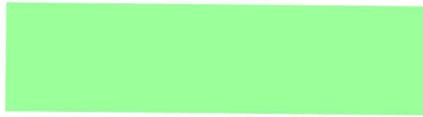


(b)(6)

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



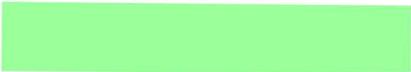
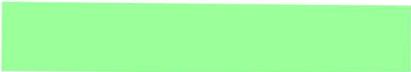
U.S. Citizenship
and Immigration
Services



Date: **JUN 18 2013**

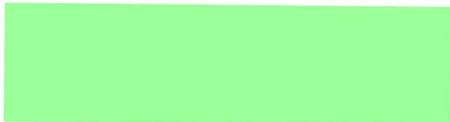
Office: VERMONT SERVICE CENTER

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg" with a stylized flourish below it.

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, which was filed on December 21, 2010, the petitioner stated that it is an import firm established in 2010. That form contains spaces for the petitioner to report its gross income, its net income, and its current number of employees. In each of those spaces, the petitioner entered, "Start-up company."

To employ the beneficiary in what it designates as a General and Operations Manager position, the petitioner endeavors to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (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.

The AAO observes, initially, that the record contains numerous submissions in Spanish without English translations. Because the petitioner failed to submit certified translations of those documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, that evidence is not probative and will not be accorded any weight in this proceeding.

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

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

The issue 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 a particular position 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.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 11-1021 General and Operations Managers. The LCA was certified for a Level I position by the U.S. Department of Labor (DOL).

With the visa petition, counsel also submitted a letter, dated December 10, 2010, from the petitioner's president. This letter provides the following description of the duties of the proffered position:

[The beneficiary] will oversee activities directly related to making products or providing services; direct and coordinate activities of businesses or departments concerned with the production, pricing, sales, or distribution of products, 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, manage staff, preparing work schedules and assigning specific duties, direct and coordinate organization's financial and budget activities to fund operations, maximize investments, and increase efficiency; establish and implement departmental policies, goals, objectives and procedures, conferring with board members, organization officials, and staff members as necessary; determine staffing requirements, and interview, hire and train new employees, or oversee those personnel processes; plan and direct activities such as sales promotions, coordinating with other department heads as required; determine goods and services to be sold, and set prices and credit terms, based on forecasts of customer demand; and locate, select, and procure merchandise for resale, representing management in purchase negotiations.

In addition to the foregoing, [the beneficiary] will plan, direct, or coordinate the operations of companies or public and private sector organizations; formulate policies, manage daily operations, and plan the use of materials and human resources.

The November 11, 2010 evaluation of the beneficiary's qualifications states that the beneficiary's previous employment experience is equivalent to a bachelor's degree in operations management from a U.S. institution.

On February 24, 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. The service center also specifically requested an organizational chart of the petitioner's operations.

In response, counsel submitted (1) a letter, dated March 7, 2011, and (2) two vacancy announcements. Counsel did not provide the requested organizational chart or address that omission. In his March 7, 2011 letter, counsel restated the duties of the proffered position as follows:

[The beneficiary] will plan, direct, and coordinate the operations of [the petitioner] including and specially with coffee growers, coffee plantation owners and cooperatives in Honduras for the importation of Honduran organic and regular coffees and eventually for the importation of other Central American coffees; As a coffee grower and coffee plantation owner and general and operations manager, she will liaise with Honduran coffee suppliers.

[The beneficiary's] responsibilities will include formulating policies and marketing strategies;

[The beneficiary] will manage daily operations;

[The beneficiary] will plan the use of material and human resources;

[The beneficiary] will be responsible for overseeing personnel, purchasing goods and administrative;

[The beneficiary] will direct and coordinate activities of the business concerning the production, pricing, sales, and/or distribution of products;

[The beneficiary] will manage staff, preparing work schedules and assigning specific duties;

[The beneficiary] will 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;

[The beneficiary] will establish and implement policies, goals, objectives and procedures, conferring with board members, and organization officials;

[The beneficiary] will direct and coordinate corporate financial and budget activities for expanding business activities as well as traveled [sic] for prospecting international and national clients and attending trade shows and fairs;

[The beneficiary] will monitor the business to ensure that it efficiently and effectively provide [sic] needed services while staying within its budgetary limits;

[The beneficiary] will oversee activities directly related to making products or providing services;

[The beneficiary] will direct non-business activities such as advertising, banking and credit negotiations, public relations, and accounting;

[The beneficiary] will direct and coordinate the organization's financial and budget activities to fund operations, maximize investments, and increase efficiency;

[The beneficiary] will determine goods and services to be sold, and set prices and credit terms, based on forecasts of customer demand;

[The beneficiary] will manage the movement of goods into and out of production facilities.

In that letter, counsel also stated that the petitioner has never previously employed anyone in the proffered position and cited DOL's *Occupational Outlook Handbook (Handbook)* as support for the proposition that the proffered position requires a bachelor's degree or the equivalent.

