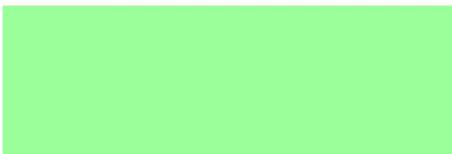




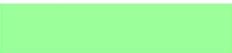
U.S. Citizenship
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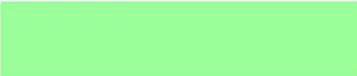
Date: **JUN 26 2013**

Office: VERMONT SERVICE CENTER

FILE: 

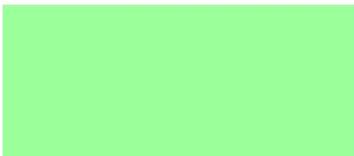
IN RE:

Petitioner:

Beneficiary: 

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a computer software company. To employ the beneficiary in what it designates as a senior executive assistant 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, concluding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. The director also found that the petitioner had not demonstrated that the beneficiary is qualified to perform services in a specialty occupation.

On appeal, counsel asserts that the director's bases for denial were erroneous and contends that the petitioner has 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 bases specified in his decision. 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 AAO will first address the specialty occupation basis of denial.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college

professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted by the petitioner in support the petition was certified for the SOC (O*NET/OES) Code 43-6011 and the associated Occupational Classification of "Executive Secretaries and Executive Administrative Assistants."

With the visa petition, counsel submitted evidence pertinent to the beneficiary's employment experience, and an evaluation that stating that the beneficiary's employment experience is equivalent to a U.S. bachelor's degree in business administration.

Counsel also submitted a letter, dated October 10, 2011, from the petitioner's CEO, who provided the following description of the duties of the proffered position:

- ❖ Schedule and maintain communication with clients, vendors, and participants
- ❖ Perform an extensive array of administrative tasks (manage calendars, book travel, and schedule facilities and equipment).
- ❖ Coordinate duties for multiple offices.
- ❖ Build efficiency and effective responsiveness into existing operations, and help define new operational strategies.
- ❖ Mentor new team members.
- ❖ Service as coordinator or team lead for and manager of all company projects.

The petitioner's CEO also stated the following:

[The proffered position] requires any combination of education, training, and/or experience equivalent to completion of a bachelor's degree with major coursework in Business Administration or [a] related field.

On November 1, 2011, the service center issued an RFE and requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, counsel submitted (1) an additional description of the duties of the proffered position, (2) an undated letter from the petitioner's human resources manager, and (3) three job vacancy announcements. The vacancy announcements will be addressed later in this decision.

The additional description of the duties of the proffered position stated the following:

JOB RESPONSIBILITIES (SENIOR EXECUTIVE ASSISTANT)

Research (15% of time) – requires Bachelors in Business or related

The Sr. Executive Assistant will have to deal with information requests from the senior executives that she would be dealing with. There are various areas of research, in which the company is involved. The comprehensive and thorough research of various areas will provide a platform to the company to deal with various issues.

Preparation of statistical reports (15% of time) – requires Bachelors in Business or related.

The Sr. Executive Assistant will work with senior executives in preparing statistical reports to analyze the performance of the company in various areas. These reports ultimately help the executives to prepare compare [sic] performance in this competitive world. In addition, these reports will help the company to develop strategies for better performance.

Preparation and reconciliation of expense reports (20% of time) – requires Bachelor's in Business or related.

The Sr. Executive Assistant will prepare and reconcile expense reports through the onsite system. She will also ensure that the orders are placed in time and tracked properly. Ensure that preparation and processing of invoices run smoothly and efficiently.

Project Management (30% of time) – requires Bachelors in Business or related.

The Sr. Executive Assistant will be responsible to form and act as team leader on various projects assigned by senior management. This could involve dealing with bankers, lawyers, accountants, technical experts, press and publicity requests, conferences and team building exercises, etc.

Travel Management (10% of time) – requires Bachelors in Business or related

The Sr. Executive Assistant will coordinate efficiently the frequent travel arrangements including private and leased jets and both domestic and international travel of senior executives.

Miscellaneous related duties (10% of time) – requires Bachelors in Business or related

The Sr. Executive Assistant will assist with presentations, documentation and spreadsheets. The attendance of staff is also maintained and also scheduling of job related interviews which senior executives might conduct.

The director denied the petition on December 13, 2011, finding, *inter alia*, 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 provided (1) additional copies of evidence previously submitted, (2) 22 additional vacancy announcements, and (3) a brief.

