

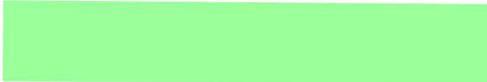


U.S. Citizenship
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Services

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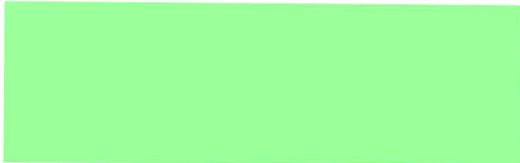


DATE: **JUN 13 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

In a letter submitted in support of the Form I-129 visa petition, the petitioner describes itself as a distributor of custom flexible packaging. In order to employ the beneficiary in what it designates as an Export Sales Manager 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 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 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 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, the 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 an Export Sales Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-2022.00 Sales Managers. The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence to show that the beneficiary has a bachelor's degree in commerce awarded by the [REDACTED] Philippines, with a major in financial accounting. An evaluation of the beneficiary's degree states that it is equivalent to a U.S. bachelor's degree in accounting.

In a support letter dated January 13, 2011, and referenced above, the petitioner's president provided the following description of the duties of the proffered position:

1. Exercising independent judgment and discretion in guiding the distribution of products to customers (20%);
2. Managing sales associates in the Export Sales Department and overseeing project management (20%);
3. Developing business partnerships with customers through business knowledge and a high level of service and integrity (20%);
4. Coordinating sales distribution by establishing sales territories, quotas, and sales targets (5%);
5. Analyzing sales statistics gathered by sales staff to determine sales potential and inventory requirements (5%);

6. Assisting current and new customers with new product/project development, including monitoring customer preferences to determine focus of sales efforts (15%);
7. Resolving customer complaints regarding sales and distribution (5%); and [sic]
8. Reviewing operational records and reports to project sales and determine profitability (5%); and
9. Establishing training programs for sales associates (5%).

The petitioner's president stated, "The [proffered position] is a specialty occupation requiring specific training and experience in international sales distribution." He also stated,

The [proffered position] requires the theoretical and practical application of a body of highly specialized knowledge in the area of finance and accounting to manage [the petitioner's] distribution, sales and marketing function.

The petitioner's president did not, however, state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, or indicate, if it did, the specific specialty in which that degree or equivalent would be.

The petitioner's president also stated that the beneficiary will perform the following additional duties:

1. Overseeing project and account management, including the major and more technical accounts/customers of the Export Sales and Marketing Team;
2. Serving as the primary contact point for international customers and assigning new customers to the team once the contact has been established;
3. Calculating job/product cost, budget allocation and sales forecasting, and creating financial reports;
4. Handling bidding/auction events;
5. Generating new business opportunities through networking, obtaining referrals and marketing calls;
6. Administering and organizing customer meetings and visits, and meeting existing and potential customers for possible account development;
7. Responding to customers' inquiries and complaints, and handling ancillary purchasing and account matters, including responding to Requests for Proposal/Information (RFP/RFI) and Requests for Quotation (RFQ);
8. Partnering with Technical and QC Teams in all aspects of account management and issue resolution;
9. Coordinating sales proposals and order confirmations, tracking orders in production, and serving as a liaison with shipping personnel to gather information about shipment/logistics requirements;
10. Managing the Export Sales and Marketing Team, and reporting directly to the Deputy Managing Director regarding project updates and team performance;

11. Interviewing, hiring, and training sales associates for Export Sales and Marketing Team and evaluating the performance of each Export Sales and Marketing Team personnel;
12. Coordinating and participating in Sales and Marketing events such as trainings, seminars, conferences and trade shows;
13. Contributing to group of companies' brochures and sales kit;
14. Establishing/updating technical correspondence format for Export Sales and Marketing Department; and
15. Providing assistance to the directors as required.

On January 31, 2011, 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.

In response, counsel submitted, *inter alia*, (1) a Position Summary, dated February 28, 2011, pertinent to the proffered position; (2) a statement, dated March 10, 2011, from [REDACTED] (3) a memorandum, dated March 10, 2011, from the petitioner's president to counsel; (4) counsel's own letter, dated March 14, 2011; and (5) five vacancy announcements. The five vacancy announcements will be announced below.

