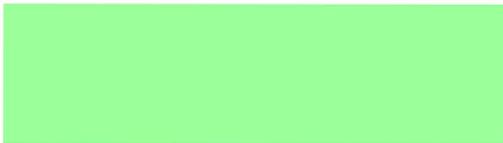


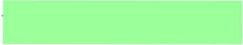


U.S. Citizenship
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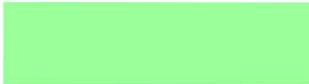
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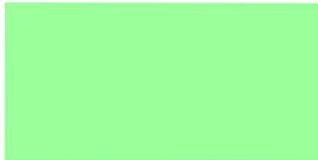
Petitioner:

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 (AAO) in your case.

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as an Online Beauty Wholesaler. To employ the beneficiary in what it designates as a sales manager position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

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

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

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

able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a sales manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 41-1012, First-Line Supervisors of Non-Retail Workers from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in economics from [REDACTED]. Counsel also submitted evidence that the beneficiary majored in Management Science and Engineering and was awarded a master's degree in management from the [REDACTED]. An evaluation in the record states that the beneficiary's Chinese degree is equivalent to a U.S. master's degree.

Counsel also submitted an attachment to the visa petition which states the following duties of the proffered position:

To maintain[,] order, and control inventory of wigs and accessories from overseas vendors in Korea and China; manage and account for daily sales; prepare sales and inventory reports; prepare budget and sales goals; hire and monitor sales staff's performance to ensure that sales goals are met; assist in internal audits; formulate pricing policies according to company's profitability requirements; implement quality and price controls; manage specials and promotions; prepare cash flow forecasts; and coordinate purchases and payments to vendors and suppliers overseas based on said forecast.

That attachment also states: "Must have a B.S.B.A. and work under the close supervision of the President."

On August 14, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel provided, *inter alia*, five vacancy announcements and counsel's own letter, dated October 12, 2012.

In his October 12, 2012 letter, counsel reiterated that the proffered position is a sales manager position, and stated while the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* "does not expressly state that a bachelor's degree in a specific specialty is the minimum requirement for entry into [a sales manager position]," the duties of the proffered position should control and that the "nature of the position itself varies with each employer's business."

As to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) counsel stated that a baccalaureate degree is normally the minimum entry requirement for the proffered position, and cited the *Handbook* as support for the proposition that sales managers need a bachelor's degree. Counsel did not, however, assert that sales manager positions require a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

As to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) counsel stated, "[W]e have found over 1,000 job posting [sic] for the position of Sales Manager, all of which require a bachelor's degree (see attached). Counsel also provided a list of 20 online sales manager vacancy announcements. That list contains no indication that any of the listed vacant positions require a bachelor's degree, let alone a bachelor's degree in a specific specialty.

As to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) counsel stated:

The [petitioner's] President, Mr. [REDACTED], is the petitioner's first and only Sales manager since its acquisition of this business in 2006. Mr. [REDACTED] has an MBA degree from [REDACTED] (see attached)

However, no evidence was provided to corroborate that the petitioner's president has the degree asserted.

As to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), counsel stated:

By comparing the above-mentioned job duties in the [Handbook] with the above-mentioned duties that the beneficiary will be performing, one can see that the job duties are in fact so specialized and complex that the knowledge required to perform both sets of duties *is* usually associated with the attainment of a baccalaureate degree. This is why the [Handbook] states up-front that a bachelor's degree is the entry-level educational requirement for the positions of Sales Manager.

The director denied the petition on November 10, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted (1) an evaluation, dated December 4, 2012, of the proffered position; (2) an affidavit, dated December 5, 2012, from [REDACTED] and (3) a diploma showing that [REDACTED] received a master of business administration degree in general business from [REDACTED] Missouri.

