position's duties reflect the duties of an sales manager as listed under the title "Advertising, Marketing, Promotions, Public Relations, and Sales Managers" in the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, 2010-11 edition, the director concluded that "although a baccalaureate level of training is often required, the position of sales manager is an occupation that does not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry

into the occupation."

On appeal, counsel for the petitioner contends that the duties of the proffered position are reflected in a combination of four occupations listed in the *Handbook* – commercial/industrial designer, art director, graphic designer, and a general and operations manager. Counsel states that "[t]o be cost effective, [the petitioner] needs someone to handle, delegate, and supervise all of the abovementioned responsibilities. Petitioner feels that this position can be best served by a person who likewise possesses managerial skills, and so Petitioner deemed it best to call the position as Product Manager."

Counsel further contends that the beneficiary is "expected to perform the duties and responsibilities of a commercial and industrial designer, art director and graphic designer" and "[t]o achieve success in combining all these technical and complex duties, the Product Manager must also exercise broad managerial and supervisory functions to implement the overall direction of product development." According to counsel, "[a]ll of these duties of a Product Manager substantially match duties of [*the Handbook*] listed occupations which require a bachelor's degree as a minimum. Therefore, a Product Manager is a specialty occupation under the regulations." Counsel also contends that the petitioner's "degree requirement is common in the industry in parallel positions among similar organizations."

Counsel also submitted the following, *inter alia*, on behalf of the petitioner on appeal: (1) a copy of a table of occupational specialties and their related O*NET occupational specialty codes; (2) seven job advertisements; and (3) copies of profiles of product managers found on the Internet.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO first turns 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 the normal 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*,¹ on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As an initial matter, the AAO

¹ The director's decision referred to the 2010-2011 edition of the *Handbook*. The AAO's references to the *Handbook* are to the 2012-2013 edition available online. The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>.

finds that the petitioner's description of the duties of the proffered position of which are largely focused on (1) developing strategies, (2) coordinating and working with factories and vendors, (3) organizing and communicating the workflow and logistics of the petitioner's operations, and (4) monitoring, controlling and supervising different departments and multiple projects within the company, most closely reflect the duties of a general and operations manager listed under the *Handbook* section on "Top Executives."² The *Handbook* states the following with respect to Top Executives:

Top executives devise strategies and policies to ensure that an organization meets its goals. They plan, direct, and coordinate operational activities of companies and public or private-sector organizations.

Duties

Top executives typically do the following:

- Establish and carry out departmental or organizational goals, policies, and procedures
- Direct and oversee an organization's financial and budgetary activities
- Manage general activities related to making products and providing services
- Consult with other executives, staff, and board members about general operations
- Negotiate or approve contracts and agreements
- Appoint department heads and managers
- Analyze financial statements, sales reports, and other performance indicators
- Identify places to cut costs and to improve performance, policies, and programs

The responsibilities of top executives largely depend on an organization's size. For example, an owner or manager of a small organization, such as an independent retail store, often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties. In large organizations, on the other hand, top executives typically focus more on formulating policies and strategic planning, while general and operations managers direct day-to-day operations.

The following are examples of common types of top executives:

² This finding also comports with the classification chosen by the petitioner on the supporting LCA. Specifically, the LCA was certified for a general and operations manager under SOC (ONET/OES) code 11-1021.00. The *Handbook's* chapter on "Top Executives" specifically lists the code 11-1021 as corresponding to general and operations managers covered by that section of this publication. See U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-6> (last visited Feb. 20, 2013).

Chief executive officers (CEOs), who are also known by titles such as **executive director**, **president**, and **vice president**, provide overall direction for companies and organizations. CEOs manage company operations, formulate policies, and ensure goals are met. They collaborate with and direct the work of other top executives and typically report to a board of directors.

Companies may also have chief officers who lead various departments or focus on specific areas of work:

- **Chief financial officers** are accountable for the accuracy of a company's or organization's financial reporting, especially among publicly traded companies. They direct the organization's financial goals, objectives, and budgets. For example, they may oversee the investment of funds and manage associated risks.
- **Chief information officers** are responsible for the overall technological direction of an organization, which includes managing the information technology and computer systems. They organize and supervise information-technology-related workers, projects, and policies.
- **Chief operating officers** oversee other executives who direct the activities of various departments, such as human resources and sales. They also carry out the organization's guidelines on a day-to-day basis.
- **Chief sustainability officers** address sustainability issues by enacting or overseeing a corporate sustainability strategy. For instance, they may manage programs and policies relating to environmental issues and ensure that the organization complies with environmental or other government regulations.

Mayors, along with **governors**, **city managers**, and **county administrators**, are chief executive officers of governments. They typically oversee budgets, programs, and uses of resources. Mayors and governors must be elected to office, and managers and administrators typically are appointed.

School superintendents and **college or university presidents** are chief executive officers of school districts and postsecondary schools. In addition to overseeing operations, they also manage issues, such as student achievement, budgets and resources, and relations with government agencies and other stakeholders.