As a preliminary matter, the AAO observes that the petitioner's CEO stated, in his October 10, 2011 letter, that the educational requirement of the proffered position would be satisfied by a bachelor's degree in business administration.

The requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Thus, the petitioner's recognition of a bachelor's degree in business, without additional specification, as a sufficient educational qualification for the proffered position, is tantamount to an admission that performance of the proffered position does not require at least a bachelor's degree, or the equivalent, in a specific specialty. This is sufficient reason, in itself, to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, and sufficient reason, in itself, to deny the visa petition. However, the AAO will continue its analysis of the specialty occupation issue, in order to identify the additional evidentiary deficiencies precluding 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)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The *Handbook's* "Secretaries and Administrative Assistants" chapter, which encompasses executive secretary and executive administrative assistant positions, states the following:

What Secretaries and Administrative Assistants Do

Secretaries and administrative assistants create and maintain filing systems. Secretaries and administrative assistants perform routine clerical and organizational tasks. They organize files, draft messages, schedule appointments, and support other staff.

Duties

Secretaries and administrative assistants typically do the following:

- Maintain paper and electronic filing systems for records and messages
- Route and distribute incoming mail and email
- Answer routine letters and email
- Reply and attach files to incoming messages
- Correct spelling and grammar to ensure accuracy
- Operate fax machines, videoconferencing and phone systems, and other office equipment
- Use computers for spreadsheet, word processing, database management, and other applications
- Complete forms in accordance with company procedures

Secretaries and administrative assistants perform a variety of clerical and organizational tasks that are necessary to run an organization efficiently. They use computer software to create spreadsheets, compose messages, manage databases, and produce presentations, reports, and documents. They also may negotiate with vendors, buy supplies, manage stockrooms or corporate libraries, and get data from various sources. Specific job duties vary by experience, job title, and specialty.

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

The following are types of secretaries and administrative assistants:

Executive secretaries and executive administrative assistants provide high-level administrative support for an office and for top executives of an organization. They often handle more complex responsibilities, such as reviewing incoming documents, conducting research, preparing reports, and arranging meetings. They may supervise clerical staff.

Legal secretaries do specialized work requiring knowledge of legal terminology and procedures. Legal secretaries prepare messages and legal papers, such as summonses, complaints, motions, responses, and subpoenas under the supervision of an attorney or a paralegal. They also may review legal journals and help with legal research—for example, by verifying quotes and citations in legal briefs.

Medical secretaries transcribe dictation, prepare messages, and help physicians or medical scientists with reports, speeches, articles, and conference proceedings. They also take simple medical histories, arrange for patients to be hospitalized, and order supplies. Medical secretaries need to be familiar with medical terminology, insurance rules, billing practices, medical records, and hospital or laboratory procedures.

Secretaries and administrative assistants, except legal, medical, and executive is the largest subcategory of secretaries and administrative assistants. They handle an office's administrative activities in almost every sector of the economy, including schools, government agencies, and private corporations. Secretaries in schools are often responsible for handling most of the communications among parents, the community, teachers, and school administrators. They schedule appointments, keep track of students' records, and handle matters that do not require the principal's attention.

Virtual assistants work from a home office. They use the Internet, email, and fax machines to communicate with clients. Although their assignments often vary from short term to long term, their typical duties are similar to those of other secretaries and administrative assistants. Working from a remote location allows virtual assistants to support multiple clients in different industries at the same time.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Secretaries and Administrative Assistants," <http://www.bls.gov/ooh/office-and-administrative-support/secretaries-and-administrative-assistants.htm#tab-2> (last visited Jun. 21, 2013).

The duties the petitioner's CEO attributed to the proffered position generally align with those of executive secretaries and executive administrative assistants, as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of secretary and administrative assistant positions:

High school graduates who have basic office and computer skills usually qualify for entry-level secretarial and administrative assistant positions.

Education and Training

High school graduates can get basic office, computer, and English grammar skills in various ways: through high school vocational education programs, vocational-technical schools, or community colleges. Many temporary placement agencies also provide formal training in computer and office skills.

Employers of more specialized positions, including medical and legal secretaries, often require applicants to have some knowledge of industry-specific terminology and practices. Community colleges and vocational-technical schools usually offer instruction in these areas.

Id. at <http://www.bls.gov/ooh/office-and-administrative-support/secretaries-and-administrative-assistants.htm#tab-4>.

