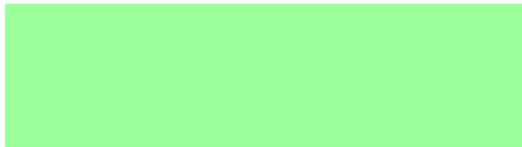




U.S. Citizenship
and Immigration
Services

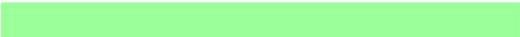
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DATE: JUN 14 2013

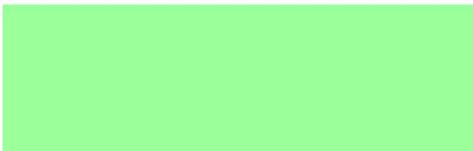
OFFICE: VERMONT SERVICE CENTER

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:

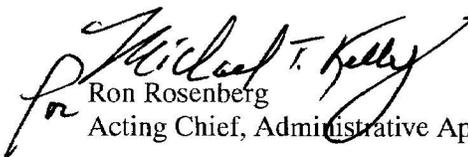


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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.

On the Form I-129 visa petition, the petitioner describes itself as a business engaged in retail development, and states that it was established in 2010. In order to employ the beneficiary in a position to which it assigns the job title "General and Operations Manager,"¹ the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition based on his determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

At the outset, the AAO will address germane aspects in the record of proceeding that have a particularly negative impact on this decision. Because the initial evidence submitted by counsel was insufficient to demonstrate that the petitioner would employ the beneficiary in a specialty occupation, Vermont Service Center, on April 23, 2012, issued an RFE in this matter. Within the RFE, the director requested specific documentation, which closely followed the regulatory criteria, to establish that the proffered position qualifies for classification as a specialty occupation. The director gave the petitioner until July 19, 2012 to submit the requested documentation, either by facsimile transmission (fax) or by mail.

Counsel for the petitioner timely responded to the RFE, by a fax to the Vermont Service Center.

The contents of the RFE-response fax received by the service center is a material aspect of this appeal, as, on appeal, counsel contends that the service center had not considered all of the documents that the petitioner had submitted (by facsimile transmission) in its RFE response.

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 11-1021, the associated Occupational Classification of "General and Operations Managers," and a Level I (entry-level) prevailing wage rate.

On appeal, counsel states, in pertinent part:

Contrary to the Vermont Service Center's decision, all requested documentation in the Request for Evidence was properly and timely faxed on or about July 19, 2012.

The denial notice does not address all supporting documents faxed to the Vermont Service Center and erroneously denies the Form I-129 on the basis that the requested supporting documents [were] not provided when in fact [they] [were] faxed to the Vermont Service Center.

Therefore[,] the Vermont Service Center erroneously concluded that the proffered position is not a specialty occupation when in fact documentation to support that the position did in fact meet the 8 C.F.R. § 214.2(h)(4)(iii)(A) criteria.

As that RFE-response fax is included in the record of proceeding, the AAO reviewed it, and the AAO finds that, as discussed below, the evidence of record does not support counsel's contention that documents submitted for consideration had not been considered. Rather, it appears that the RFE response transmitted to the service center did not include the documents that counsel claims were included but not considered.

Counsel's cover sheet to the fax transmission of the RFE response indicates that the facsimile transmission (including cover sheet) consists of 50 pages. Upon review of this submission, however, the AAO observes that the facsimile submission consists of 51 pages, including the cover page.

Pages two through 14 of the fax consist of counsel's letterhead stationery, devoid of any other information. Although these pages do not contain any information other than the letterhead, it is clear that these pages were successfully sent: one and all bear counsel's letterhead, although no content appears below it.

Page 15 of the fax contains one sentence and counsel's closing.²

Page 16 of this fax-transmitted RFE response is the Vermont Service Center Premium Processing Unit's fax transmission cover-sheet. The following four pages - pages 17 through 20 - constitute a copy of the RFE issued by the Vermont Service Center. The remainder of the fax consists of copies of the following documents: (1) twelve employee-pay-statements for the beneficiary (as pages 21 through 23, and pages 26 through 34 of the transmission); (2) a 2011 W-2 Wage and Tax statement for the beneficiary (as pages 24 and 25); (3) 2012 quarterly wage reports for the first quarter of 2012 (as pages 40-42); and (4) 2011 quarterly wage reports for all four quarters (as pages 35 through 39, and as pages 43 through 51 of the fax).