The director denied the petition on June 1, 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 submitted a brief and three additional vacancy announcements. In the appeal brief, counsel again cited the *Handbook* for the proposition that the proffered position requires a bachelor's degree or the equivalent.

The AAO will now discuss the application of the additional, supplemental requirements of 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 if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ In the "Top Executives" chapter, the *Handbook* provides the following description of the duties of those positions:

Top executives typically do the following:

- Establish and carry out departmental or organizational goals, policies, and procedures

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

- 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

More specifically, that same chapter of the *Handbook* states the following about the duties of General and Operations Manager positions:

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> (last visited June 13, 2013).

Whether the petitioner's operations are complex enough to require a general and operations manager position as described in the *Handbook*, or indeed, whether the petitioner has engaged in any business operations at all, is not made clear by the evidence in the record.² However, the AAO will assume, *arguendo*, that the proffered position is a general and operations manager as claimed in the visa petition.

The *Handbook* states the following about the educational requirements of top executive positions, including general and operations manager positions, "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."

The *Handbook* further states:

² The record does not indicate whether the petitioner operates retail stores, operates coffee shops, or sells to retailers, or whether it has ever engaged in any of those activities.

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.

Id. at <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited June 13, 2013).

That "many" top executives have a bachelor's degree does not indicate that it is the standard, minimum acceptable education for entry into such positions. Further, the *Handbook* makes clear that top executives in the private sector often have a degree in business administration, public administration, law, or any of the liberal arts. Although a general-purpose bachelor's degree, such as a degree in business administration or liberal arts, 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. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration or liberal arts is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a general and operations 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.

In addition, the *Handbook* explicitly states that general manager positions may be given to people on the basis of experience, rather than education, and contains no indication that the experience thus substituted would necessarily be equivalent to a minimum of a bachelor's degree in a specific specialty or its equivalent. For all of those reasons, the *Handbook* does not indicate that top executive positions, including general and operations manager positions, normally require a minimum of a bachelor's degree in a specific specialty or its equivalent for entry. It provides no support, therefore, for the proposition that the specific position offered in this case requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural

Immigration Programs (Rev. Nov. 2009). 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, notwithstanding that the *Handbook* suggests that some top executive positions may not require such a degree.

Finally, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of business administration, 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 here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty 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.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard, industry-wide entry 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.

Counsel did submit five vacancy announcements, as was noted above. Two of those vacancy announcements are for the same position of Sales and Operations Planning Manager with the same company and are substantially identical.³ As they pertain to a single vacancy, they will be considered as one vacancy announcement. The three remaining vacancy announcements are for

³ Those announcements are for a sales and operations planning manager position with Vermont.

positions entitled General Manager, National Account Manager, and General Manager – Sales Operations.

Those vacancy announcements are for positions with [REDACTED] which manufactures and markets chocolate and has retail stores and factory outlets; [REDACTED] which offers after-school tutoring; [REDACTED] which markets coffee through coffee shops, wholesaling to retailers, and contracts to provide coffee to offices; and [REDACTED] a company that owns and operates coffee shops. None of the companies that placed those vacancy announcements has been shown to be in the petitioner's industry, and [REDACTED] clearly is not.⁴

One of those vacancy announcements states that the position it announces requires an associate's degree or a bachelor's degree, and does not indicate that the requisite degree must be in any specific specialty. Both because it does not require a minimum of a bachelor's degree and because it does not require a degree in a specific specialty, that vacancy announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states that the position announced requires a bachelor's degree "in business or [a] related field." Again, the requirement of a 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. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). That vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that the position announced requires a bachelor's degree in mathematics, engineering, business, or a related field. As this announcement indicates that the duties of the posted position may be performed by someone with a general degree in business, it also does not support a finding that the particular position proffered in this matter qualifies as a specialty occupation for the same reasons articulated, *supra*. *See id.*

The final vacancy announcement states that the position requires a bachelor's degree, but does not indicate that the requisite degree must be in any specific specialty. That vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

⁴ As was noted above, the petitioner has provided no evidence to demonstrate, for instance, that it sells coffee to retailers, that it operates retail stores, or that it operates coffee shops. As such, its specific industry is unknown to the AAO.

Further, even if all of the vacancy announcements were for parallel positions in similar organizations within the petitioner's industry, which they are not, and each indicated a bachelor's degree in a specific specialty or its equivalent to be a minimum 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 four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁵

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 occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I general and operations manager positions, entry-level positions requiring only a basic understanding of general and operations management, require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition for which 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).

⁵ 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 four job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of general and operations manager for a coffee distributor 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 general and operations 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 general and operations manager positions in general. The duties of the proffered position (such as planning, directing, and coordinating operations; formulating policies and marketing strategies; managing daily operations; planning the use of material and human resources; and directing and coordinating production, pricing, sales, and distribution) are described in terms of functions common to general and operations manager positions, and so have not been shown to be more complex or unique than the duties of other general and operations manager positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent for entry.

Moreover, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specialty baccalaureate-degreed individual could perform them. While related courses may be beneficial in performing some of the proposed duties, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other general and operations manager positions that can be performed by persons without at least 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 general and operations manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of general and operations 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, especially as the *Handbook* suggests that general and operations manager positions do not require such a degree for entry into the occupation.