With specific regard to advancement to higher secretary and administrative assistant positions, the *Handbook* states the following:

Secretaries and administrative assistants generally advance through promotion to other administrative positions with more responsibilities. Qualified administrative assistants who broaden their knowledge of a company's operations and enhance their skills may be promoted to *senior or executive secretary or administrative assistant*, clerical supervisor, or office manager. With additional training, many legal secretaries become paralegals. For more information, see the profile on paralegals and legal assistants. Once hired, most secretaries and administrative assistants tend to get more advanced skills through on-the-job instruction. [Emphasis supplied.] *Id.*

The *Handbook* contains no indication that secretary or administrative assistant positions at any level, including executive secretaries and executive administrative assistants, require a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* makes clear that a high school diploma is sufficient preparation for an entry-level secretary or administrative assistant position, and that acquisition of a higher-level position is typically accomplished by on the job training and advancement through the ranks.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, although the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of advanced secretarial and administrative functions, they 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.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

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.

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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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, 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, as was noted above, submit three vacancy announcements in response to the RFE and another 22 vacancy announcements on appeal. All 25 vacancy announcements were submitted in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations and will be addressed here. Those vacancy announcements are for positions entitled Executive Assistant, Senior Executive Assistant, Executive Assistant Lead, Administrative Assistant, and Independence Compliance Assistant Director. Although some of the vacancy announcements include descriptions of the duties associated with the positions announced, few of those descriptions are sufficient to show that the positions announced are parallel to the position proffered in the instant case.

The positions announced are located in information technology firms, a communications firm, an aircraft interior products firm, the legal and corporate affairs department of an unidentified company

in an unidentified industry, two banks, a supplier of facilities maintenance products, a professional services corporation, a company that collects plasma for processing into drugs, a company that specializes in building infrastructure in war zones, a casino, two medical schools, a health technology and services company, an assisted living community, a public relations firm, the [REDACTED] in Washington, D.C., the [REDACTED], the sales and services department of a company identified by neither name nor industry, and other firms identified by neither name nor industry. Although some of those organizations may conduct business within the petitioner's industry, the majority clearly do not.

Some of those vacancy announcements contain no educational requirement. Some indicate that a bachelor's degree is preferred, but not required. Many indicate that a bachelor's degree is required, but not that the requisite degree must be in a specific specialty.

Some of the announcements indicate an ostensible requirement for a bachelor's degree, but state that "equivalent" work experience would be considered in lieu of a degree and do not explain what type or amount of work experience would be considered equivalent to a bachelor's degree. The AAO is unable, therefore, to independently determine that those announcements actually require a bachelor's degree or the equivalent.

In sum, none of the vacancy announcements provided has been shown to be for a position parallel to the proffered position in the instant case, with an organization similar to the petitioner in the petitioner's industry, and to unequivocally require a minimum of a bachelor's degree in a specific specialty or its equivalent. They are of no assistance, therefore, in determining whether the proffered position qualifies as a specialty occupation position pursuant to the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).²

² Furthermore, according to the *Handbook* there were approximately 1,236,100 persons employed as executive secretaries and executive administrative assistants in 2010. *Handbook* at <http://www.bls.gov/ooh/office-and-administrative-support/secretaries-and-administrative-assistants.htm#tab-6> (last accessed Jun. 21, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the 25 submitted vacancy announcement 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 these 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 these 25 job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these 25 job-vacancy announcements which appear to 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

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 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 differentiate the work of the proffered position from the work of other executive secretaries and executive administrative assistant positions. The duties that constitute the proffered position (such as maintaining communication with vendors and clients, performing administrative tasks, defining new operations strategies, mentoring new team members, and coordinating company projects) are abstractly described, but appear to be duties common to executive secretary and executive administrative assistant positions in general, and so have not been shown to be more complex or unique than the duties of other executive secretary and executive administrative assistant positions, which the *Handbook* indicates do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The descriptions of the proffered position's duties do not specifically identify any tasks that are so complex or unique that only a person with a bachelor's degree, or the equivalent, in a specific specialty 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 position that counsel claims is so complex or unique. 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 executive secretary or executive administrative assistant positions that can be performed by persons without at least 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 AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

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

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

AAO observes that, as noted above, the petitioner's CEO has indicated that it would accept an otherwise undifferentiated bachelor's degree in business administration as an acceptable educational requirement for the proffered position. As was explained above, that, in itself, demonstrates that the petitioner does not require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further, the only evidence regarding individuals who previously held the proffered position is the undated letter from the petitioner's human resources manager. That letter states that [REDACTED] worked in the proffered position from August 30, 2010 to February 4, 2011, but that she was terminated because she was unable to perform satisfactorily. It also states that [REDACTED]

was hired for the position, but that she did not have the requisite experience and was transferred to another department. Although accompanied by pay stubs to show that those people worked for the petitioner in some capacity, this letter was not accompanied by any evidence to corroborate that those people worked in the proffered position. Further, although that letter states that "[redacted] was a college graduate," no evidence of was provided to corroborate that assertion, and the letter does not even assert that she had a degree in a specific specialty closely related to the proffered position. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 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 aspects of the proffered position. Although counsel characterized what he provided in response to the RFE as a detailed job description, the duties listed are described with insufficient detail.

