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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: MAR 08 2013 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

for Michael T. Kelly
Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an accounting firm that provides "audit, tax, consulting, and financial advisory services" with two employees. It seeks to employ the beneficiary in what it describes as a part-time "IT Audit Specialist" position and to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied the evidentiary requirements. In support of this assertion, counsel submitted an addendum to Form I-290B.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice of denial; and (5) the Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO finds that the director's decision to deny the petition for its failure to establish that the proffered position qualifies as a specialty occupation in accordance with the controlling statutory and regulatory provisions was correct. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

To meet its burden of proof on the specialty occupation issue, the petitioner must establish that the job it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii):

> *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 at 387. To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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 evidence in the record of proceeding establishes that performance of 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 evidence in the record of proceeding establishes that 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 the specific specialty as the minimum for entry into the occupation, as required by the Act.

At the outset of its comments upon this particular record of proceeding, the AAO notes that the Form I-129 assigned to the proffered position the Job Title "IT [(Information Technology)] Audit Specialist," and identified it as a part-time position that would be performed 20 hours per week.

The AAO also observes that, as the supporting Labor Condition Application (LCA), the petitioner submitted into the record one that had been certified for a position with the SOC (Standard Occupational Classification) code 11-3021.00, and the SOC occupational title "Computer and Information Systems Managers."

Additionally, the AAO notes that at page 3 of the Form I-129, in the space at Part 4, item 4, for entry of the pertinent NAICS (North American Industrial Classification System) Code, the petitioner entered 541211, which is the code for Offices of Certified Public Accountants.

The allied papers submitted with the Form I-129 include a letter of support from the petitioner, dated October 5, 2010. That letter includes the following assertions regarding the petitioner's business and the role that the beneficiary would play as its IT Audit Specialist:

> Our accounting firm provides audit, tax, consulting, and financial advisory services to corporate, small business, and private clients. A major part of audit services is informational technology [(IT)] review, i.e., assessment and improvement of client's internal control policies and procedures within technology environments. Our audit approach recognizes the importance of information systems in achieving internal control. An assessment of key internal controls is highly integrated into our audit plans.
>
> We believe that today's complex business environment demands that companies find ways to utilize technologies to the fullest, both to maximize productivity and minimize costs. Yet finding and integrating the right solution to each unique

business can be an overwhelming task, particularly with new technology emerging almost daily.

The letter continued with this general overview of the role proposed for the beneficiary:

> [The beneficiary], given her experience, will serve as a powerful resource for our clients. She will apply a structured approach to deliver and support a broad range of solutions including, accounting systems, email services, network services, and web services.

The letter of support also states that the beneficiary "will be responsible for the following":

- Demonstrate advanced understanding of business processes, internal control risk management, IT controls and related standards
- Identify and evaluate complex business and technology risks, internal controls which mitigate risks, and related opportunities for internal control improvement
- Understand complex business and informational technology management processes
- Execute advanced services and supervise staff in delivering basic services
- Assist in the selection and tailoring of approaches, methods and tools to support service offering or industry projects
- Understand clients' business environment and basic risk management approaches
- Demonstrate a general knowledge of market trends and competitor activities
- Actively participate in decision making with engagement management and seek to understand the impact of current decisions
- Generate innovative ideas and challenge the status quo
- Build and nurture positive working relationships with clients with the intention to exceed client expectations
- Facilitate use of technology-based tools or methodologies to review, design and/or implement products and services
- Identify opportunities to improve engagement profitability
- Participate in and actively support mentoring relationships within practice

- Excellent potential for 1) Playing lead role in designated tasks of the project team in gathering, organizing and analyzing data; 2) making major contributions in assuring products/deliverables meet contract/work plan; and 3) strong potential for growth and acceptance of additional responsibilities.

The AAO notes that the petitioner declined the opportunity, provided in the RFE, to specifically and substantially expand upon the substantive nature of the beneficiary's duties, upon the position that they constitute, and, also, upon the petitioner's business operations. The AAO finds that, in the absence of such evidence, and as illustrated in the duty descriptions quoted above, the petitioner limited its descriptions of the position and its constituent duties to general functions. The AAO finds that, as so generally described, those general functions do not in themselves either reveal the substantive nature of the actual work that would be involved in their actual performance, or reveal substantial information about any applications of a body of highly specialized knowledge in any specialty that would be required to perform them. Likewise, as a natural consequence, the record of proceeding does not establish a necessary correlation between such work and a necessity for the beneficiary to hold at least a bachelor's degree, or the equivalent, in a specific specialty closely related to the nature of the proffered position as it would actually be performed.

As a corollary to the record of proceeding's lack of substantive information about the proposed duties and the position they are said to constitute, the AAO also finds that the petitioner has not provided a factual foundation sufficient to distinguish the proffered position or its duties as more complex, unique and/or specialized than other positions and constituent duties in the pertinent occupational classification.