Based upon its review of the number of the RFE-reply documents in the record of proceeding and also their content, the AAO finds that there is no evidentiary basis for the assertion that the director's

² The sentence reads, "Thank you in advance for your kind attention on this matter. Please do not hesitate to contact me with any concerns."

decision was based upon an incomplete review of the evidence submitted in the RFE response. Further, although counsel checked the box on the Notice of Appeal (Form I-290(B)) indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days, none has been received.

Although the AAO finds no merit to the specific assignment of error specified on appeal, the AAO will continue to analyze the record of proceeding as part of its independent, *de novo* review of the matter on appeal.³

As will now be discussed, based upon a complete review of the record of proceeding, the AAO finds that the director's decision to deny the petition for failing to establish the proffered position as a specialty occupation was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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:

³ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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

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

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

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

In its March 27, 2012 letter of support, the petitioner stated that the general and operations manager is a professional position with a Specific Vocational Preparation (SVP) designation of level 7, and the petitioner also summarized the incumbent's expected general duties as follows:

The General and Operations Manager will plan, direct, or coordinate the operations of companies and other public- or private-sector organizations. [The] duties and responsibilities include formulating policies, managing daily operations, and planning the use of materials and human resources that are too diverse and general in nature to be classified into any one area of management or administration, such as personnel, purchasing, or administrative services. In some organization, the tasks of general and operations managers may overlap those of chief executive officers.

More particularly, the petitioner described the day-to-day duties of the proffered position as listed below:

1. Determine staffing requirements, and interview, hire and train new employees, or oversee those personnel.
2. Direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency.
3. Establish and implement departmental policies, goals, objectives, and procedures, conferring with board members, organization officials, and staff members as necessary.
4. Manage staff, preparing work schedules and assigning specific duties.
5. Monitor businesses and agencies to ensure that they efficiently and effectively provide needed services while staying within budgetary limits.
6. Plan and direct activities such as sales promotions, coordinating with other department heads as required.

7. Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement;
8. Determine goods and services to be sold, and set prices and credit terms, based on forecasts of customer demand.
9. Develop and implement product marketing strategies including advertising campaigns and sales promotions.
10. Direct and coordinate activities of businesses or departments concerned with the production, pricing, sales, and or distribution of products.

The AAO finds that the above-quoted duty descriptions fairly illustrate the petitioner's failure to provide information about the proffered position and its constituent duties that is sufficiently specific and detailed to communicate what the position's actual performance would substantively involve. Instead, as reflected above, the duties and the position that they are said to comprise are only conveyed in relatively abstract terms of generalized functions. Such limited descriptions leave to speculation both the substantive nature of the work involved and the associated performance requirements.

By way of a representative example, the AAO notes, for instance, that the record of proceeding does not contain concrete details about what substantive work and associated knowledge requirements would be involved in "Direct[ing] and coordinat[ing] [the petitioner's] financial and budget activities to fund operations, maximize investments, and increase efficiency." The petitioner does not provide a substantive picture of the "financial and budget activities" that the beneficiary would direct and coordinate, or of the nature and extent of the investments involved, or of the type of considerations that would be involved in funding operations within the particular context of the petitioner's business.

Thus, the petitioner has not provided an evidentiary record establishing the substantive nature of the matters upon which the above functions would be performed, whatever practical and theoretical applications of highly specialized knowledge would be required to perform those functions on such matters within the context of the petitioner's business, and any particular correlation between such knowledge and the need for a particular level of education, or educational equivalency, in a specific specialty.

In this regard, the AAO also finds that the petitioner failed to specifically and substantially expound upon the substantive nature of the beneficiary's duties, upon the position that they constitute, and upon the petitioner's business operations within which they would be performed. The AAO finds that the petitioner has limited its descriptions of the position and its constituent duties to general functions that do not in themselves reveal the substantive nature of the actual work that their performance would

entail.⁴ Also of note, while the petitioner ascribes a variety of duties and tasks to the proffered position, the petitioner failed to provide substantial information about any applications of a body of highly specialized knowledge in any specialty that would be required to perform such work. Moreover, the petitioner fails to establish any necessary correlation between such work and the necessity for the beneficiary to hold at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the nature of the proffered position as it would actually be performed.

As a corollary to the record of proceeding's lack of substantive information about the proposed duties and the position, the AAO also finds that the petitioner has not provided a factual foundation sufficient to establish that the proffered position or its duties are particularly complex, unique and/or specialized.

Further, the AAO notes that the record of proceeding lacks substantive evidence of any projects and work assignments of the beneficiary during the period of proposed employment, and this precludes the AAO from examining the nature of the beneficiary's duties and thus finding that the duties will be those of a specialty occupation.

