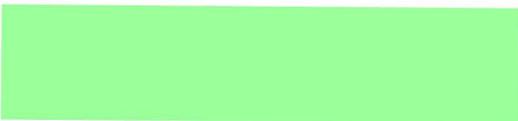


(b)(6)

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



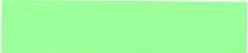
U.S. Citizenship  
and Immigration  
Services



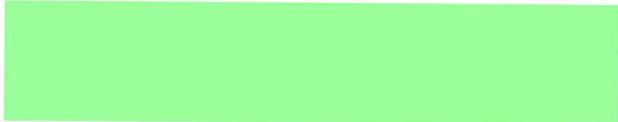
DATE: JUL 19 2013

OFFICE: VERMONT SERVICE CENTER

FILE:

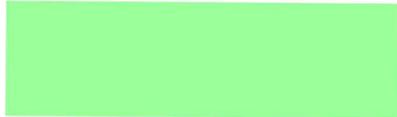


IN RE: Petitioner:  
Beneficiary:



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 (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 states that it is a distributor and wholesaler of medical supplies with six employees. In order to employ the beneficiary in what it designates as a controller position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, 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 his 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 response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue on appeal is whether the petitioner has demonstrated that the 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 following statutory and regulatory requirements.

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

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

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

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as 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 controller position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3031, Financial Managers 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 Licentiate in Business Administration degree from Rafael Urdaneta University in Venezuela. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration.

Counsel also submitted a letter, dated May 23, 2012, from the managing director of [REDACTED] which is at the petitioner's address; and a letter, dated May 29, 2012, from counsel. In her letter, the managing director of [REDACTED] stated that the petitioner "operat[es] as [REDACTED]". Both counsel and [REDACTED] managing director state the following as the duties of the proffered position:

- Delegate authority for the receipt, disbursement, banking, protection, and custody of funds, securities, and financial instruments.
- Keep company compliant regarding organizational policies and procedures, federal and state policies and directives, and accounting standards.
- Conduct audits of accounts & financial transactions to ensure compliance with state and federal requirements.

- Act as company's chief financial officer and financial representative; inform and consult on any important financial decisions
- Prepare and file annual tax returns or prepare financial information; assist in completion of tax returns.
- Prepare financial statements, business activity reports, financial position forecasts, annual budgets and reports
- Supervise employees performing financial reporting, accounting, billing, collections, payroll, and budgeting duties.
- Receive, record, and authorize requests for disbursements in accordance with company policies and procedures.
- Develop and maintain relationships with banking, insurance, and nonorganizational accounting personnel to facilitate financial activities.

Further, both counsel and [REDACTED] managing director stated, "The minimum requirement for this professional position is a four[-]year bachelor's degree or its equivalent," but did not state that the requisite degree must be in any specific specialty or in any range of specialties.

On June 29, 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 submitted (1) a letter, dated August 28, 2012, from [REDACTED] managing director; (2) a list of the duties of the proffered position; (3) an evaluation of the proffered position; (4) printouts of web content pertinent to officers of other companies; and (5) counsel's own letter, dated September 17, 2012.

In his August 28, 2012 letter, [REDACTED] managing director provided descriptions of the duties of four of the positions in which [REDACTED] employs people, including the following, slightly amended, version of the duties of the proffered position:

- Delegate authority for the receipt, disbursement, banking, protection, and custody of funds, securities, and financial instruments.
- Keep company compliant regarding organizational policies and procedures, federal and state policies and directives, and accounting standards.

- Conduct audits of accounts & financial transactions to ensure compliance with state and federal requirements.
- Act as company's chief financial officer and financial representative; inform and consult on any important financial decisions
- Prepare and file annual tax returns or prepare financial information; assist in completion of tax returns.
- Prepare financial statements, business activity reports, financial position forecasts, annual budgets and reports
- Receive, record, and authorize requests for disbursements in accordance with company policies and procedures.
- Develop and maintain relationships with banking, insurance, and non-organizational accounting personnel to facilitate financial activities.

The AAO observes that the only substantive difference between that description and the description Acti-Kare's managing director previously provided in her May 23, 2012 letter is the elimination of the duty of supervising employees performing financial reporting, accounting, billing, collections, payroll, and budgeting duties.

