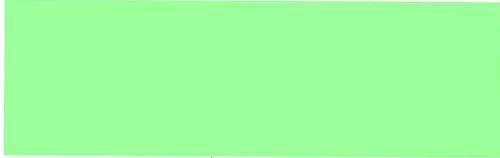


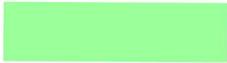


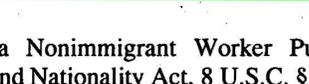
U.S. Citizenship
and Immigration
Services

(b)(6)



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 an international logistics consulting firm with seven employees. To employ the beneficiary in what it designates as an "Import/Export Compliance Specialist" position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 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 first request for evidence (RFE); (3) the petitioner's response to the first RFE; (4) the director's second RFE; (5) the petitioner's response to the second RFE; (6) the notice of decision; and (7) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

The primary issue for consideration 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 employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed position must also meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The petitioner submitted the following documents, *inter alia*, with the Form I-129: (1) a certified

Labor Condition Application (LCA); (2) a support letter dated September 14, 2010; and (3) the petitioner's brochure.

The petitioner states in its support letter that it "provides a full range of logistics package including import and export compliance, international freight forwarding, cargo security, customs clearance, and public and contract warehousing facilities." The petitioner also states that the beneficiary will be responsible for the following duties:

- Oversee the procedural aspect of international inbound and outbound freight;
- Ensure legal compliance and provide import/export administration and control within governmental rules and regulations;
- Determine whether business practices of the company are within the parameters of the U.S. and international regulations;
- Provide overseas brokers and agents with commodity assignment as they relate to the Harmonized Tariff System and Export Control Classification Number;
- Ensure that all of the import and export documentation are [in] compliance with regulations and the accuracy of its contents;
- Implement, monitor, and maintain an in-house compliance program regarding any and all matters relating to international trade.

The petitioner also states that the proffered position requires "at least a Bachelor's degree in the area of Business Administration, or a related Field, from an accredited institution of higher learning."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on December 13, 2010. Noting that basic information about the proposed employment in the Form I-129 was missing, incomplete, or conflicted with other information in the record, the director requested the following information: (1) copies of the petitioner's federal income tax returns; (2) copies of the petitioner's quarterly wage reports; (3) copies of the petitioner's business licenses; and (4) documentation regarding the petitioner's business organization and the products and services that it provides.

The director also requested documentation establishing that a valid employer-employee relationship will exist between the petitioner and the beneficiary and that the beneficiary is qualified to perform the duties of the claimed specialty occupation. The director also requested documentation to establish that the beneficiary was in a valid nonimmigrant status at the time the petition was filed.

On January 19, 2011, the petitioner and the petitioner's prior counsel responded by providing further information regarding the proffered position and additional evidence. Specifically, counsel submitted, *inter alia*, the following documents on behalf of the petitioner: (1) tax returns; (2) the petitioner's City of [redacted] business tax certificate; (3) a brochure; (4) a sample contract; (5) a sample contract appendix; (6) an evaluation of the beneficiary's foreign degree equivalency; and (7) an evaluation of the educational requirements of a Business Operations Specialist

(b)(6)

position with [REDACTED]¹

On June 16, 2011, the director sent a second RFE to the petitioner. Specifically, the petitioner was asked to submit documentation to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On July 27, 2011, the petitioner and the petitioner's prior counsel responded to the RFE. In response, the petitioner submitted the following revised job description:

- (1) Negotiate and Authorize Contracts with new agents, steamship lines, customers & other interests . . . [;]
- (2) Project Cargo for [REDACTED] (Arrange [REDACTED] cargo movement to different international destinations. Prepare and process the documentation and perform related activities. Maintain and develop positive business relationships with Samsung's key personnel . . . [;]
- (3) Supervise Subordinate Staff: (a) Ensure legal compliance and provide import/export administration and control within US and international rules and regulation, (b) oversees the procedural aspect of international inbound and outbound freight, and (c) ensure that all of the import and export documentation are compliant with regulations and accurate in its contents and (d) demurrage & per-diem negotiation . . . [;]
- (4) Investigate, Verify, and Resolve Customer or Shipper Claims . . . [;]
- (5) Support Development, Maintenance and Training of System Manuals . . . [;]
- (6) Sales: Confer with potential customers and attend Trade Expos

The petitioner also submitted, *inter alia*, the following: (1) sample contracts, arrival notices, and bills of lading; (2) the petitioner's organizational chart; (3) resumes of [REDACTED] and [REDACTED]; (4) a letter from [REDACTED] President of [REDACTED] dated July 15, 2011; (5) a letter from [REDACTED] President of [REDACTED] dated July 22, 2011; (6) a letter from [REDACTED] dated July 14, 2011; (7) two of the petitioner's past job vacancy advertisements.

