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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 19 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

In a letter submitted to support the Form I-129 visa petition, the petitioner states that it is a family-owned trucking company established in 2000. In order to employ the beneficiary in what it designates as a business manager position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the 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 petitioner has demonstrated that the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a

specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Business Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3111.00, Compensation and Benefits Managers. The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary received a degree in economics with a major in E-business from the in Poland. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in economics with a concentration in electronic business.

Counsel also submitted a letter, dated September 6, 2011, from the petitioner's president, which provides the following description of the duties of the proffered position:

- Design & analyze benefit policies to be competitive & compliant with government regulations
- Fulfill reports concerning (ERISA) Employee Retirement Income Security
- Prepare and compile job descriptions and company policy for distribution
- Assist employees' decision with benefit/compensation selections
- Identify our competitors and how they differ in doing business
- Identify potential customers and increase our business opportunities
- Develop pricing strategies to maximize the firm's profits and market share
- Balance company's objectives with customer satisfaction
- Create advertisements describing services and products offered
- Initiate market research to advance sales of services and products

- Direct preparation and distribution of written and verbal information to inform employees of benefits, compensation, and personnel policies
- Plan, direct, supervise, and coordinate work activities of subordinates and staff relating to employment, compensation, labor relations, and employee relations.
- Prepare budgets for various objectives

The petitioner's president also stated, "A Bachelor's degree is the absolute minimal requirement for this position," but did not state that the requisite degree must be in any specific specialty.

On February 16, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted, *inter alia*, (1) evidence pertinent to (2) vacancy announcements; (3) evidence pertinent to another trucking company; and (4) counsel's own letter, dated April 2, 2012.

The evidence pertinent to shows that she received a master's degree in humanities with a minor in primary education.

In his April 2, 2012 letter, counsel provided the following amended description of the duties of the proffered position:

> Design & analyze benefit policies to be competitive & compliant with government regulations.
>
> Complete reports concerning Employment and Income.
>
> Gather data on customer preference to identify to executive staff the most appropriate services and recommend modification to offered services to increase the company's appeal.
>
> Prepare and compile job descriptions and company policy for distribution.
>
> Assist employees' decision with benefit/compensation selections.
>
> Research vendors and negotiate contract for items including primarily fuel.
>
> Identify competitors and how they differ in doing business.
>
> Identify potential customers and increase our business opportunities.
>
> Effectively and accurately present company objectives and profile to clients and business colleagues in phone, personal, and electronic communication.

Propose and draft sample contracts taking into account profitability (estimates of distance, fuel, weight, employee expenses, insurance, etc.)

Create and maintain an internet presence for the company. Create other advertisements describing services and products offered.

Design an annual business plan.

Meet with company management/executives to present researched data, business plan and budget concerns.

Write reports to evaluate the company's performance against goals and suggest improvements and changes.

Use research to plan the company's expansion.

Develop pricing strategies to maximize the firm's profits and market share.

Using research and knowledge of corporate finance, suggest competitive pricing.

Balance company's objectives with customer satisfaction.

Direct preparation and distribution of written and verbal information to inform employees of benefits, compensation, and personnel policies.

Counsel asserted that each of those duties would require five percent of the beneficiary's time, except that "Gather[ing] data on customer preference to identify to executive staff the most appropriate services and recommend modification to offered services to increase the company's appeal" would require ten percent of the beneficiary's time. The AAO observes that, although some of the duties of the proffered position have been eliminated or rephrased, and some duties have been added, the amended description of the proffered position is essentially consistent with the original description.

Counsel stated that is the petitioner's president's wife and has, until the present, performed the duties of the proffered position. Counsel also cited the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*), the O*NET Resource Center, and the vacancy announcements provided as evidence that the proffered position is a specialty occupation position. Counsel reiterated that "a bachelor's degree is absolutely the minimal requirement for a business manager," but, again, did not state that the requisite degree must be in any specific specialty.

The director denied the petition on July 2, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by

virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel again cited the *Handbook* as support for the proposition that the proffered position qualifies as a specialty occupation position.

As a preliminary matter, the AAO observes that counsel and the petitioner's president have asserted that the proffered position requires a minimum of a bachelor's degree or its equivalent; however, they have not asserted, nor sought to demonstrate, that it requires a minimum of a bachelor's degree *in a specific specialty* or its equivalent. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. 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. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify other evidentiary deficiencies that preclude approval of this petition.

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)(*1*), 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 observes that counsel previously cited O*NET as evidence that the proffered position qualifies as a specialty occupation. O*NET does not state a requirement for a bachelor's degree. Rather, it assigns Compensation and Benefits Managers a Job Zone "Four" rating, which groups them among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, the O*NET does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be *in a specific specialty* closely related to the requirements of that occupation.

Therefore, the O*NET information is not probative of the proffered position's being a specialty occupation.