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

The AAO will now consider the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁶ In both his March 7, 2011 letter and the appeal

⁶ 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

brief, counsel stated that the petitioner has not previously employed anyone in the proffered position. In any event, the record contains no evidence pertinent to anyone the petitioner has ever previously hired 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).

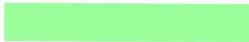
Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. Managing staff; preparing work schedules; assigning specific duties; reviewing performance data; establishing and implementing policies, goals, objectives and procedures; conferring with board members and organization officials; directing and coordinating financial and budget activities; traveling to prospect for clients and to appear at trade shows; directing advertising, banking and credit negotiations, public relations, and accounting; directing and coordinating financial and budget activities; determining the goods and services to be sold; setting prices and credit terms; and managing the movement of goods into and out of production facilities, for instance, contain no indication of specialization and complexity relative to other general and operations managers. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than general and operations 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 general and operations manager position, a position with only a basic understanding of general and operations management. This does not support the proposition that the duties of the position are so specialized and complex relative to other general and operations managers such 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 general and operations management, especially as some general and operations 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).

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").



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

The record suggests additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

The petitioner is obliged to show that the beneficiary is qualified to work in a specialty occupation position. To do so, the petitioner must demonstrate that the beneficiary has a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains no evidence that the beneficiary has any college degree, or any college education. Therefore, the petitioner is obliged to show that the beneficiary has the equivalent of a bachelor's degree. To show this, the petitioner provided an evaluation of the beneficiary's qualifications. That evaluation states that, based on the beneficiary's employment experience, she has the equivalent of a U.S. bachelor's degree in operations management.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or

- (4) Have [a] education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and [b] have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

The beneficiary does not meet either of the criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (3), as there is no evidence of a U.S. accredited college or university baccalaureate or higher degree, or of an unrestricted state license, registration or certification which authorizes her to fully practice and be immediately engaged in a specialty occupation in the state of intended employment.

Next, as was noted above, the record contains no indication that the beneficiary has any college education. As such, the petitioner has not established that the beneficiary is qualified to serve in a specialty occupation under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) for an alien holding a foreign degree determined to be equivalent to a U.S. accredited college or university baccalaureate or higher degree required by the pertinent specialty occupation.

Next, in order to equate a beneficiary's credentials to a U.S. baccalaureate or higher degree under the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), the provisions at 8 C.F.R. § 214.2(h)(4)(iii)(D) require one or more of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;⁷
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education,

⁷ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not training and/or experience.

specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. . . .

With regard to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), the AAO finds that the record has not established that the evaluator who opined on the educational equivalency of the beneficiary's work experience has "authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience," as required by this criterion. On this ground alone, her opinion on the beneficiary's work experience has no evidentiary value.

The criteria at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(2) and (4) are not factors in this proceeding, as the record contains no evidence related to them.

With regard to 8 C.F.R. § 214.2(h)(4)(iii)(D)(3), the AAO observes that the only evaluation provided pertains to the beneficiary's employment experience, rather than to her education. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) is concerned solely with the evaluation of foreign educational credentials for their equivalence to U.S. degrees. It has no relevance to evaluations of work experience.

The remaining criterion for review is 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). It allows recognition of a beneficiary's qualification by a USCIS determination that his or her training or work experience is equivalent to U.S. baccalaureate coursework in a specific specialty. This criterion provides that, for each year of college-level training the alien lacks:

[I]t must be clearly demonstrated [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁸;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;

⁸ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In response to the February 24, 2011 RFE issued in this matter, counsel provided letters pertinent to the beneficiary's employment experience. They indicate that she operated a coffee farm beginning in 1973 and continuing for several decades.

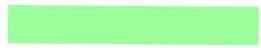
Neither the skeletal letters pertinent to the beneficiary's employment experience nor any other evidence of record demonstrates the extent of the theoretical and practical application of specialized knowledge in any specialty that was involved in the beneficiary's work; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in any particular specialty occupation; or that the alien has recognition of expertise in any specialty, as evidenced by at least one type of documentation such as those listed in this criterion. Consequently, the petitioner has not established that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

As the petition fails to establish that the beneficiary is qualified to serve in any specialty occupation requiring an academic concentration or major in any specific specialty, the petition must be denied for this additional reason.

Yet further, in the February 24, 2011 RFE, stated:

Provide an organizational chart for your firm showing the current positions and the positions you seek to fill. Clarify under whose supervision these employees operate and describe the educational requirements you have established for each position. The list of individuals you currently employ should include their dates of birth, the degree and field of study held by the employees, their start date, and their current work.

Counsel did not provide, and the record does not contain, the petitioner's organizational chart or a list of its employees. The chart and list requested are relevant to the material issue of the relationship of the proffered position to the petitioner's hierarchy and, therefore, whether it qualifies as a top executive or general and operations manager position. Accordingly, it is relevant to whether the proffered position qualifies as a specialty occupation position. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petition must also be denied for this reason.



An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

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

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