



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **JUN 27 2013** Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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)

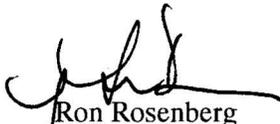
ON BEHALF OF PETITIONER:

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 Director, Vermont Service Center, ("the 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 remain denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a partnership established in 1990 to engage in "retail hotel operations." In order to employ the beneficiary in what it designates as a general manager position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, determining that the petitioner failed to demonstrate that the position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; (5) the petitioner's motion for reconsideration; (6) the director's reconsideration decision; and (7) the Form I-290B, Notice of Appeal or Motion, and counsel's supplemental brief. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.<sup>1</sup> Accordingly, the appeal will be dismissed, and the petition will remain denied.

### **The Law**

The first issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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<sup>1</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*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, a proposed 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.

### **Facts and Procedural History**

In a letter submitted in support of the petition, the petitioner indicated that it operates a hotel, the [REDACTED] and employs 14 full-time employees. The petitioner stated that it has a critical need for a general manager who will be charged with managing the hotel. The petitioner indicated further that as general manager the beneficiary will utilize his bachelor's degree in accounting, as well as his extensive experience in the hospitality industry, to manage the operation of the hotel. The petitioner described the duties of the position as follows:

- Apply principles of accounting to analyze financial information and prepare financial reports for the hotel;
- Compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions;
- Analyze financial information detailing assets, liabilities, and capital, and prepares balance sheets, profit and loss statements, and other reports to summarize current and projected company financial position;
- Audit contracts, orders, and vouchers, and prepare reports to substantiate individual transactions prior to settlement;
- Establish, modify, document, and coordinate implementation of accounting and accounting control procedures;
- Devise and implement manual or computer-based system for general accounting;
- Direct and coordinate activities of other accountants and clerical workers performing accounting and bookkeeping tasks;
- Provide accounting duties, including process of accounts payable, accounts receivable, payroll, daily income audit, credit card and cash transactions, profit and loss of hotel and all departments, and labor and expense controls;

- Develop hotel financial strategies by estimating, forecasting, and anticipating requirements, trends, and variances;
- Provide daily management of 14 full-time employees to operate the hotel;
- Serve guests by managing provision of sleeping accommodations, food and beverage services, and special event planning;
- Accomplish hotel human resource strategies by:
  - determining accountabilities;
  - communicating and enforcing values, policies, and procedures;
  - implementing recruitment, selection, orientation, training, coaching, counseling, disciplinary, and communication programs;
  - planning, monitoring, appraising, and reviewing job contributions; and
  - planning and reviewing compensation strategies;
- Develop hotel organizational strategies by contributing information, analysis, and recommendations to strategic thinking and direction, establishing functional objectives in line with organizational objectives;
- Assign duties to workers and schedule shifts;
- Establish hotel operational strategies by:
  - evaluating trends;
  - establishing critical measurements;
  - determining production, productivity, quality, and customer-service strategies;
  - designing systems;
  - accumulating resources;
  - resolving problems; and,
  - implementing change;
- Promote the hotel by:
  - developing and implementing advertising and publicity programs;
  - deciding the type of patronage to be solicited;
  - speaking to community and business groups; and,
  - sponsoring special events at the hotel;
- Maintain the hotel's stature by:
  - inspecting guests' rooms, public access areas, and outside grounds for cleanliness and order;
  - verifying the quality of food and beverage services; and,
  - overseeing special events;
- Maintain customer confidence by personally responding to and resolving complaints and making charge adjustments or offering complimentary sendees;
- Improve quality results by studying, evaluating, and re-designing processes, and by implementing changes, and,
- Enhance hotel's reputation by accepting ownership for accomplishing new and different requests.

The petitioner stated that the proffered position requires a bachelor's degree or the foreign equivalent in business administration, accounting or hospitality, combined with at least two years of experience in the daily management and operations of a hotel, including at least one year in accounting in the hospitality industry.

The petitioner provided the required certified Labor Condition Application (LCA) which indicates that the occupational classification for the position is "Lodging Managers," SOC (ONET/OES) Code 11-9081.00, at a Level I (entry-level) wage.<sup>2</sup>

Upon review, the director notified the petitioner that the certified LCA submitted with the petition identified the position as a "lodging manager" and informed the petitioner that the Department of Labor's *Occupational Outlook Handbook (Handbook)* did not report that the occupation of lodging manager required a minimum of a baccalaureate degree in a specific related specialty. The director requested a detailed description of the proffered position, including the approximate percentages of time for each duty the beneficiary will perform. The director further requested other evidence demonstrating that the proffered position is a specialty occupation including the petitioner's prior employment of individuals in the proffered position.