The remaining jobs for which duty descriptions were provided are Managing Director, Assistant/Marketing Professional, and Caregiver. [REDACTED] managing director stated, "Currently, there are four caregivers under our employ." Thus, as the petitioner claimed, on the visa petition, to have six employees, and the descriptions provided account for seven positions, including the position proffered in the instant case, those job descriptions appear to account for all of the positions in the petitioner's organization.<sup>1</sup> Further, [REDACTED] managing director stated: "This letter is submitted as evidence of the existing positions under the petitioner's employ and their official job titles, duties and education requirements." [REDACTED] managing director appears, thereby, to confirm that the position descriptions provided account for all of the positions in the petitioner's organization. None of the positions described are designated as accountant or bookkeeping positions and, with the exception of the proffered position, none include duties related to accounting or bookkeeping.<sup>2</sup>

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<sup>1</sup> This is based on the assumption, made *arguendo*, that the petitioner and [REDACTED] are, in fact, identical, as asserted.

<sup>2</sup> This may account for the withdrawal of the assertion, made in [REDACTED] managing director's May 23, 2012 letter, and counsel's May 29, 2012 letter, that the beneficiary would supervise employees performing financial reporting, accounting, billing, collections, payroll, and budgeting duties. That supervisory duty was redacted from the submissions in response to the RFE.

Although both counsel and the [REDACTED] managing director both previously indicated that the beneficiary would supervise the petitioner's accounting and bookkeeping staff, the submissions in response to the RFE indicate that it has no accounting in bookkeeping staff. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

Further, as noted earlier, the petitioner claims on the Form I-129 that it is a distributor and wholesaler of medical supplies. Therefore, it is unclear why it requires four "caregivers." That more than half of the petitioner's employees are caregivers suggests that the petitioner mischaracterized the type of business it operates. Again, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The list of the duties of the proffered position provided in response to the RFE is unsigned and contains no indication of who generated that list. It describes the duties of the position as follows:

- Act as company's chief financial officer and financial representative; inform and consult on any important financial decisions. 40%
- Conduct audits of accounts & financial transactions to ensure compliance with state and federal requirements. 15%
- Prepare financial statements, business activity reports, financial position forecasts, annual budgets and reports. 15%
- Develop and maintain relationships with banking, insurance, and non-organizational accounting personnel to facilitate financial activities. 10%
- Prepare and file annual tax returns or prepare financial information; assist in completion of tax returns. 5%
- Delegate authority for the receipt, disbursement, banking, protection, and custody of funds, securities, and financial instruments. 5%
- Keep company compliance [sic] regarding organizational policies and procedures, federal and state policies and directives, and accounting standards. 5%
- Receive, record, and authorize requests for disbursements in accordance with company policies and procedures. 5%

The evaluation of the proffered position was prepared by an assistant professor at [REDACTED] and states that the proffered position requires a bachelor's degree in business administration or a closely-related field. That evaluation also states, "The [petitioner] provides senior and home care services." That assertion conflicts with the petitioner's assertion, on the visa petition, that its business is distribution and wholesaling of medical supplies.

The printouts pertinent to other companies show the college degrees and other accomplishments of various officers of [REDACTED]

The AAO observes that all of those organizations appear to provide home care.

In his September 17, 2012 letter, counsel stated "Acti-Kare is organized as a franchise under NTHREEA, LLC [the petitioner]." Counsel cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and the O\*NET Internet site for the proposition that the proffered position qualifies as a specialty occupation position. Counsel also stated, "[The proffered position] must be filled by an individual with a minimum education of a bachelor's degree in business administration and/or its equivalent." The AAO observed that counsel previously stated that the proffered position requires a bachelor's degree, but not that it requires a degree in any particular major or any particular array of majors. Counsel also cited the evaluation of the proffered position as evidence that the proffered position is a specialty occupation position.

As to the printouts pertinent to officers of other companies, counsel stated:

We have also provided examples from the elder home care industry, with companies ranging from a smaller to larger size. We found that in four examples of companies offering similar services, the employee in charge of the financial operation of the company has, at a minimum, a Bachelor's Degree in either finance or accounting. Based on the information we have gathered, we believe we have shown that in similarly situated businesses in the industry, a baccalaureate degree in business or a related field of study is a standard minimum requirement for a Controller position.

As was noted above, the petitioner stated on the visa petition that it is a distributor and wholesaler of medical supplies. The petitioner has not retracted that assertion, and counsel did not explain the relevance of evidence pertinent to companies in the home care industry to the educational requirements of the proffered position.

The director denied the petition on October 3, 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 an undated letter from [REDACTED], Co-owner and Director of [REDACTED]. [REDACTED] stated that "[REDACTED] is family owned and operated as a local branch of the [REDACTED]. The relationship, if any, between that company and the petitioner, [REDACTED] is unclear. [REDACTED] also stated that his company is in the business of providing non-medical senior in-home care. He also stated:

As a result of the necessities of the business, our current Controller who handles all the financial aspects of our business have [sic] the equivalent of over 12 years of working experience in accounting and finance.

