

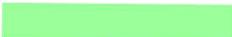
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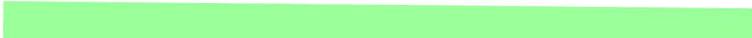
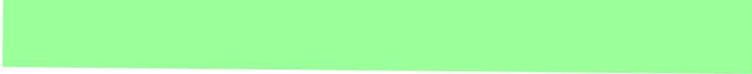
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **JUN 19 2013** OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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".

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 real estate investment company with five employees.¹ To employ the beneficiary in what it designates as a human resources 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.

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

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

The issue on appeal before the AAO 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 meet 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.

¹ In its original form, the visa petition did not state the number of workers the petitioner employs. That information was provided on an amended Form I-129 in response to specific request from the service center that the petitioner provide a copy of the Form I-129 with Part 5, Item 12, "Current Number of Employees," completed.

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

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

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

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

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

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

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

With the visa petition, counsel provided evidence that the beneficiary was awarded a *Licenciado* degree in psychology by the [REDACTED]. An evaluation submitted with the visa petition states that the beneficiary's degree is equivalent to a bachelor's degree in psychology awarded by a U.S. institution.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Human Resources Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3040.00, Human Resources Managers. The LCA further states that the proffered position is a Level I position.

Counsel also submitted a letter, dated November 11, 2010, from the petitioner's president. That letter contains the following description of the duties of the proffered position:

In this position, [the beneficiary] will plan and carry out policies relating to all phases of personnel activity: "She will recruit, interview, and select employees to fill positions. She will plan and conduct new employee orientation to foster positive attitude toward company goals.

(b)(6)

[The beneficiary] will keep record of insurance coverage, personnel transactions, such as hires, promotions, transfers, and terminations. She will investigate accidents and will prepare reports for insurance carrier. She also will conduct wage survey within labor market to determine competitive wage rate. She will prepare budget of personnel operations. She will write separation notices for employees separating with cause and conducts exit interviews to determine reasons behind separations.

[The beneficiary] will also prepare reports and will recommend procedures to reduce absenteeism and turnover. She will represent company at personnel-related hearings and investigations. She may supervise clerical workers. She may keep records of hired employee characteristics for governmental reporting purposes.

Neither that letter, nor any other evidence then in the record, indicated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or, if it does, the specific degree required.

On December 21, 2010, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*, (1) an amended Form I-129, (2) seven vacancy announcements, and (3) counsel's own letter dated January 24, 2011.

In his letter, counsel stated that the proffered position "requires the services of an individual who possesses a bachelor's degree or equivalent, with proven experience in Human Resources or an individual who has achieved a level of knowledge, competence, and practice in the profession that has been determined to be equal to that of an individual who has a baccalaureate in the profession."

The director denied the petition on February 9, 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.

On appeal, counsel submitted, *inter alia*, an additional letter, dated March 7, 2011, from the petitioner's president, and a brief.

In his March 7, 2011 letter, the petitioner's president conceded that the petitioner does not presently need a person in the proffered position, but asserted that it plans to develop an "Advisory Services arm" to provide advice to investors, and that the first step in that aggressive business plan is to hire a person in the proffered position. The petitioner's president did not state that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

In the appeal brief, counsel asserted that the proffered position requires "a bachelor's degree or the equivalent." He did not state that the requisite degree must be in any specific specialty.

As a preliminary matter, the petitioner's claim that a bachelor's degree is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree 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 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Furthermore, a visa petition may not be approved based on a potential future need. That the petitioner projects that it will start a business and anticipates that the business will require a human resources manager is insufficient. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO will 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 U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.² In the "Human Resources Managers" chapter, the *Handbook* provides the following descriptions of the duties of those positions:

² 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.

Human resources managers plan, direct, and coordinate the administrative functions of an organization. They oversee the recruiting, interviewing, and hiring of new staff; consult with top executives on strategic planning; and serve as a link between an organization's management and its employees.

More specifically, the *Handbook* attributes the following duties to human resources manager positions:

Human resources managers typically do the following:

- Plan and coordinate an organization's workforce to best use employees' talents
- Link an organization's management with its employees by handling questions, administering employee services, and resolving work-related problems
- Advise managers on organizational policies, such as equal employment opportunity and sexual harassment
- Coordinate and supervise the work of specialists and support staff
- Oversee an organization's recruitment, interview, selection, and hiring processes
- Handle staffing issues, such as mediating disputes, firing employees, and directing disciplinary procedures

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Human Resources Managers," <http://www.bls.gov/ooh/management/human-resources-managers.htm#tab-2> (last visited June 17, 2013).