The director denied the petition on September 8, 2011, finding that the proffered position is not a specialty occupation. Citing to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), the director noted that the position of an "Import/Export Compliance Officer" as listed under the title "Compliance Officer" does not require a bachelor's degree in a specific specialty as a normal, minimum for entry into the occupation. The director

¹ The relationship between the petitioner and [REDACTED] is unclear from the evidence presented in this matter. Although it appears that the petitioner may have changed its name from [REDACTED] to its current name, there is no evidence that it and [REDACTED] are the same company. On the contrary, according to California state corporate records, [REDACTED] while shown as being located at the same address as the petitioner, is a separate legal entity incorporated on March 16, 2007. This further raises the question of what relevance, if any, this evaluation has to the instant petition. Moreover, it also remains unexplained why the position evaluation, even if relevant, states that [REDACTED] is a company founded in 1999 with offices in [REDACTED] when the evidence of record does not support these claims.

found that the petitioner failed to establish any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel contends that the proffered position is actually akin to that of a logistician, and cites to the *Handbook's* section addressing that occupation. Counsel further contends that a "bachelor's degree is a minimum educational requirement for the position of Logistician within the job grouping of Business Operations Specialist, and requires a degree in a specific academic discipline, such as Business Administration, Economics or a related field in order to execute the demanding duties of the job position." Counsel also asserts that the proffered position is specialized and complex.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. The AAO, however, will first make some preliminary findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

Upon review of the record, the AAO finds that there are significant discrepancies and deficiencies in the record of proceeding with regard to the proffered position. These material conflicts, when viewed in the context of the record of proceeding, undermine the claim that the proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

For example, the AAO notes that there is a significant discrepancy between what the petitioner claims about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated on the LCA submitted in support of petition. That is, the petitioner provided an LCA in support of the instant petition that indicates that the occupational classification for the position is Business Operations Specialists, All Others, OES/SOC Code 13-1199.99, at a Level I (entry level) wage.² The petitioner's designation of the proffered position as a Level I position on the submitted LCA indicates that it is an entry-level position for an employee who has only basic understanding of the occupation.

² The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

Therefore, it is simply not credible that the position is one with complex, unique and/or specialized duties, as such a position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage.

Moreover and as noted above, the occupational classification listed on the LCA is for a Business Operations Specialist, OES/SOC Code 13-1199.99. The petitioner claims on appeal that the import/export compliance specialist position described in the petition, however, is indicative of a logistician's duties. If true, the petitioner would have been required to provide at the time of filing an LCA certified for OES/SOC code 13-1081.00, not 13-1199.99, in order for it to be found to correspond to the petition.

Thus, for the foregoing reasons, a review of the enclosed LCA indicates that the information provided does not correspond to the level of work, requirements, and description that the petitioner ascribed to the proffered position in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved for this reason.

The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). There must be sufficient, corroborating evidence in the record that demonstrates not only actual, non-speculative employment for the beneficiary, but also enough details and specificity to establish that the work the beneficiary will perform for the petitioner will be in a specialty occupation. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1) and 103.2(b)(12).

Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

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

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

proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.³

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

For purposes of performing a more exhaustive review, however, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 AAO will first discuss the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it

³ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

addresses.⁴ The *Handbook* does not contain an occupation with the specific title of business operations specialist or import/export compliance specialist. Upon review of the described duties, the AAO concurs in part with the director, who found that the position encompasses duties of a compliance officer.

The AAO reviewed the information in the *Handbook* regarding the occupational category "Compliance Officers" and notes that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.⁵ The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory

⁴ The director's decision referred to the 2010-2011 edition of the *Handbook*. All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

⁵ The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one objective, authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether a particular position qualifies as a specialty occupation.

The AAO observes that the *Handbook* does not indicate that compliance officer positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. The full-text of the *Handbook* regarding this occupational category is as follows:

Compliance Officers

(O*NET 13-1041.00, 13-1041.01, 13-1041.02, 13-1041.03, 13-1041.04, 13-1041.06, and 13-1041.07)

Examine, evaluate, and investigate eligibility for or conformity with laws and regulations governing contract compliance of licenses and permits. Perform other compliance and enforcement inspection and analysis activities not classified elsewhere. Excludes "Financial Examiners" (13-2061), "Tax Examiners and Collectors, and Revenue Agents" (13-2081), "Occupational Health and Safety Specialists" (29-9011), "Occupational Health and Safety Technicians" (29-9012), "Transportation Security Screeners" (33-9093), "Agricultural Inspectors" (45-2011), "Construction and Building Inspectors" (47-4011), and "Transportation Inspectors" (53-6051).