Initially, the AAO observes that what [REDACTED] means by "the equivalent of over 12 years of working experience," is unclear. Further, as the petitioner has not retracted the assertion that its business is distributing and wholesaling of medical supplies, the relevance of that document to the educational requirements of positions in the petitioner's industry is unclear.

In his appeal brief, counsel asserted that the evidence submitted demonstrates that the proffered position qualifies as a specialty occupation position. Counsel also cited unpublished AAO decisions for various propositions.

As a preliminary matter, counsel's references to AAO non-precedent decisions have no persuasive impact. While 8 C.F.R. § 103.3(c) provides that USCIS precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Furthermore, each nonimmigrant petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding; *see* 8 C.F.R. § 103.2(b)(16)(ii).

The AAO observes, initially, that neither the petitioner nor counsel has effectively asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Specifically, in the submissions with the visa petition, they asserted that the proffered position requires a bachelor's degree, without asserting that the degree must be in any particular subject or range of subjects. Subsequently, in response to the RFE, counsel asserted that the proffered position requires "a minimum education of a bachelor's degree in business administration and/or its equivalent." That assertion also fails to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

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).

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 in a specific specialty or the equivalent. This is sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (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.

Counsel cited O\*NET for the proposition that controller positions require a bachelor's degree. Controller positions are addressed under the SOC 11-3031.01, Treasurers and Controllers, which is a more specific occupation included under SOC 11-3031, Financial Managers. Even assuming that the proffered position qualifies as a controller position, as asserted, O\*NET does not indicate that it therefore qualifies as a specialty occupation position.

Specifically, O\*NET assigns controller positions to Job Zone 5. Jobs assigned to that Job Zone require "extensive preparation."<sup>3</sup> O\*NET further explains the phrase "extensive preparation" by stating, "Most of these occupations require graduate school. For example, they may require a master's degree, and some require a Ph.D., M.D., or J.D. (law degree)." Even assuming, *arguendo*, that the jobs in that Job Zone that do not require a post-graduate degree require a bachelor's degree, such a designation does not demonstrate that a degree *in any specific specialty* is required for such positions. Such a designation does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

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<sup>3</sup> For an explanation of Job Zones, see <http://www.onetonline.org/help/online/zones>.

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.<sup>4</sup>

The petitioner claimed in the LCA that the proffered position corresponds to SOC code and title 11-3031, Financial Managers. Subsequently, on appeal, counsel asserted that the proffered position corresponds to the more specific SOC code and title 11-3031.01, Treasurers and Controllers.

The AAO questions whether the proffered position corresponds to such a position. The AAO observes that the evidence presented indicates that the petitioner does not employ an accountant or an auditor; or a bookkeeping, accounting, or auditing clerk. Further, based on the duties attributed to the other positions in which the petitioner employs people, no one but the beneficiary appears to be available to perform financial duties. Further still, the *Handbook* discusses controller positions in the chapter entitled, "Financial Managers." The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Financial Managers," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of financial managers, including controllers:

### **What Financial Managers Do**

Financial managers are responsible for the financial health of an organization. They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization.

### **Duties**

Financial managers typically do the following:

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

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to

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<sup>4</sup> 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.

produce financial reports. Financial managers' main responsibility used to be monitoring a company's finances, but they now do more data analysis and advise senior managers on ideas to maximize profits. They often work on teams, acting as business advisors to top executives.

Financial managers also do tasks that are specific to their organization or industry. For example, government financial managers must be experts on government appropriations and budgeting processes, and healthcare financial managers must know about issues in healthcare finance. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry. For more information on chief financial officers, see the profile on top executives.

The following are examples of types of financial managers:

**Controllers** direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by governmental agencies that regulate businesses. Often, controllers oversee the accounting, audit, and budget departments.

**Treasurers** and **finance officers** direct their organization's budgets to meet its financial goals. They oversee the investment of funds. They carry out strategies to raise capital (such as issuing stocks or bonds) to support the firm's expansion. They also develop financial plans for mergers (two companies joining together) and acquisitions (one company buying another).

**Credit managers** oversee the firm's credit business. They set credit-rating criteria, determine credit ceilings, and monitor the collections of past-due accounts.

**Cash managers** monitor and control the flow of cash that comes in and goes out of the company to meet the company's business and investment needs. For example, they must project cash flow (amounts coming in and going out) to determine whether the company will not have enough cash and will need a loan or will have more cash than needed and so can invest some of its money.