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁵

At the outset, the AAO withdraws the director's finding that the proposed duties appear to be those of an administrative services manager. The AAO finds that, while very broadly stated, the petitioner's descriptions of the proposed duties and proffered position exceed the supportive-services limitation of the Administrative Services Managers occupational group as described in the related *Handbook* chapter, from which the AAO quotes below:

⁴ The AAO further finds that it cannot discern the actual work involved without a clear understanding of the petitioner's organizational structure. For example, the petitioner describes that the beneficiary would establish and implement departmental policies, goals, objectives, and procedures, but a true understanding of the position would entail knowledge about the number of employees and the constitution of the departments. In a similar vein, the petitioner states that the beneficiary would be expected to monitor businesses and agencies to ensure that they efficiently and effectively provide needed services. Again, without sufficient contextual knowledge regarding the scope and nature of the petitioner's business enterprises and the respective agencies, the AAO cannot ascertain the full nature of the proffered position.

⁵ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

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

Duties

Administrative services managers typically do the following:

- Buy, store, and distribute supplies
- Supervise clerical and administrative personnel
- Recommend changes to policies or procedures to improve operations, such as changing what supplies the organization keeps and improving how the organization handles records
- Plan budgets for contracts, equipment, and supplies
- Monitor the facility to ensure that it remains safe, secure, and well maintained
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems
- Ensure that facilities meet environmental, health, and security standards and comply with government regulations

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. An organization may have several managers who oversee activities that meet the needs of multiple departments, such as mail, printing and copying, recordkeeping, security, building maintenance, and recycling.

The work of administrative services managers can make a difference in employees' productivity and satisfaction. For example, an administrative services manager might be responsible for making sure the organization has the supplies and services it needs. Also, an administrative services manager who is responsible for coordinating space allocation might take into account employee morale and available funds when determining the best way to arrange a given physical space.

Administrative services managers also ensure that the organization honors its contracts and follows government regulations and safety standards.

Administrative services managers may examine energy consumption patterns, technology usage, and office equipment. For example, managers may recommend buying new or different equipment or supplies to lower energy costs or improve indoor air quality.

They also plan for maintenance and the future replacement of equipment, such as computers. A timely replacement of equipment can help save money for the organization, because eventually the cost of upgrading and maintaining equipment becomes higher than the cost of buying new equipment.

The following are examples of types of administrative service managers:

Contract administrators handle buying, storing, and distributing equipment and supplies. They also oversee getting rid of surplus or unclaimed property.

Facility managers oversee buildings, grounds, equipment, and supplies. Their duties fall into several categories, including overseeing operations and maintenance, planning and managing projects, and dealing with environmental factors.

Facility managers may oversee renovation projects to improve efficiency or ensure that facilities meet government regulations and environmental, health, and security standards. For example, they may influence building renovation projects by recommending energy-saving alternatives or efficiencies that reduce waste. In addition, facility managers continually monitor the facility to ensure that it remains safe, secure, and well maintained. Facility managers also are responsible for directing staff, including maintenance, grounds, and custodial workers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Administrative Services Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2> (accessed June 10, 2013).

Additionally, the AAO finds that, although too broadly described to convey a requirement for any particular educational level of substantive knowledge in any specific specialty, the petitioner's descriptions of the proffered position and its constituent duties do generally comport with the General and Operations Manager occupational category as described in the related *Handbook* chapter. The AAO will proceed with its analysis accordingly.

The *Handbook's* discussion of the duties and educational requirements of General and Operations Managers appears within its discussion of Top Executives, which states, in pertinent part, the following:

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

Duties

Top executives typically do the following:

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

* * *

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (accessed June 10, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

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

Education

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration. Top executives in the public sector often have

a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a Master of Business Administration (MBA).

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (accessed June 10, 2013).

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into the occupational group within which the proffered position falls. Instead, the *Handbook* indicates that these positions generally impose no specific degree requirement on individuals seeking employment. The statement that "many" top executives, which include general and operations managers, have college degrees is not synonymous with the "normally required" standard imposed by this criterion. To the contrary, such a statement does not even necessarily indicate that a majority of top executives possess such a degree. While the *Handbook* indicates that top management positions may be filled by individuals with a broad range of degrees, its subsequent discussion of the training and education necessary for such employment clearly states that companies also hire executives based on lower-level experience within their own organizations or management experience with another business. Moreover, the *Handbook* does not state that those positions which do require a bachelor's degree or the equivalent require that the degree be in a specific specialty.