In response, the petitioner provided the same job description as previously submitted for the proffered position adding an approximate estimate of the amount of time the beneficiary would allocate to each duty. The petitioner also added that the beneficiary will align monetary resources, develop action plans, measure and analyze results, initiate corrective actions, and minimize the impact of variances.

The petitioner further included an advertisement from a staffing company for a hotel general manager that indicated the ideal candidate would have either: six years progressive experience in a first-class hotel; a four-year college degree with at least four to five years of related experience; or a two-year college degree and at least five to six years of related experience. The petitioner also submitted a November 8, 2011 letter signed by a human resource employee at the [REDACTED] stating that the hotel's requirement for a general manager is "a four year degree with at least a year of hospitality experience or an equivalent of two years of experience for each year of education."

The petitioner also provided the credentials of its previous general manager showing the individual in the position had a business management degree issued by the [REDACTED] in Bombay, India as well as a bachelor of arts from the [REDACTED] and a bachelor of laws from the [REDACTED]

Upon review of the evidence in the record, the director denied the petition, determining that the record did not establish the proffered position as a specialty occupation.

Counsel for the petitioner filed a motion to reopen and reconsider the director's decision and submitted additional documentation in support of the motion. The director reopened the matter to consider counsel's argument and the additional evidence submitted.

On motion, counsel submitted a December 28, 2011 opinion prepared by [REDACTED] Assistant Professor, [REDACTED]. [REDACTED] repeated the description of duties provided to USCIS and

<sup>2</sup> See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

offered his opinion that the proffered "position of General Manager is clearly a specialty position, and requires the services of someone with advanced training through a Bachelor's program in Business or a closely related field." The petitioner also submitted an additional six advertisements from various hotels and staffing agencies for the position of general manager or general manager/director of sales. Three of the advertisements indicated that a degree in business or hospitality/hotel management or related field is preferred. One of the advertisements indicated that a bachelor's degree in a hospitality related field or equivalent work related experience is required. One identified a four-year college degree as preferred. One advertisement noted high school plus four years of experience as the education requirement for the position of general manager.

The petitioner also submitted a letter to clarify its requirements for general manager for the hotel. The petitioner noted that its requirements for the position of general manager were more stringent than other hoteliers because other hoteliers required their general managers to oversee the operation of the hotel only. The petitioner stated that other hoteliers did not require their general managers to spend much time in accounting or the financial aspect of the operation. The petitioner repeated the duties previously submitted that related to the accounting and financial aspect of the proffered position as follows:

- Apply principles of accounting to analyze financial information and prepare financial reports for the hotel;
- Compile and analyze financial information to prepare entries to accounts, such as general ledger accounts, documenting business transactions;
- Analyze financial information detailing assets, liabilities, and capital, and prepares balance sheets, profit and loss statements, and other reports to summarize current and projected company financial position;
- Audit contracts, orders, and vouchers, and prepare reports to substantiate individual transactions prior to settlement;
- Establish, modify, document, and coordinate implementation of accounting and accounting control procedures;
- Devise and implement manual or computer-based system for general accounting;
- Direct and coordinate activities of other accountants and clerical workers performing accounting and bookkeeping tasks;
- Provide accounting duties, including process of accounts payable, accounts receivable, payroll, daily income audit, credit card and cash transactions, profit and loss of hotel and all departments, and labor and expense controls;
- Develop hotel financial strategies by estimating, forecasting, and anticipating requirements, trends, and variances, align monetary resources, develop action plans, measure and analyze results, initiate corrective actions, and minimize the impact of variances.

The petitioner noted that it required its general manager to have a baccalaureate degree or its equivalent in business or a related field.

Upon review of the additional evidence, the director again denied the petition determining that the *Handbook* did not indicate a baccalaureate degree in a specific field of study as the minimum

educational requirement for lodging managers. The director also found that the advertisements submitted as well as the opinion of [REDACTED] were insufficient to establish the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director erred when evaluating the proffered position as a lodging manager position instead of a general manager. Counsel noted that there is a great disparity between the two occupations with regard to duties, responsibilities, and necessary levels of education. Counsel contends that the beneficiary's position requires at a minimum the attainment of a bachelor's degree or the equivalent in order to be eligible for the job. Counsel avers that this degree requirement is common to the industry in parallel positions among similar organizations. Counsel further asserts that the petitioner normally requires a degree or its equivalent for the position and that the nature of the 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.