**Risk managers** control financial risk by using hedging and other strategies to limit or offset the probability of a financial loss or a company's exposure to financial uncertainty. Among the risks they try to limit are those due to currency or commodity price changes.

**Insurance managers** decide how best to limit a company's losses by obtaining insurance against risks such as the need to make disability payments for an employee who gets hurt on the job and costs imposed by a lawsuit against the company.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Treasurers and Controllers," <http://www.bls.gov/ooh/management/financial-managers.htm#tab-2> (last visited July 3, 2013).

Thus, according to the *Handbook*, controllers (1) direct the preparation of financial reports, (2) are in charge of preparing special reports required by governmental agencies, and (3) often oversee the accounting, audit, and budget departments.

As was observed above, the petitioner has no accounting or bookkeeping staff for the beneficiary to oversee or to direct in preparing financial reports. As such, in the context of the petitioner's operations, the beneficiary could not perform the duties of a controller as described in the *Handbook*. From the evidence submitted, the AAO finds that the beneficiary would not be directing, in charge of, or overseeing others. The evidence submitted does not support the proposition that the proffered position is a controller position, as the petitioner claims. The record suggests that the proffered position is likely a bookkeeping position or, at best, an accountant position.<sup>5</sup> In any event, the AAO finds that the proffered position is not a controller position.

Both controllers and other financial managers, "Supervise employees who do financial reporting and budgeting" and "Review company financial reports and seek ways to reduce costs."

Based on the evidence in the record, the proffered position appears to be a more hands-on position than financial manager positions described by the *Handbook*. That is, because there is no accounting or bookkeeping crew to supervise, the beneficiary would not be supervising any such crews. Further the duties the beneficiary would perform pertinent to financial reporting and budgeting would be producing financial reports and budgets, rather than reviewing them, as there appears to be no one else at the petitioner's organization able to produce financial reports and budgets. In addition to finding that the proffered position is not a controller position, the AAO finds that the proffered position is not any other financial manager position as described in the *Handbook*.

However, the AAO will assume, *arguendo*, that the proffered position is a controller position, so as to reach counsel's assertion that such positions necessarily qualify as specialty occupation positions. The *Handbook* states the following with regard to the educational requirements of financial manager positions:

### **How to Become a Financial Manager**

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<sup>5</sup> The AAO observes that if the proffered position were found to be a bookkeeping or accounting position, that classification would be insufficient, in itself, to show that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

### **Education**

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

### **Certification**

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

### **Work Experience**

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

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

### **Advancement**

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

### **Important Qualities**

**Analytical skills.** Financial managers increasingly assist executives in making decisions that affect the organization, a task for which they need analytical ability.

**Communication skills.** Excellent communication skills are essential because financial managers must explain and justify complex financial transactions.

**Detail oriented.** In preparing and analyzing reports such as balance sheets and income statements, financial managers must pay attention to detail.

**Math skills.** Financial managers must be skilled in math, including algebra. An understanding of international finance and complex financial documents also is important.

**Organizational skills.** Financial managers deal with a range of information and documents. They must stay organized to their jobs effectively.

*Id.* at <http://www.bls.gov/ooh/management/financial-managers.htm#tab-4> (last visited July 3, 2013).

The *Handbook* indicates that a bachelor's degree in finance, accounting, economics, or business administration is often the minimum education needed for financial managers and that many employers now seek candidates with a master's degree, preferably in business administration, finance, or economics. In both cases, a degree in business administration appears to be a sufficient educational qualification for such positions.

As was observed above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent and is insufficient to show that a position qualifies as a specialty occupation position. The *Handbook* does not support the proposition that financial manager positions, including controller positions, as a category, qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. Even given the assumption that the proffered position is a controller position, the petitioner would not have demonstrated that it qualifies as a specialty occupation position.

Further, 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Even assuming that the proffered position is a controller position as asserted by counsel, (which the AAO has found that it is not) the classification of the proffered position as a Level I position would not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some financial manager positions, which *Handbook* classification includes controllers, do not require such a degree.

Further still, the AAO finds that, to the extent that they are described in the record of proceeding, the duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of finance and accounting principles, 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.

Finally, regarding the position evaluation submitted by counsel in response to the RFE, the AAO observes that the evaluator does not list the reference materials on which he relies as a basis for his conclusion. It appears that the evaluator did not base his conclusion on any objective evidence, but relied, instead, on the position description provided by the petitioner and on the evaluator's own subjective opinions based on his own experience. Additionally, the evaluator stated that the petitioner's "provides senior and home care services," whereas the petitioner stated, on the visa petition, that it is a distributor and wholesaler of medical supplies. As such, the evaluator has not demonstrated an in-depth knowledge of the petitioner's business operations that would accord him insight into the requirements of the proffered position as it would be performed within the context of the petitioner's business operations.