- 2010 employment: **216,600**
- May 2010 median annual wage: **\$58,720**
- Projected employment change, 2010-20:
 - Number of new jobs: **32,400**
 - Growth rate: **15 percent (about as fast as average)**
- Education and training:
 - Typical entry-level education: **Bachelor's degree**
 - Work experience in a related occupation: **None**
 - Typical on-the-job-training: **Moderate-term on-the-job training**

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Feb. 20, 2013).

The *Handbook* summary data provides "education and training categories" for occupations. The occupational category "Compliance Officers" falls into the group of occupations for which a

bachelor's degree (no specific specialty) is the typical entry-level education. The AAO notes that, as evident in the above *Handbook* excerpt on this occupation, the *Handbook* reports only that a bachelor's degree is typical – but not required – for entry into compliance officer positions and, more importantly, the *Handbook* does not report that bachelor's degrees held by those entering the occupation are limited to and must be in any specific specialty directly related to the occupation. Accordingly, the *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally the minimum requirement for entry into this occupational category.

The AAO, however, notes that the duties of the proffered position also encompass some of the duties of administrative services managers, as described by the *Handbook*. Specifically, the petitioner's initial description of duties indicated that the beneficiary would be responsible for planning, directing, and coordinating the operations of the company, including coordinating shipment schedules and functioning as a liaison between customers, customs brokers and agents. The *Handbook* states:

Administrative services managers plan, direct, and coordinate supportive services of an organization. Their specific responsibilities vary by the type of organization and may include keeping records, distributing mail, and planning and maintaining facilities. In a small organization, they may direct all support services and may be called the *business office manager*. Large organizations may have several layers of administrative managers who specialize in different areas.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Administrative Services Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2> (last visited Feb. 20, 2013).

Again, as discussed above and as noted by the director in her decision, there is no specific occupation entitled "business operations specialist" in the *Handbook*. Consequently, a review of various other occupations is warranted to determine the closest match based on the duties of the proffered position as described by the petitioner. Upon review, it appears that both the occupation of compliance officer and administrative services manager encompass numerous duties of the proffered position. According to the *Handbook*, neither of these positions requires a bachelor's degree in a specific specialty. Specifically, regarding administrative services managers, the *Handbook* states:

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, some administrative services managers need at least a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Administrative Services Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4> (last visited Feb. 20, 2013).

The *Handbook*, therefore, does not indicate that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into such positions.

As noted above, counsel contends on appeal that the proffered position is actually akin to that of a logistician, and cites to the *Handbook's* section addressing that occupation. However, even if the proffered position were established as being that of a logistician, a review of the *Handbook* does not indicate that, as a category, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation of logistician. The information on the educational requirements in the "Logisticians" chapter of the *Handbook* indicates the following:

Logisticians can qualify for positions with an associate's degree in business or engineering or by taking courses on logistics. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's or master's degree in business, finance, industrial engineering, or supply chain management.

Therefore, while some firms "prefer" to hire workers with at least a bachelor's degree, the *Handbook* does not indicate that a bachelor's degree *in a specific specialty* is a standard occupational entry requirement. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Feb. 20, 2013). Thus, the *Handbook* is not probative evidence of the occupational category "Logisticians" being a specialty occupation.

The AAO further acknowledges the submission of an expert opinion letter by [REDACTED] Professor at the [REDACTED] attesting that a bachelor's degree in business administration or a related field is required to perform the duties of the proffered position. The AAO has reviewed the opinion, which appears to be for a business operations specialist position with [REDACTED] but declines to accept the testimony as evidence that the proffered position in this matter qualifies as a specialty occupation.

Specifically, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. See *Matter of Michael Hertz Associates*, 19 I&N Dec. 558. In this matter, while [REDACTED] states that a bachelor's degree in business administration or a related field is the minimum educational requirement for the proffered position, he fails to discuss specifically how a degree in such a generalized field of study renders the proffered position a specialty occupation. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*,

19 I&N Dec. 791 (Comm'r 1988). The AAO does not find the opinion of [REDACTED] persuasive in this matter.

Consequently, the AAO finds that, to the extent that it is described in the record of proceeding, the proffered position does not align with any occupational classification which the *Handbook* indicates as requiring, as a minimum standard for entry, at least a bachelor's degree in a specific specialty or its equivalent. It should be further noted that the petitioner's requirements for the position, which simply require a general degree in business, do not require a candidate to have a degree in a specific specialty.