General and operations managers oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign work, and ensure projects are completed. In some organizations, the tasks of chief executive officers may overlap with those of general and operations managers.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/Management/Top-executives.htm#tab-2> (last visited Feb. 20, 2013).

That the *Handbook* does not indicate that general and operations manager positions normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation is also evident in the following discussion in the "Education" section of its chapter on "Top Executives," which does not specify a particular major or academic concentration:

Although education and training vary widely by position and industry, many top executives have at least a bachelor's degree and a considerable amount of work experience.

Education

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a Master of Business Administration (MBA).

Top executives who are promoted from lower level managerial or supervisory positions within their own firm often can substitute experience for education. In industries such as retail trade or transportation, for example, people without a college degree may work their way up to higher levels within the company and become executives or general managers.

Handbook, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/Management/Top-executives.htm#tab-4> (last visited Feb. 20, 2013). As indicated above, a specialty degree is not required for entry into this particular occupation. Because the *Handbook* indicates that entry into the top executive occupation does not normally require at least a baccalaureate degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation.

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 directly 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.

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 entry 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. Finally, as briefly addressed above and for the reasons discussed in greater detail below, the petitioner's reliance upon the job vacancy advertisements is misplaced.

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 seven advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions.³ Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Associate Product Manager for [REDACTED]
2. Senior Product Manager for [REDACTED]
3. Product Manager IV for [REDACTED]
4. Product Manager for [REDACTED]
5. Product Manager for [REDACTED]
6. Senior Global Product Manager for [REDACTED] and [REDACTED]

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just seven job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar firms. 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 product manager for a small wholesale/distribution of video game accessories and related electronics firm required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

7. Product Manager at [REDACTED]

The advertisements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree or the equivalent in a *specific specialty* is not.

Specifically, the first, second, sixth, and seventh advertisements only indicate that a bachelor's degree is required. The third advertisement is for a product manager position that requires "[m]obile gaming expertise with technical understanding of web and client side platforms, like:

The advertised position also requires a "successful track record that demonstrates mastery of all phases of product management process." There is no evidence that the proffered position is a position that requires mobile gaming experience and "mastery of all phases of product management process."

The fourth advertisement states that it requires a "Four Year University degree in Engineering, Business or Computer Sciences. (MBA preferred)." 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).

The fifth and sixth advertisements are for senior product manager and senior global product manager positions, respectively, whereas the proffered position is an entry level position for an employee who has only basic understanding of the occupation, as indicated on the LCA where the petitioner designated the proffered position as a Level I position. *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 (last visited Feb. 20, 2013). Furthermore, the fifth advertisement only states that it requires a "bachelor's degree preferably in computer science or engineering; an MBA is also desirable[.]"

Notably and in any event, many of the advertising organizations do not appear to be similar to the petitioner's organization in terms of size and the type and level of services provided such that the advertising organizations could be found to be similar to the petitioner. It is not sufficient for the petitioner and counsel to claim that the organizations are similar and in the same industry without providing corroborating evidence to support for 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 (Reg. Comm'r 1972)). The petitioner did not provide sufficient evidence to establish that the advertising employers and the petitioner share the same general characteristics. The record also lacks sufficient information regarding which aspects or traits (if any) the advertising organizations share with the petitioner such that a finding could be made that these entities are similar to and in the same industry as the petitioner.

As the documentation does not establish that the petitioner has met this prong of the regulations,

further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. Consequently, the petitioner has failed to establish the first prong of the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. As the petitioner fails to demonstrate how the proffered position of product manager is so complex or unique relative to other product manager positions in wholesale/distribution of video game accessories and related electronics firms 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 a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁴

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

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in 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").

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 product manager positions that are not usually associated with a degree in a specific specialty.⁵

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation 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.⁶

Finally, it is noted that the dismissal of this appeal and the denial of the petition shall in no way prejudice the petitioner from once again seeking an immigration benefit on behalf of the beneficiary. If the petitioner is able to satisfy the requirements for the same classification requested in this petition or that of another status, e.g., L-1A nonimmigrant classification for a multinational manager or executive, this decision will not bar or otherwise prevent the filing or subsequent approval of such a petition.

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.

⁵ It is further noted that the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

⁶ As noted above, counsel asserts that the proffered position is a combination of four occupations, i.e., commercial/industrial designer, art director, graphic designer, and a general and operations manager. However, even if a significant portion of the beneficiary's duties were industrial designer, art director, and/or graphic designer duties, which they are not, and the position were to qualify as a specialty occupation, it does not appear that the beneficiary is qualified to perform the duties of such positions based on his bachelor's degree in business administration with a major in management information systems. A review of the *Handbook* indicates that for positions as industrial designers or graphic designers, degrees in 1) industrial design, architecture, or engineering, and 2) graphic design, respectively, are "usually" required for jobs in those fields. With respect to art director positions, the *Handbook* states that "[a]rt directors need at least a bachelor's degree in an art or design subject and previous work experience."

(b)(6)

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