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).

Moreover, the evaluator finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a 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 (Comm'r 1988). In addition to proving 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 also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring 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).

Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, 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, even assuming the proffered position to be a controller position, 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.

[REDACTED] undated letter appears to have been provided to show that parallel positions in organizations similar to the petitioner in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent. However, [REDACTED] stated that [REDACTED] is in the business of providing senior in-home care, whereas the petitioner stated, on the visa petition, that it is a distributor and wholesaler of medical supplies. [REDACTED] has not been demonstrated to be in the petitioner's industry. Further still, no evidence was provided to corroborate [REDACTED] assertion that his business employs a controller, or that the controller's experience is equivalent, pursuant to the salient regulations, to a bachelor's degree in any specific specialty.

The printouts pertinent to officers of other companies show the various college degrees and other accomplishments of various officers of [REDACTED]. Again, those businesses appear to be in the home care industry, and the petitioner has asserted that it is a distributor and wholesaler of medical supplies. The record contains insufficient evidence to show that the operations of those companies are similar to the operations of the petitioner, or that the duties of any of those officers are so similar to those of the

proffered position that those officers could be said to be in positions parallel to the proffered position.

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 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.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that, even assuming the proffered position to be a controller position, there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the 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.<sup>6</sup> In his September 17, 2012 letter, counsel stated: "The [proffered position] was established as a new position; thus, there were no individuals under petitioner's employ that occupied such position." The petitioner has submitted no other evidence pertinent to the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), and has failed, therefore, to satisfy that criterion.

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.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as delegating authority for receipt, disbursement, banking, protection, and custody of funds, securities, and financial instruments; maintaining compliance with internal policies and governmental requirements; conduct audits of accounts and transactions; acting as the petitioner's chief financial officer and financial representative; informing and consulting on any important financial decisions; preparing tax returns, financial statements, etc.; supervising the petitioner's accounting and bookkeeping staff;<sup>7</sup> receiving, recording and authorizing requests for disbursements; and developing and maintaining relationships with banking, insurance, and outside accounting personnel contain no indication of a nature so specialized and complex that they require knowledge usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent.

In other words, even assuming the proffered position to be a controller position (which the AAO has found that it is not), the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of controller positions that are not usually

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<sup>6</sup> 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").

<sup>7</sup> The petitioner has not yet resolved the inconsistency between its assertion that the beneficiary would supervise its accounting and bookkeeping staff and its admission that it has no accounting and bookkeeping staff.

associated with at least a bachelor's degree in a specific specialty or its equivalent.<sup>8</sup> 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 record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

Although the petitioner is identified on the visa petition as [REDACTED] much of the evidence pertains to work the beneficiary, if the visa petition were approved, would perform for [REDACTED]. In his May 23, 2012, [REDACTED] managing director asserted that [REDACTED] . . . operat[es] as [REDACTED] thus asserting that they are the same entity, and that [REDACTED] is merely a *DBA* name of the petitioner. However, no evidence was submitted to corroborate that assertion.

In his September 17, 2012 response to the RFE in this matter, counsel stated, [REDACTED] is organized as a franchise under [REDACTED]. Counsel thus asserted that the two entities are not, in fact, identical, but that the petitioner franchises [REDACTED] locations. However, no evidence was submitted to corroborate that assertion, either.

The petitioner named on the visa petition is [REDACTED] but considerable evidence in the record suggests that the beneficiary would work for [REDACTED]. Even if the visa petition were approvable in every other respect, without a clarification of the relationship between those two entities, and

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<sup>8</sup> Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other food service materials manager positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

evidence demonstrating that, if the two actually are different entities, the beneficiary would work for [REDACTED] which is the petitioner in this case, this visa petition could not be approved.

Pursuant to the instant visa category, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation.

The AAO observes, however, that the evidence pertinent to the beneficiary's qualifications shows that the beneficiary has a foreign bachelor's degree in business administration, which an evaluation states is equivalent to a U.S. bachelor's degree in business administration.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). A specialty occupation position, as was explained above, necessarily requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, an otherwise undifferentiated bachelor's degree is an insufficient educational qualification for any specialty occupation position. The evidence does not show that the beneficiary is qualified to perform services in any specialty occupation position. The visa petition must be denied for this additional reason.

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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.