Most of the duties the petitioner's president attributed to the proffered position are consistent with the duties of human resources managers as described in the *Handbook*. The AAO notes that those duties are apparently projected, dependent upon the institution of the petitioner's plan to expand into a different industry. However, the AAO will assume, *arguendo*, that the duties described are the current duties of the proffered position, and analyze the proffered position as a human resources manager position.

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

Human resources managers usually need a bachelor's degree in human resources or business administration. Alternatively, as not all undergraduate programs offer a degree in human resources, candidates can get a bachelor's degree in another field and take courses in human resources subjects, such as labor or industrial relations, organizational development, or industrial psychology. Some positions are also filled

by experienced individuals with other backgrounds, including finance, business management, education, and information technology.

Id. at <http://www.bls.gov/ooh/management/human-resources-managers.htm#tab-4>.

That human resources manager positions "usually" require a degree in human resources or business administration does not necessarily mean that such minimum of a bachelor's degree in a specific specialty or its equivalent is "normally the minimum requirement" within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). This is made clear by the additional language in the *Handbook* that indicates that a bachelor's degree in another, unspecified, field may suffice, if courses in related subjects were taken, and by the language that indicates that some human resources manager positions are filled by people with backgrounds in finance, business management, education, and information technology.

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. 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, given that the *Handbook* suggests that some human resources manager positions do not require such a degree.

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

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

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

As previously mentioned, the petitioner indicated that it is a real estate investment company with five employees.

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 an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Counsel's reliance on the vacancy announcements submitted is misplaced. The vacancy announcements submitted do not establish that organizations similar to the petitioner in the petitioner's industry routinely employ individuals with degrees in a specific specialty, in parallel positions.

The AAO notes that for the petitioner to establish that another organization is similar to the petitioner, it must demonstrate that the petitioner and the other organization share the same general characteristics. Such factors may include the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing, to list just a few elements that may be considered. In the instant case, given that the proffered position is asserted to be a human resources manager position, the size of the petitioner's work force is clearly relevant.

The seven vacancy announcements submitted are all for positions with job titles of Human Resources Manager or very similar job titles. One of those announcements was placed by [REDACTED] an electronics and electrical engineering firm; [REDACTED] a company of unknown size in an unidentified industry; an unidentified company in an unidentified industry; [REDACTED]; [REDACTED]; [REDACTED], a staffing service; and the [REDACTED]. Whether any of those organizations is similar to the petitioner and in the petitioner's industry is unknown. Clearly, however, most are not.

One of the vacancy announcements states that the position requires a bachelor's degree in a related industry. Whether the subjects the hiring authority would consider to be "related" to that position would delineate a specific specialty is unknown to the AAO.

Five of the vacancy announcements states that the position requires a bachelor's degree, or a four-year degree, but not that the requisite degree must be in any specific specialty.

One of the vacancy announcements states that the position requires a "four-year college of university degree in human resources or a related field." Again, the fields that the hiring authority would consider to be "related" may or may not delineate a specific specialty.

None of the vacancy announcements submitted have been shown to be with an organization similar to the petitioner and in the petitioner's industry. None unequivocally require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, even if all of the vacancy announcements indicated a bachelor's degree or the equivalent in a specific specialty to be a prerequisite for the vacancies they announce, which they do not, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from seven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

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

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).

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 human resources manager positions in the petitioner's industry may not require a minimum of a bachelor's degree in a specific

³ Although the size of the relevant study population is unknown, the petitioner failed to demonstrate what statistically valid inferences, if any, can be drawn from seven job postings with regard to determining the common educational requirements for entry into parallel positions in similar real estate investment firms. *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 human resources manager for a real estate investment firm 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.

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 human resources manager positions in general. The duties of the proffered position (such as recruiting, interviewing, and selecting employees; and planning and carrying out personnel policy) are described in terms of generalized functions generic to human resources manager positions in general, and so have not been shown to be more complex or unique than the duties of other human resources 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.

Further, as was also noted above, the LCA submitted to support the visa petition is approved for a Level I human resources manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of human resources 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 since the *Handbook* suggests that some human resources manager positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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

The petitioner's president indicated that the petitioner has never filled the proffered position before. The petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).⁴

Finally, the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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. Recruiting, interviewing, and selecting employees; and planning and carrying out personnel policy are abstract

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

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

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

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

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

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

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