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]

As noted above, the LCA submitted with the petition is certified for a Business Manager position corresponding to SOC code and title 11-3111.00, Compensation and Benefits Managers. In the "Compensation and Benefits Managers" chapter, the *Handbook* provides the following description of the duties of those positions:

> Compensation managers plan, direct, and coordinate how and how much an organization pays its employees. Benefits managers do the same for retirement plans, health insurance, and other benefits an organization offers its employees.
>
> **Duties**
>
> Compensation and benefits managers typically do the following:
>
> - Set the organization's pay structure and benefits offerings so the organization can compete for employees
> - Participate in or buy salary surveys to see how their organization's pay compares with that in other organizations
> - Determine competitive wage rates and develop or modify compensation plans
> - Evaluate employee benefits policies to assess whether they are current, competitive, and legal
> - Coordinate and supervise the work activities of specialists and support staff
> - Oversee the distribution of pay and benefits information to the organization's employees
> - Ensure that pay and benefits plans comply with federal and state regulations
> - Collaborate with outside partners such as benefits vendors and investment managers
> - Prepare a program budget and keep operations within budget
>
> Although some managers administer both the compensation and benefits programs in an organization, other managers—particularly at large organizations—often

[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.

specialize and oversee one or the other. All managers, however, routinely meet with senior staff, managers of other human resources departments, and the financial officers of their organization.

In addition to their administrative responsibilities, compensation and benefits managers also have several technical and analytical duties. For example, they may do complex data analysis to determine the best pay and benefits plans for an organization. They also must monitor trends affecting pay and benefits and assess how their organization can improve its practices or policies. Using a variety of analytical, database, and presentation software, managers frequently identify and present their findings to other managers in the organization.

Compensation managers are responsible for managing an organization's pay structure. They monitor market conditions and government regulations to ensure their pay rates are current and competitive. They may collect and analyze data on wages and salaries, and they evaluate how their organization's pay structure compares with other companies. Compensation managers then use this information to maintain or develop pay scales for an organization. Some also design pay-for-performance plans, which include guidelines for bonuses and incentive pay. They may help to determine commission rates and other incentives for sales staff.

Benefits managers administer a company's employee benefits program, which includes retirement plans and insurance policies such as health, life, and disability. They work closely with benefits vendors and manage the enrollment, renewal, and distribution processes for an organization's employees. They must frequently monitor government regulations and the costs of other plans to ensure that their programs are current and competitive.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Compensation and Benefits Managers," http://www.bls.gov/ooh/management/compensation-and-benefits-managers.htm#tab-2 (last visited June 17, 2013).

Some of the duties the attributed to the proffered position in the petitioner's president's description and counsel's amended description (e.g. "Design & analyze benefit policies to be competitive & compliant with government regulations" and "Assist employees' decision with benefit/compensation selections.") are consistent with the duties of compensation and benefits managers as described in the *Handbook.* Others (e.g. "Identify our competitors and how they differ in doing business," "Identify potential customers and increase our business opportunities," "Develop pricing strategies to maximize the firm's profits and market share," "Create advertisements describing services and products offered," and "Initiate market research to advance sales of services and products.") are not, and appear to be more closely related to marketing specialist, marketing manager, or market research analyst positions. However, although the evidence is insufficient to demonstrate that the proffered position is a compensation and benefits manager position, as claimed, the AAO will assume,

arguendo, that the proffered position qualifies as such a position, so as to reach counsel's assertions pertinent to such positions.[2]

The *Handbook* states the following about the educational requirements of compensation and benefits manager positions:

> Compensation and benefits managers need at least a bachelor's degree for most positions, although some jobs require a master's degree. Because not all undergraduate programs offer a degree in human resources, managers often have a bachelor's degree in business administration, business management, finance, or a related field.
>
> Many employers prefer to hire managers who have a master's degree, particularly one with a concentration in human resources management, finance, or business administration (MBA).

Id. at http://www.bls.gov/ooh/management/compensation-and-benefits-managers.htm#tab-4 (last visited June 17, 2013).

Counsel asserts that the *Handbook* indicates that compensation and benefits manager positions require a minimum of a bachelor's degree. The AAO believes that the *Handbook* is not clear on that point, but, in any event, the *Handbook* makes clear that an otherwise undifferentiated master's degree in business administration is a sufficient educational qualification for some such positions. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. As the *Handbook* indicates that an undifferentiated degree in business administration may be a sufficient educational qualification for compensation and benefits manager positions, the *Handbook* does not support the assertion that such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

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. Assuming, *arguendo*, that the proffered position is a compensation and benefits manager position, as it is represented to be, the classification of the proffered position as a Level I position does not support

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[2] The AAO observes, however, that if the duties of the proffered position were found to demonstrate that it is not a compensation and benefits manager position, then the visa petition would be deniable because it is not supported by a corresponding LCA.

the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* indicates that some compensation and benefits manager positions do not require such a specialized 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 knowledge, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

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

As stated earlier, in determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 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 requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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.