In support of the contention that the position is a specialty occupation, counsel submitted a copy of the Occupation Information Network (O*NET) Summary Reports pertinent to 11-1021.00 – General and Operations Managers. Contrary to the assertions of counsel, however, the O*NET does not state a requirement for a bachelor's degree. Rather, it assigns the General and Operations Managers occupation a Job Zone "Three" rating, which groups the occupation as one of which "most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree." Further, O*NET does not indicate that Job Zone Three occupations require four-year bachelor's degrees in a specific specialty closely related to the requirements of that occupation. See the U.S. Department of Labor's Occupational Information Network (O*NET) section on general and operations managers on the Internet at <http://www.onetonline.org/link/summary/11-1021.00>. Therefore, O*NET is not probative evidence that the proffered position satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

Next, the AAO will address counsel's contention that the occupational classification is designated as having a Specific Vocational Preparation rate of "7," and consequently, this is indicative of a specialty occupation. Contrary to counsel's contention, the AAO observes that the O*NET Summary Reports designates the General and Occupational Manager occupational classification as

having an SVP of "6<7." As such, this is understood to be an SVP rating of 6, as the less than symbol indicates that it does not merit an SVP of 7. The SVP is 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. The *Dictionary of Occupational Titles* (hereinafter the *DOT*). This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.⁶ The *DOT* explains the analysis and designation of SVP levels in relation to a given occupation.

Specific Vocational Preparation... 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:

1. 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)
2. Apprenticeship training (for apprenticeable jobs only)
3. In-plant training (organized classroom study provided by an employer)
4. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker)
5. 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
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

⁶ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

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

Id.

Although counsel insists that the SVP rating supports her claim that the proffered position is a specialty occupation, the AAO disagrees, and finds that the SVP designation and the DOT's Appendix C state otherwise. Based on the foregoing chart, job classifications with a designation of SVP level 6, such as general and occupational managers, are those that require, at a minimum, the passage of over one year up to and including two years of preparation. The years of preparation may occur in one of five circumstances, ranging from vocational training to on-the-job training. Here, at issue is whether the DOT indicates that a bachelor's degree or higher in a specific specialty is normally a threshold requirement for entry into general and operations managers positions. An SVP rating of 6 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 rating of 6 is not probative of the proffered position as one that satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The record of proceeding does not contain persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in the general and operations manager category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Finally, the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.⁷

⁷ The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not established 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.

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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. In addition, 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. Consequently, the AAO finds that the evidence contained in the record of proceeding does not satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the AAO finds that the petitioner did not satisfy the second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The AAO finds that the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner's descriptions of the proffered position and the duties which collectively constitute the proffered position lack the detail and specificity required to establish that they surpass or exceed in terms of complexity or uniqueness the duties performed by general and operations managers who would be among that spectrum of persons without a bachelor's or higher degree, or the equivalent, in a specific specialty that the *Handbook* indicates compose part of that occupational group. In this

limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

regard, the AAO here incorporates this decision's earlier comments and findings with regard to the generality of the information that the petitioner provided about the proffered position and its constituent duties.

The AAO finds further that the petitioner has simply not established relative complexity or uniqueness as distinguishing attributes of the proffered position, let alone as attributes at such an elevated level as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. The wage rate of the LCA submitted by the petitioner into the record is only appropriate for a person who would be expected to apply just a basic understanding of the occupation. Moreover, that wage rate is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy.

As the evidence in the record of proceeding fails to show that this particular proffered position is so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position. The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and with regard to employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.⁸ In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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

⁸ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated by the aforementioned LCA wage-level that its proffered position is a comparatively low, entry-level position relative to others within the occupation.

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 assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, based on that examination, determine whether the actual performance requirements of the position necessitate a petitioner's history of requiring a particular degree in its recruiting and hiring for the position. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In any event, the petitioner has not presented evidence establishing a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position. Therefore, as the petitioner has not shown that it normally requires for the proffered position at least a bachelor's degree, or the equivalent, in a specific specialty, it has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

The AAO finds that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proposed duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than general and operations manager positions whose duties are not of such a nature that their performance requires knowledge usually associated with at least a bachelor's degree in a specific specialty or its equivalent. In this regard, the AAO hereby incorporates into the analysis of this present criterion this decision's earlier comments and findings with regard to the generalized and relatively abstract level of information provided about the duties of the proffered position and with

regard to the associated failure to provide substantial information with regard to the substantive work that the beneficiary would actually perform.

Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position meets the requirements of 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Additionally, both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

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.

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For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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

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