The Position Summary includes the following revised description of the duties of the proffered position:

Management / (30%)

- General management of export sales and project management associates and activities (10%)
- Establish and implement sales and customer service training programs for export sales team. (10%)
- Establish sales performance standards, compensation, and incentives for export sales team. (5%)
- Manage all expenses associated with export sales. (5%)

Strategic Planning (30%)

- Define export sales potential, targets markets & customers, and objectives. (10%)
- Develop export sales infrastructure and territories to facilitate sales objectives. (10%)
- Develop strategic and effective sales strategy to enable export sales team to meet sales objectives. (10%)

Information & Analysis / (15%)

- Analyze sales data to best determine sales potential and inventory requirements. (5%)
- Monitor, project, and report export sales and profitability. (5%)

- Collect, organize, analyze, and report product, service, and market related information that enables [the petitioner] to better serve export markets. (5%)

Sales Support (25%)

- Assist in defining and developing business opportunities with foreign account prospects. (10%)
- Provide day-to-day sales and technical interface support to export sales associates. (5%)
- Support of export sales associates with new product and/or project developments. (5%)
- Support of sales associates in developing partnerships with key customer through core business expertise, experience, and reputation for a high level of service and integrity. (5%)
- Development of sales presentation material targeting prospective foreign accounts.
- Assist in the resolution of customer complaints pertaining to product quality and/or service failures.

The Position summary states the following as "Essential Skills & Qualifications" for the proffered position:

- Demonstrated flexible packaging sales skills and successes in foreign markets.
- Implicit understanding of foreign flexible packaging product and market demands, opportunities, and competitive conditions.
- Demonstrated ability to effectively and successfully manage a sales effort in foreign markets.
- Extensive technical understanding of flexible packaging materials, applications, and manufacturing processes.
- Ability to think critically and make quality, value generating decisions based on industry specific experience and educational background.
- Strong leadership and coaching skills.
- Adept at closely organizing work and making efficient use of time and resources.
- Excellent oral, written, and presentation communication skills.
- Proficient in Microsoft Office, Adobe Acrobat X, and Quickbooks Enterprise Solutions.
- Ability to multi-task and effectively manage numerous tasks simultaneously.

It is preliminarily noted that the Position Summary states, "Bachelor's degree required," but does not state that the proffered position requires a bachelor's degree *in any specific specialty*.

In his March 10, 2011 statement, [REDACTED] stated, "From March of 1990 to April 2008 I served as Western Region Sales Manager, Export Sales Manager – Latin America, and Export Sales Manager

— [REDACTED]. I am currently retired and employed as a supply chain consultant to [the petitioner]." He further stated, "As a minimum requirement for employment in [REDACTED] export business, I was required to have completed a bachelor's degree curriculum." It is noted that he did not state that he was required to have a minimum of a bachelor's degree *in any specific specialty* or its equivalent in order to hold any of those positions.

In a March 10, 2011 memorandum addressed to the petitioner's counsel, the petitioner's president stated:

The [proffered position] requires, among other attributes, a candidate that possesses the experience, skills, and education inherent to undergraduate studies. For this reason, a bachelor's degree is a required qualification for this position. We firmly believe it's unrealistic and unreliable to expect applicants without undergraduate degree credentials to possess the critical experience and skills necessary to satisfy the tasks, responsibilities, and goals of this position. This position requires a candidate with formal training and experience in oral and written communications skills, presentation, accounting and finance, task and project management, and marketing.

In her March 14, 2011 letter, counsel stated that the proffered position is a new position and that it requires "the theoretical and practical application of a body of specialized knowledge in the field of business administration, accounting, or finance." She also cited the other evidence in the record as demonstrating that the proffered position qualifies as a specialty occupation.

The director denied the petition on March 22, 2011, 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 criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel asserted that the evidence submitted shows that the proffered position is a specialty occupation position. Counsel cited the Specific Vocational Preparation (SVP) level and Job Zone, as stated in O*Net, as evidence that the proffered position requires a bachelor's degree. Counsel also asserted that the petitioner had demonstrated that the proffered position satisfies each of the alternative requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A), although it is only necessary to satisfy any one of those requirements.