The record does contain a letter from the president of a family-owned trucking company in Chicago, Illinois. In that letter, the president of stated:

> I would like to confirm, that due to the complexity of services and operations of our company, it is our normal business practice to employ individuals with baccalaureate or higher degrees in our key – management positions. Our business manager, holds a Master's Degree in Management (diploma and W-2 enclosed) and

> our Financial Controller, holds a Master's Degree in International Business and Political Relations, a Master's of Science in Accounting as well as a CPA Certificate.

The president of did not assert that those specific degrees are required for those specific positions. That is, he did not state a requirement of a bachelor's degree in a specific specialty for either position he discussed. Further, he did not state that either of those positions is identical, or even similar, to the position proffered in the instant case. As such, the specific degree requirements, if any, he imposes on those positions have not been shown to be relevant to the requirements of the proffered position.

The petitioner did submit four vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Transportation Sales Representative for a freight company, requiring a "bachelor's degree or equivalent industry experience."
2. Temporary Marketing Specialist for a consulting firm, states: "A bachelor's degree in Marketing, Communications, English, or Journalism is desired."
3. Management Development for an industrial supply company, which states that the "Desired Education Level" for the position is a bachelor's degree.
4. Local Sales Manager for which owns and states that the position requires a "bachelor's degree in marketing or a related discipline."

Although duty descriptions are included in some of the vacancy announcements, none of those duty descriptions are sufficient to show that the positions announced are parallel to the proffered position.

Further, the petitioner is a trucking company. Only the first vacancy announcement was placed by a company in the petitioner's industry. However, the advertising organization does not appear to be similar to the petitioner's organization in terms of its size and the type and level of services provided such that the advertising organization could be found to be similar to the petitioner. Also, although it ostensibly states a requirement of a bachelor's degree, it does not indicate that the requisite degree should be in any specific specialty. Further, it indicates that the ostensible degree requirement could be waived based on "equivalent industry experience," but does not state what type or amount of experience the hiring authority would consider to be equivalent to a bachelor's degree. As such, the AAO is unable to independently determine that the vacancy announcement actually requires a bachelor's degree or the equivalent.

The second and third announcements appear to state a preference, rather than a minimum requirement, of a degree. Further, as the third vacancy announcement states a preference for a bachelor's degree, but not that the preferred degree should be in any specific specialty, it cannot be

said to announce even a preference for a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

None of the vacancy announcements has been shown to be for a parallel position with an employer that is in the petitioner's industry and is otherwise similar to the petitioner and to unequivocally state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, even if all four of the vacancy announcements were demonstrably for parallel positions with organizations similar to the petitioner and in the petitioner's industry and unequivocally required a minimum of a bachelor's degree in a specific specialty or its equivalent, 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.[3]

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 compensation and benefits manager position. 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 positions, entry-level positions requiring only a basic understanding of such positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the proposition of which is not supported by the *Handbook*.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The 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 the particular position proffered in the instant case is so

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[3] Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just 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 business manager for a transportation 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 does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

The record contains little evidence that would suggest that the work of the proffered position is so complex or unique that it would require a minimum of a bachelor's degree in a specific specialty or its equivalent. The duties of the proffered position, for instance, designing and analyzing benefit policies, filing ERISA reports, compiling job descriptions, assisting employees with compensation and benefit decisions, identifying competitors and potential customers, developing pricing strategies, etc., contain no indication of a nature so inherently complex or unique that they would require a specialized degree or the equivalent.

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

Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. Additionally, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the position. While a few 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 than other compensation and benefits manager positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

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

The AAO will next consider the alternative criterion of 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 position.[4]

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[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 a specific specialty or its equivalent. *See Defensor v. Meissner*,

In his April 2, 2012 response to the RFE in this matter, counsel stated: "Until now, the President's wife has been handling the job duties of a Business Manager." That is the only assertion in the record pertinent to anyone who has previously worked in the proffered position for the petitioner. However, counsel submitted no evidence in support of his assertion.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains no evidence that the petitioner employed as its business manager or its compensation and benefits manager, or in any other capacity. The record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as designing and analyze benefit policies, completing reports concerning employment and income; gathering data on customer preferences; preparing and compiling job descriptions and company policy; assisting employees' decisions pertinent to benefits and compensation; research vendors; identifying competitors and potential customers, etc., have not been shown to be so specialized and complex that they not 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 position, a position for a beginning level employee with only a basic understanding of compensation and benefits manager positions. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to compensation and benefits manager positions, especially as the *Handbook* indicates that some benefits and compensation manager positions do not require such a specialized degree or equivalent.

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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").

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 specialty 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.