As to the research the beneficiary would perform, for instance, counsel stated:

The [beneficiary] will have to deal with information requests from the senior executives that she would be dealing with. There are various areas of research, in which the company is involved. The comprehensive and thorough research of various areas will provide a platform to the company to deal with various issues.

The statement that the beneficiary would perform research in "various areas" is insufficient to demonstrate that the specific research the beneficiary would perform is so specialized and complex that it would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, although the revised duty-description states that the beneficiary would prepare statistical reports, it provides no detail regarding those reports. Whether they would be so specialized and complex that they would require a minimum of a bachelor's degree in a specific specialty or its equivalent has not been demonstrated.

The duty-description also states that the beneficiary would prepare and reconcile expense reports, but provides no evidence that preparing and reconciling expense reports is inherently so specialized and complex that the duty requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, nothing in the record indicates that the specific expense reports the beneficiary would provide are more specialized and complex than ordinary expense reports.

The duty-description also states that the beneficiary would manage projects, which would entail "dealing with bankers, lawyers, accountants, technical experts, press and publicity requests, conferences and team building exercises, etc." The record contains no indication, however, that the projects the beneficiary would manage are so specialized and complex that this duty would require the knowledge associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, the record contains no evidence that the particular dealings the beneficiary would have with "bankers, lawyers, accountants, technical experts, press and publicity requests, conferences and team building exercises, etc." would be so specialized and complex that they would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the record contains no indication that the beneficiary's travel management and miscellaneous duties would be so specialized and complex that they would require 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 the duties of executive secretaries and executive administrative assistant 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.

Another basis for the decision of denial was the director's finding that the petitioner had not demonstrated that the beneficiary is qualified to perform the duties of a specialty occupation position. The record contains no evidence that the beneficiary has a bachelor's degree in any subject. The only evidence that the beneficiary is qualified to work in a specialty occupation position pertains to the beneficiary's employment experience. An evaluation of the beneficiary's employment experience states that it is equivalent to a bachelor's degree in business administration.

Because the AAO's finding that the proffered position is not a specialty occupation is sufficient reason, in itself, to dismiss the appeal and deny the visa petition, the AAO need not address the issue of the beneficiary's qualifications in detail. The AAO observes, however, that for an evaluation to competently address the equivalence of work experience to a particular degree, 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) requires a petitioner to demonstrate that the evaluator 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." In this case, the petitioner may, arguably, have demonstrated that the evaluator has authority to grant college credits for experience at an institution with a program for awarding such credits.³ The record contains no indication, however, that the evaluator's authority extends to

³ In fact, a letter provided to address that point states that the evaluator "is qualified to review the credentials of foreign applicants, students, prospective students, and prospective faculty." It further states that

awarding such college credit in the field business administration. As such, the evaluator has not been shown to have the authority contemplated in 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), and the evaluation provided is not acceptable evidence that the beneficiary has the equivalent of a bachelor's degree in that subject.

Furthermore, a general degree in business administration alone is insufficient to qualify the beneficiary to perform the services of a specialty occupation, unless the academic courses pursued and knowledge gained is a realistic prerequisite to a particular occupation in the field. *Matter of Ling*, 13 I&N Dec. 35 (Reg. Comm'r 1968). The petitioner must demonstrate that the beneficiary obtained knowledge of the particular occupation in which he or she will be employed. *Id.* Thus, even if the petitioner had demonstrated that the beneficiary has the equivalent of a bachelor's degree in business administration, it would be insufficient to show that she is qualified to perform the duties of a specialty occupation.

For both of those reasons, the petitioner has submitted insufficient evidence that the beneficiary is qualified to perform the duties of a specialty occupation, and the visa petition will be denied for this additional 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 petition will be denied and the appeal dismissed 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.

"professors, including [the evaluator] evaluate such credentials and determine whether [redacted] is to award or recognize credit based upon students['] foreign education and industry experience." It stops short of stating that the evaluator herself "has the authority to grant college-level credit," for work experience, rather than serving in an advisory capacity in that regard. However, given that the evaluation, even if accepted, does not show that the beneficiary is qualified to work in any specialty occupation position, the AAO will not address this issue in detail.