As a preliminary matter, it is noted that the petitioner and counsel have made contradictory claims regarding the minimum requirements necessary to perform the duties of the proffered position. Specifically, the petitioner did not state its educational requirement for the proffered position when it filed the petition despite the necessity for the petitioner to establish at the time of filing that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. *See* § 214(i)(1)(B) of the Act; 8 C.F.R. § 103.2(b)(1).

In response to the RFE in which the director requested evidence establishing that the proffered position qualifies for classification as a specialty occupation such as an explanation of "why the work to be performed requires the services of a person who has a college degree or its equivalent in the occupational field," the petitioner stated that it requires a "[b]achelor's degree" without any specific specialty for the proffered position. Furthermore, the position summary states that a bachelor's degree, without any specific specialty, is required. Counsel claimed in her response to the RFE that the proffered position requires "the theoretical and practical application of a body of specialized knowledge in the field of business administration, accounting, or finance." She also stated in her response that the proffered position requires a bachelor's degree.

Later, on appeal, counsel claimed that the proffered position requires a "Bachelor's degree, or equivalent, in Business Administration, Accounting or Finance." However, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaiqbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

These discrepancies aside, the claims by counsel of the petitioner's requirement of an unspecified bachelor's degree or a general bachelor's degree in "Business Administration, Accounting or Finance" 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). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As previously explained *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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 at 147.¹

¹ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

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. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² The petitioner asserts in the LCA that the proffered position falls under the occupational category "Sales Managers." The AAO reviewed the chapter of the *Handbook* (2012-2013 edition) entitled "Sales Managers," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* provides the following description of the duties of a sales manager:

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

employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

Id.

² The director's decision referred to the 2010-2011 edition of the *Handbook*. All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

- 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.

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> (last visited June 12, 2013).

However, the *Handbook* does not indicate that sales managers constitute an occupational group for which normally the minimum requirement for entry is a specialty occupation level of education, that is, at least a U.S. bachelor's degree *in a specific specialty*, or its equivalent. This is also evident from the discussion in the "How to Become a Sales Manager" section of its chapter "Sales Managers." This section of the *Handbook* states the following regarding the requirements for this occupation:

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.

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-4> (last visited January 24, 2013). Thus, while the *Handbook* states that "[m]ost sales managers have a bachelor's

degree," it does not indicate that the bachelor's degree must be in a specific specialty. Accordingly, as the *Handbook* indicates that working as a sales manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

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 sales manager 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. The classification of the proffered position as a Level I position does 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 since the *Handbook* suggests that some sales manager positions 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 numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of sales, but do not establish any particular level of formal, post-secondary 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 proffered here is one for which normally the minimum requirement for entry is a baccalaureate or higher degree, in a specific specialty directly related to the position's duties, or its equivalent, 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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

Here, and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in

positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Furthermore and for the reasons discussed below, the petitioner's reliance upon the job vacancy advertisements it submitted is misplaced.

Counsel did submit the statement of [REDACTED] who stated that a bachelor's degree was a minimum requirement for his employment in positions with a different company in the petitioner's industry, some of which may have been similar to the proffered position. He did not indicate, however, that his employment in those positions required a bachelor's degree *in any specific specialty*. [REDACTED] statement does not suggest 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 for parallel positions in similar organizations.

As was stated above, counsel did provide five vacancy announcements. They are for positions entitled Account Manager or Sales Representative, Sales Business Representative, Regional Sales Manager, Account Manager. All appear to have been placed by companies in the petitioner's industry.