### Analysis

The overarching reason for the AAO's dismissal of this appeal is that the proposed duties as described in the record do not establish that performance of the proffered position requires the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, as required by the H-1B specialty occupation provisions of the Act and their implementing regulations. The petitioner's descriptions of the proposed duties, although providing the routine tasks that the beneficiary will perform, when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically.

Turning to the specific position proffered by the petitioner, the AAO will first review the record of proceeding in relation to 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). To satisfy this criterion, the evidence must establish 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 Department of Labor's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As will now be discussed, the *Handbook* does not indicate that general managers, as a subheading of lodging managers, constitute an occupational group that requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

The *Handbook* reports that lodging managers typically do the following:

- Inspect guest rooms, public areas, and grounds for cleanliness and appearance;
- Greet and register guests;

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<sup>3</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

- Ensure that standards for guest service, décor, housekeeping, and food quality are met;
- Answer questions from guests about hotel policies and services;
- Keep track of how much money the hotel or lodging facility is making;
- Interview, hire, train, and sometimes fire staff members;
- Monitor staff performance to ensure that guests are happy and the hotel is well run;
- Coordinate front-office activities of hotels or motels and resolve problems; and
- Set room rates and budgets, approve expenditures, and allocate funds to various departments

The *Handbook* also identifies different types of lodging managers and indicates that lodging general managers:

Oversee all lodging operations at a property. At larger hotels with several departments and multiple layers of management, the general manager and several assistant managers coordinate the activities of separate departments. These departments may include housekeeping, personnel, office administration, marketing and sales, purchasing, security, maintenance, recreational facilities, and other activities.

The petitioner's description of the beneficiary's duties most closely resembles the duties of a lodging manager who performs general managerial duties. The petitioner explains that the beneficiary will oversee all the lodging operations at the property including some promotional and accounting functions.

Contrary to counsel's claim, however, the *Handbook* does not support the conclusion that a lodging general manager position is a specialty occupation. The introduction to "How to Become a Lodging Manager" section of the *Handbook* states:

Many applicants may qualify with a high school diploma and long-term experience working in a hotel. However, most large, full-service hotels require applicants to have a bachelor's degree. Hotels that provide fewer services generally accept applicants who have an associate's degree or certificate in hotel management or operations.

Accordingly, not every lodging manager position, including a lodging general managerial position, requires at least a bachelor's degree level of knowledge. The *Handbook* reports:

Most full-service hotel chains hire people with a bachelor's degree in hospitality or hotel management. Hotel management programs typically include instruction in hotel administration, accounting, economics, marketing, housekeeping, food service management and catering, and hotel maintenance and engineering. Computer training is also an integral part of many degree programs, because hotels use hospitality-specific software in reservations, billing, and housekeeping management.

At hotels that provide fewer services, candidates with an associate's degree or certificate in hotel, restaurant, or hospitality management may qualify for a job as a lodging manager.

In this matter, the petitioner has not established whether it is a full-service hotel chain or a hotel that provides fewer services. However, even if the petitioner is a full-service hotel chain, the *Handbook's* report that most of these chains hire individuals with a bachelor's degree in hospitality or hotel management does not support the view that any lodging manager job qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of lodging manager jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular lodging manager position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).<sup>4</sup>

The petitioner in this matter also described accounting functions and implies that these additional duties require the beneficiary to have a bachelor's degree. However, although the petitioner references a subordinate level of clerks, the petitioner has not provided documentary evidence that it employs a bookkeeper or accounting clerk. 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)). Thus, there is no evidence that the beneficiary would be relieved from performing the company's general financial record keeping such as recording the petitioner's financial transactions, updating statements, and checking financial records for accuracy (all duties of a bookkeeper and/or accounting clerk). It appears more likely than not that the beneficiary is being hired to perform, at least in substantive part, these duties.<sup>5</sup>

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<sup>4</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of accountant positions require at least a bachelor's degree in accounting or a related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

<sup>5</sup> The *Handbook* identifies the typical duties of a bookkeeping, accounting, and auditing clerk as: using bookkeeping software; posting financial transactions; receiving and recording cash, checks, and vouchers; producing reports and income statements; and checking figures, reports and postings for accuracy and reconciling discrepancies. The *Handbook* notes that these workers have a wide range of tasks and some maintain an entire organization's books. The *Handbook* reports that most bookkeeping, accounting and auditing clerks need a high school diploma although some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. See Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/oco/ocos001.htm>.