The position evaluation provided suggests that the proffered position combines duties of a sales manager, a marketing manager, a production manager, a finance manager, a purchasing manager, and a vice-president of operations. The evaluator stated: "[The proffered position] **clearly requires someone with at least a bachelor's degree in business administration.**"

The December 5, 2012 affidavit from [REDACTED] states that she is the president of [REDACTED], a retailer of wigs and other beauty supplies, and is in charge of three other beauty supply stores. She stated that she has a bachelor's degree and has never hired a manager without a bachelor's degree. She did not state the subjects in which she and her managers have bachelor's degrees and provided no evidence to corroborate that she and her managers have bachelor's degrees. Finally, she stated, "In fact, we are planning to hire a new manager at our [REDACTED] location who has an MBA (see attached)," apparently referring to the diploma of [REDACTED]

In his brief, counsel asserted that the proffered position may require a bachelor's degree notwithstanding that the *Handbook* does not state that all sales manager positions require such a degree. Counsel stated:

It is the [petitioner's] position herein that [the proffered position's] job duties are such that only a person with a bachelor's degree in business administration could adequately perform them.

As a preliminary matter, the AAO observes that the petitioner has never asserted that the proffered position requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent. An attachment to the visa petition states that the proffered position requires a bachelor's degree in business administration, but did not state that the degree must be in any specific concentration or specialization. In response to the RFE, counsel asserted that the proffered position requires a bachelor's degree, but not that the requisite degree must be in any specific specialty. On appeal, counsel again asserted that the proffered position requires a bachelor's degree in business administration, but not that the degree must be in any specific concentration or specialization.

A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of specialized knowledge as required by Section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Thus, the petitioner's recognition of a bachelor's degree in business administration, without additional specification, as a sufficient educational qualification for the proffered position, is tantamount to an admission that performance of the proffered position does not require at least a bachelor's degree, or the equivalent, in a specific specialty. The director's decision must therefore be affirmed and the petition denied on this basis alone. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

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

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular

position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The LCA submitted is certified for a First Line Supervisor of [REDACTED]. The visa petition states that the proffered position is a sales manager position, and counsel has cited the *Handbook* chapter pertinent to sales managers to support the proposition that the proffered position requires a bachelor's degree. The *Handbook* describes the occupation of "Sales Manager" as follows:

What Sales Managers Do

Sales managers direct organizations' sales teams. They set sales goals, analyze data, and develop training programs for the organization's sales representatives.

Duties

Sales managers typically do the following:

- Oversee regional and local sales managers and their staffs
- Resolve customer complaints regarding sales and service
- Prepare budgets and approve budget expenditures
- Monitor customer preferences to determine the focus of sales efforts
- Analyze sales statistics
- Project sales and determine the profitability of products and services
- Determine discount rates or special pricing plans
- Plan and coordinate training programs for sales staff

Sales managers' responsibilities vary with the size of the organization they work for. However, most sales managers direct the distribution of goods and services by assigning sales territories, setting sales goals, and establishing training programs for the organization's sales representatives.

In some cases, they recruit, hire, and train new members of the sales staff. For more information about sales workers, see the profiles on retail sales workers and wholesale and manufacturing sales representatives.

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

Sales managers advise sales representatives on ways to improve their sales performance. In large multiproduct organizations, they oversee regional and local sales managers and their staffs.

Sales managers also stay in contact with dealers and distributors. They analyze sales statistics that their staff gathers, both to determine the sales potential and inventory requirements of products and stores and to monitor customers' preferences.

Sales managers work closely with managers from other departments. For example, the marketing department identifies new customers that the sales department can target. The relationship between these two departments is critical to helping an organization expand its client base. Because sales managers monitor customers' preferences and stores' and organizations' inventory needs, they work closely with research and design departments and warehousing departments.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Sales Managers," <http://www.bls.gov/ooh/management/sales-managers.htm#tab-2> (last visited July 10, 2013).

Most of the duties the visa petition attachment attributed to the proffered position are consistent with the duties of sales managers as described in the *Handbook*. However, whether the petitioner's operations require a sales force is unclear. The petitioner's stated on the visa petition that it is an "Online Beauty Wholesaler," and although the petitioner provided its catalogs, which contain order forms to facilitate mail order purchases, the record contains no indication of a retail store. The petitioner also stated on the visa petition that it has 19 workers. Its organizational chart lists 19 workers, exclusive of Mr. [REDACTED] whom the 2011 tax return in the record identifies as the petitioner's owner, and [REDACTED] the petitioner's vice president. None of the 19 workers identified on the organizational chart work in the petitioner's Purchasing & Sales Department. For all of these reasons, whether the petitioner requires sales personnel to operate its business has not been established.