One vacancy announcement states that the position announced requires a four year degree in a related field. Another announcement states that it requires a bachelor's degree in "an appropriate area." They do not state what fields would be considered sufficiently closely related, or appropriate. If they required a degree in a specific specialty, that specialty would likely have been identified. In any event, those announcements do not indicate that the positions they announce require a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

One vacancy announcement states that it requires a "College degree or equivalent," and another states that it requires a "Bachelor's degree or equivalent." Those vacancy announcements also do not indicate a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

The final vacancy announcement states that it requires a bachelor's degree in "Business, Engineering, or [a] related field." This vacancy announcement fails to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for numerous reasons. First, business administration and engineering do not delineate a specific specialty. Further, what degrees would be considered sufficiently closely related to business administration and/or engineering to satisfy the hiring authority is unclear. Further, 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*, 19 I&N Dec. 558 (Comm'r. 1988). 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. Further still, the field of engineering is also a very broad category that covers numerous and various disciplines, some of which are only related through the basic principles of science and mathematics, e.g., petroleum engineering and aerospace engineering. As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in engineering is not a

requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For all of those reasons, the final vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, even if all of the vacancy announcements indicated a bachelor's degree or the equivalent in a specific specialty to be a prerequisite for the vacancies they announce, which none of them do, 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.³

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficiency of every vacancy announcement has been addressed.

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the sales manager occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in some specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I sales manager positions, entry-level positions requiring only a basic understanding of sales management, require a minimum of a bachelor's degree in a specific specialty closely related to sales management or its equivalent, which proposition is not supported by the *Handbook*.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from five job postings with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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 or export sales manager for a packaging company 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 may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that, notwithstanding that other sales manager positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific specialty or its equivalent, the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with such credentials.

The record contains no evidence that would differentiate the work of the proffered position from the work of sales manager positions in general. The skills allegedly required by the proffered position (such as sales skills in foreign markets; understanding of product and market demands; ability to manage sales in foreign markets; technical understanding of flexible packaging materials, applications, and manufacturing; ability to think critically and make decisions; leadership and coaching skills; ability to organize work and use time and resources efficiently; oral, written, and presentation skills; and skills in various computer applications) have not been shown to be more complex or unique than the skills required in other sales manager positions, some of which, the *Handbook* indicates, may not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I sales manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of sales management. 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, notwithstanding that the *Handbook* suggests that some sales manager positions do not require such a degree.

For both reasons, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In her March 14, 2011 response to the RFE, counsel stated that the proffered position is a new position. In any event, the record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁴

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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.

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of exercising independent judgment and discretion in guiding the distribution of products to customers; managing sales associates and overseeing project management; developing business partnerships with customers through business knowledge and a high level of service and integrity; establishing sales territories, quotas, performance standards, compensation, sales targets, and incentives for the sales team; monitoring, analyzing, projecting, and reporting sales statistics; resolving customer complaints; reviewing operational records and reports to project sales and determine profitability; establishing and implementing training programs for export sales associates; general management of export sales and project management associates and activities; managing expenses; and developing sales strategy, for instance, contain no indication of a nature 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, or, if it is, what that specific specialty would be.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than sales manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I sales manager position, a position with only a basic understanding of sales management. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely related to sales management, notwithstanding that some sales manager positions require no such degree.

For the reasons discussed above, 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 will now discuss the SVP rating of 7.0 < 8.0 assigned to sales managers by O*NET. See O*NET Online, Sales Managers, <http://www.onetonline.org/link/summary/11-2022.00> (last visited June 12, 2013). The AAO finds that an assignment of an SVP rating of 7.0 to 8.0 is not indicative of

a specialty occupation. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.⁵ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month

⁵ The Appendix's site is <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM> (last visited June 12, 2013).

- 3 Over 1 month up to and including 3 months
- 4 Over 3 months up to and including 6 months
- 5 Over 6 months up to and including 1 year
- 6 Over 1 year up to and including 2 years
- 7 Over 2 years up to and including 4 years
- 8 Over 4 years up to and including 10 years
- 9 Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 7 through 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the requirements of that occupation. Therefore, the SVP information is not probative of the proffered position being a specialty occupation.

Furthermore, a designation of Job Zone 4 indicates that a position requires "considerable preparation." It does not, however, demonstrate that at least a bachelor's degree in a specific specialty or its equivalent is required, and does not, therefore, demonstrate that a position so designated is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones> (confirming that Job Zone 4 does not indicate any requirements for degrees in specific specialties) (last visited June 12, 2013).

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 degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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