Moreover, the petitioner initially stated that the proffered position requires a bachelor's degree in business administration, accounting, or hospitality combined with hotel management experience. In the petitioner's clarifying letter submitted on motion, the petitioner confirmed that it required its general manager to have a baccalaureate degree or its equivalent in business or a related field. It must be noted, however, that the petitioner's claimed entry requirement of at least a bachelor's degree in business, accounting, or hospitality does not denote a requirement in a specific specialty. The claimed requirement of a degree in a major such as "Business" or "Business Administration" for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question.<sup>6</sup> 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 discussed *supra*, 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. 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, supra*. The petitioner's claim that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration, is tantamount to an admission that the proffered position is not in fact a specialty occupation.

Based on the above analysis of the evidence contained in the record, the AAO finds that the petitioner has failed to demonstrate that the proffered position normally requires the incumbent to possess a high level of specialized knowledge that may be obtained only through at least a baccalaureate degree in a specific discipline or its equivalent for entry into that particular position. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied the first of the two alternative prongs at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry

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<sup>6</sup> We observe the petitioner initially indicated that a degree in business, accounting, or hospitality would be sufficient. However, the petitioner, who bears the burden of proof in these proceedings, has not demonstrated that a degree in accounting, hospitality, or the general degree of business are related except in the most general way. To establish these three majors are closely related, the petitioner must establish that each major's required "body of highly specialized knowledge" would essentially be the same. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards.

in positions that are both: (1) parallel to the proposed position; and (2) located in organizations that are similar to the petitioner.

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

As discussed *supra*, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry.

The job vacancy announcements submitted by the petitioner also do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Only one of the seven advertisements submitted required that the successful incumbent possess a four-year degree in a hospitality related field in order to qualify for the advertised position. We herein note that the petitioner requires only a general business degree. Three of the advertisement noted a preference for a business or hospitality/hotel management degree and one indicated a four-year college degree is preferred; however, employer preference is not synonymous with a normal minimum requirement for entry into an occupation. The statement that some employers "prefer" a certain degree is not sufficient to establish that a bachelor's degree *in a specific field of study* is a common minimum entry requirement. Although an additional advertisement indicated that a degree was required, it did not list a specific discipline. As observed above, a variety of acceptable degrees is insufficient to establish that the position requires a precise and specific course of study that relates directly and closely to the proffered position. Likewise, the advertisement that provided a variety of paths available for entry into a general lodging manager position did not require a precise and specific course of study to qualify. A degree with a generalized title does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates, supra*. The petitioner also fails to submit any evidence of how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few advertisements 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").

The petitioner's submission of a letter signed by a human resource employee at the [REDACTED] [REDACTED] similarly does not provide probative information that the company routinely employs and recruits only individuals with bachelor's degrees in a specific discipline. Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." In this matter, the petitioner failed to credibly demonstrate exactly what tasks the beneficiary will perform on a day-to-day basis that encompass such complexity or uniqueness.

The AAO observes the petitioner's reliance on the beneficiary's educational background and past experience in the hospitality industry as evidence of the beneficiary's ability to carry out the duties of the position it claims constitutes a specialty occupation. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. For instance, 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 it claims are so complex and unique.

Regarding the expert opinion letter submitted by counsel on motion and again on appeal, [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Moreover, [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or a related field. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration, again, is inadequate to establish that a position qualifies as a specialty occupation. To reiterate, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. Therefore, the AAO finds that the opinion prepared by [REDACTED] does not establish that the proffered position is a specialty occupation.

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

Next, we consider whether the petitioner's prior history of recruiting and hiring for the proffered position establishes the proffered position as a specialty occupation. We have reviewed the petitioner's past employment of an individual in the proffered position and the foreign diplomas offered to establish his educational history. The petitioner, however, has not provided an evaluation of this individual's educational history, the individual's transcripts, or other evidence to establish that this individual possessed the equivalent of a U.S. bachelor's degree in a specific discipline. Accordingly, the record is insufficient to establish the petitioner's prior history of only recruiting and hiring candidates with a specific bachelor's degree for 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, supra*.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner, supra*. 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"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge at a level usually associated with at least a bachelor's degree, or the equivalent, in a specific discipline. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than other types of employees, including those bearing the title "general manager" or "lodging general manager." In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than a lodging general manager position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.<sup>7</sup>

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<sup>7</sup> Counsel argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

The record does not support that the proffered position is one with specialized and complex duties when the petition was filed. The AAO, therefore, concludes that the proffered position failed to satisfy 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 will remain denied for this reason.

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

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

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[http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).