Further, the organizational chart, which identifies [REDACTED] as the petitioner's president and sales manager, indicates that, in that capacity, he is in charge of all of the petitioner's departments, including, not just purchasing and sales, but marketing, graphics, customer service, accounting, website, and warehouse & shipping as well. Such myriad responsibilities, if they would be performed by the beneficiary in the proffered position, do not mark the proffered position as a sales manager position. Further still, the position evaluation submitted on appeal argues that the proffered position is "much more than just a sales manager" position.

However, the AAO will assume, *arguendo*, that the proffered position is a sales manager position, as represented by the petitioner and counsel, and as described in the *Handbook*, in order to reach counsel's assertions pertinent to the educational requirements of such positions.

The *Handbook* states the following about the educational requirements of sales manager positions:

How to Become a Sales Manager

Most sales managers have a bachelor's degree and work experience as a sales representative.

Education

Most sales managers have a bachelor's degree, although some have a master's degree. Educational requirements are less strict for job candidates who have significant experience as a sales representative. Courses in business law, management, economics, accounting, finance, mathematics, marketing, and statistics are advantageous.

Work Experience

Work experience is typically required for someone to become a sales manager. The preferred duration varies, but employers usually seek candidates who have at least 1 to 5 years of experience.

Sales managers typically enter the occupation from other sales and related occupations, such as sales representatives or purchasing agents. In small organizations, the number of sales manager positions is often limited, so advancement for sales workers usually comes slowly. In large organizations, promotion may occur more quickly.

Important Qualities

Analytical skills. Sales managers must collect and interpret complex data to target the most promising areas and determine the most effective sales strategies.

Communication skills. Sales managers need to work with people in other departments and with customers, so they must be able to communicate clearly.

Customer-service skills. When helping to make a sale, sales managers must listen and respond to the customer's needs.

Managerial skills. Sales managers must be able to evaluate how sales staff perform and develop ways for struggling members to improve.

Id. at <http://www.bls.gov/ooh/management/sales-managers.htm#tab-4> (last visited July 10, 2013).

The *Handbook* does not indicate that, as a category, sales manager positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. First, the *Handbook* only states that "most" sales managers have a bachelor's degree, not that all or substantially all sales managers have a bachelor's degree. Second, even for those positions that may require a bachelor's degree, the *Handbook* does not indicate that the requisite degree must be in any specific specialty. For both reasons, the *Handbook* does not indicate that a sales manager position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of business knowledge, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

Also, there are no letters from professional associations 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.

Counsel did submit the December 5, 2012 affidavit of [REDACTED] Ms. [REDACTED] stated that managers for her stores all have bachelor's degrees, but did not state that those manager positions require a minimum of a bachelor's degree *in a specific specialty* or its equivalent. Further, she provided the diploma of [REDACTED] That diploma, however, does not support the petitioner's case.

As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The only evidence in the record pertinent to managers hired by Ms. [REDACTED] indicates that she does not, in fact, require a minimum of a bachelor's degree *in a specific specialty* or its equivalent for the position.

The petitioner did submit five vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Account Manager for [REDACTED] which markets artificial eyelashes, stating "Bachelor's degree preferred";
2. Manager -- Regional Sales, [REDACTED] which markets [REDACTED] cosmetics, fragrances, and beauty products in the United States, requiring a "Bachelor's Degree in Management or related field of study (or equivalent work experience)" and "5 to 7 years of retail management experience, with at least 3 to 5 years managing multiple freestanding store locations with broad geographic scope";
3. Account Manager, Beauty Client Development for [REDACTED] which provides information and advice to businesses, stating that the position requires a "BA/BS," and "5-8 years experience in beauty marketing or account management within market research";
4. Key Relationship Manager [REDACTED] a manufacturer of hair care products, stating, "Bachelor's degree in business, marketing or related field preferred"; and
5. Regional Sales Manager – New York Region, for [REDACTED] [REDACTED], requiring a "Bachelor's degree or equal job experience"