As the evidence of record does not establish that the particular position proffered here 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 requirement of a bachelor's or higher 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)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, counsel submitted letters from (1) [REDACTED] President of [REDACTED] (2) [REDACTED] President of [REDACTED] and (3) [REDACTED] President of [REDACTED]. However, the evidence does not demonstrate that the three companies are similar organizations. The record of proceeding lacks sufficient information to conduct a meaningfully substantive comparison of the business operations of [REDACTED], and [REDACTED] to the petitioner. The petitioner failed to provide any supplemental information to establish that the organizations are similar to the petitioner. Thus, from the onset, this prong of the regulations has not been established.

More specifically, for the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics.

Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and an organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing corroborating evidence to support such an assertion. As previously mentioned, 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)).

Furthermore, all of the letters state that the position of business operations specialist requires the services of someone with a minimum of a bachelor's degree in business administration. As noted above, the claimed requirement of a degree in "Business Administration" for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558.

Moreover, while each of the companies claim to employ business operations specialists, there is no information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received in each of those positions. Accordingly, there is insufficient information regarding the duties and responsibilities of the positions to determine whether they are the same or parallel to the proffered position. Moreover, the AAO observes that the petitioner did not provide any documentary evidence to corroborate that the companies currently or in the past employed individuals in parallel positions to the proffered position, nor did it provide any documentation to substantiate the claimed academic requirements. That is, while the letters make general references regarding the companies' educational requirements, there is no documentation in support of these assertions (e.g., copies of diplomas/transcripts, employment records). As previously mentioned, 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Thus, the documentation provided does not establish that a bachelor's degree (or higher) in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations.

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." In the

instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of import/export compliance specialist. Specifically, the petitioner failed to demonstrate how the import/export compliance specialist duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial in performing certain duties of a case care management specialist position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other compliance specialist positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. The petitioner has not credibly demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or the equivalent. That is, the wage level designated by the petitioner in the LCA is not consistent with claims that the position would entail any particularly complex or unique duties relative to other compliance specialist positions.

Further, the petitioner has not identified any specific duties that elevate the position to one that would require the education obtained through a four-year university program in a specific discipline. Thus, the petitioner has not established that a baccalaureate or higher degree, in a specific specialty, or its equivalent, is common to the industry in parallel positions among similar organizations or, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific discipline. The petitioner has therefore failed to establish the alternative prongs of the criterion at 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. To satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), the evidence of record must show 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 as the minimum for entry into the occupation as required by the Act. To interpret the regulations 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 a 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 in a specific specialty. *See id.* at 388.

The petitioner submitted two of its own job vacancy announcements.⁶ Notably, the text of the announcement states that the educational requirement is a "4 year bachelor's degree, majored in int'l trade" which is not the same degree requirement claimed here, i.e., "at least a Bachelor's degree in the area of Business Administration, or a related Field, from an accredited institution of higher learning." The second announcement states that the position requires a bachelor's degree in business administration or economics and "5 yrs. exper." However, a claim that a bachelor's degree in business administration is a sufficient, minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. Accordingly, the AAO hereby incorporates into this analysis its prior discussion regarding the petitioner's claimed requirement of a degree in business administration for the proffered position, and the determination that this stated requirement does not establish that the proffered position is a specialty occupation. In addition, the advertised position is for a "Logistician" with five years of experience 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. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).⁷

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

⁶ It is noted that one of the advertisements is by [REDACTED] which according to the petitioner is its former name.

⁷ 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. As noted above, 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").

not usually associated with a degree in a specific specialty.⁸

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.

Furthermore, the AAO notes that the O*NET OnLine Summary Report for 13-1081.00 – Logisticians cited by counsel, is insufficient to establish that the position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. Contrary to the assertions of counsel, O*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns the occupation a "Job Zone Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." (The AAO again notes that the petitioner designated the position as a Level I position, the lowest of four possible wage-levels, which DOL indicates is appropriate for beginning level employees who have only a basic understanding of the occupation.) Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a *specific specialty* directly related to the duties of that occupation. Similarly, O*NET OnLine does not indicate that the logisticians responding to its survey who report that they hold at least a bachelor's or master's degree hold their degrees in a specific specialty. Therefore, the O*NET OnLine information is not probative of the proffered position being a specialty occupation.

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.

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

⁸ As noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), *available at* http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage.

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

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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