The AAO observes that the third vacancy announcement, placed by [REDACTED] does not appear to be for a position in the petitioner's industry, as [REDACTED] does not sell beauty products. Further, although the other vacancy announcements appear to have been placed by companies in the cosmetics and beauty products industries, whether any of those companies are otherwise similar to the petitioner has not been demonstrated. [REDACTED] which placed the second vacancy announcement, for instance, does not appear to be, as it is part of a 100-year old company, and has multiple manufacturing and distribution facilities in the United States as well as several research facilities.

Yet further, the first and fourth vacancy announcements state that a bachelor's degree is "preferred." The AAO observes that a preference for a degree is not a minimum requirement. Those vacancy announcements do not state a requirement of a bachelor's degree.

Even further, the third and fifth vacancy announcements state a requirement of a bachelor's degree, but not that the degree must be in any specific specialty. Those vacancy announcements also fail to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Additionally, the second and fifth vacancy announcements state that they require a degree or equivalent work experience, but they do not state what type or amount of work experience the hiring authorities would consider to be equivalent to the requisite bachelor's degree. The AAO is unable, therefore, to determine that the second and fifth vacancy announcements actually do require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, the fourth vacancy announcement indicates that an otherwise undifferentiated bachelor's degree in business would be a sufficient educational qualification for the position offered. As was explained above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *See Matter of Michael Hertz Associates, supra.* As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For this additional reason, the fourth vacancy announcement does not contain a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Furthermore, although the vacancy announcements provided contain descriptions of the positions offered, none are so specifically described that they can be determined to be sufficiently similar to the proffered position as to be characterized as "parallel." In this regard, the AAO also observes that the petitioner indicated that the proffered position is a Level I position, indicating that it is an entry-level position for an employee who has only a basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty, the petitioner would be obliged to demonstrate that other Level I positions, entry-level positions requiring only a basic understanding of the occupation, require a minimum of a bachelor's degree in a specific specialty or its equivalent. The first three vacancy announcements provided, however, are for positions requiring considerable experience, and, even if they were for positions with similar organizations in the petitioner's industry and required a bachelor's degree, would be of no evidentiary weight for the proposition that *positions parallel to the proffered position* require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate

what statistically valid inferences, if any, can be drawn from five announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.²

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I position, an indication that the proffered position is an entry-level position for an employee

² 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 these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *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 sales manager for firms similar to and in the same industry as the petitioner 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 demonstrate that such an educational requirement is common throughout the petitioner's industry among companies similar to the petitioner for parallel positions.

who has only a basic understanding of the occupation. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree.

As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.³

In response to the RFE, counsel stated:

The [petitioner's] President, Mr. [REDACTED] is the petitioner's first and only Sales manager since its acquisition of this business in 2006. Mr. [REDACTED] has an MBA degree from [REDACTED] . . .

First, as was observed above, no evidence was provided to corroborate that the petitioner's president has the degree asserted. Further, a degree in business administration, whether a bachelor's degree or a master's degree, while it may be an excellent qualification for many positions, is not a degree in a specific specialty, as was explained above. The evidence submitted indicates that the only person who has ever worked in the proffered position for the petitioner does not possess a minimum of a bachelor's degree *in a specific specialty* or its equivalent. The petitioner has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

³ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. 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").

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Notwithstanding counsel's assertions to the contrary, the duties of the proffered position, including maintaining and ordering inventory, managing and accounting for sales, preparing sales and inventory reports, preparing budget and sales goals, hiring sales staff and monitoring their performance, assisting in internal audits, formulating pricing policies according to company's profitability requirements, implementing quality and price controls, managing specials and promotions, preparing cash flow forecasts, and coordinating purchases and payments contain no indication of specialization and complexity usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that specialty degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.