Further, the AAO notes that the record of proceeding lacks substantive evidence of any projects and work assignments designated for the beneficiary during the period of proposed employment, which might shed some light on the substantive nature of the work in which the beneficiary would engage.[1]

The petitioner claimed that the duties are highly technical requiring the skills of a professional who holds at a minimum a B.A. or B.S. in business administration, accounting, computer science, management information systems or an equivalent.

A copy of a certified LCA submitted with the petition indicated that the beneficiary would work in Chula Vista, California during the period of intended employment. In addition to a copy of a certified LCA, the petitioner submitted copies of the beneficiary's educational documentation together with an educational evaluation, as well as documentation establishing the beneficiary's valid nonimmigrant status at the time of filing the H-1B nonimmigrant change of status petition.

On February 15, 2011, the director issued an RFE. In the request, the director asked the petitioner to submit particularized evidence clarifying the nature of the proffered position and the nature of

[1] Counsel maintains that the proffered position is professional pursuant to the Fair Labor Standards Act, defined at 29 C.F.R. § 541.300. Reliance on this Act is misplaced, as it is not the applicable statutory and regulatory scheme for determinations as to whether a position qualifies as an H-1B specialty occupation.

the petitioner's business, and set forth the legal elements to meet the specialty occupation standard.

In a letter dated March 28, 2011, the petitioner, through counsel, responded to the RFE and also submitted the following documents: (1) a corrected Form I-129, with proper signature; (2) an addendum to the Form I-129, providing the same nontechnical job description as presented in the initial H-1B support letter; (3) an educational evaluation, together with the beneficiary's diploma and transcript, which had been previously submitted; (4) a copy of the petitioner's quarterly wage report for the period ending on December 31, 2010; (5) a copy of the petitioner's quarterly wage report for the period ending on September 30, 2010; (6) the petitioner's quarterly wage report for the period ending on March 31, 2010; (7) a copy of the petitioner's quarterly wage report for the period ending on June 30, 2010; (8) a copy of Form 1120S, 2009 Federal Tax Returns for the petitioner; (9) a copy of Form 1040, 2008 Individual Federal Tax Returns for the petitioner's president/CEO and his spouse; (10) an original brochure describing the petitioner's services; (11) an original calendar, also containing promotional information about the petitioner, together with the president/CEO's business card; and (12) original photographs depicting the exterior and interior of the petitioner's business premises.

In the March 28, 2011 RFE-response letter, the petitioner presented the same job duties and description about itself as had been presented in the initial support letter, without further elaboration regarding the substantive nature of the work to be performed by the beneficiary. Also, the RFE response emphasized that the proffered position had been presented in prior H-1B petitions that had been approved by the California Service Center for different beneficiaries. Additionally, the petitioner argued that the proffered position is a "transitional occupation," and following therefrom, that it fits into an exception to the industry-standard requirement, and thus the Service should find that the position is professional, regardless of its size. Building upon this argument, counsel claims that the position is a specialty occupation because it meets the definition of professional under the Fair Labor Standards Act. As a final matter, the petitioner asserted that the beneficiary's degree is directly related to the proffered position, and highlights the relevant coursework and underlying principles taught within the respective courses.

The director denied the petition on May 18, 2011, finding that the list of duties is generic in nature and provides no further detail as to the unique or complex nature of the proffered position. Further, the director found that the duties were not viewed as sufficient to establish that the proffered position is more unique or complex than similar positions within the same industry that do not require a baccalaureate level of education in a specific specialty as a normal, minimum for entry into the occupation. Finally, in direct contrast to the petitioner's claim that the proffered position belongs to the Computer and Information Systems Managers occupational category, the director found that the proposed duties of primarily reflect a position in the category of Computer Network, Systems, and Database Administrators occupational category as it is discussed in the U.S. Department of Labor's *Occupational Outlook Handbook* (hereinafter referred to as the *Handbook*).

On appeal, counsel presents the same arguments as had been submitted in response to the RFE, and also states that the Service incorrectly characterized the position as fitting within the

occupational classification of Computer Network, Systems, and Database Administrators, rather than Computer and Information Systems Managers.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. The petitioner declined the opportunity, afforded by the RFE to supplement the record with evidence establishing the substantive nature of specific work that the beneficiary would perform.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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. However, the AAO will continue its analysis in order to surface other material deficiencies in the petition.

The AAO first turns to the criterion t 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*): a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The *Handbook*'s chapter on Computer and Information Systems Managers describes the occupational group as follows:

> Computer and information systems managers, often called information technology managers (IT managers or IT project managers), plan, coordinate, and direct computer-related activities in an organization. They help determine the information technology goals of an organization and are responsible for implementing computer systems to meet those goals.
>
> **Duties**
>
> Computer and information systems managers typically do the following:
>
> - Analyze their organization's computer needs and recommend possible upgrades to top executives
> - Plan and direct installing and upgrading computer hardware and software
> - Ensure the security of an organization's network and electronic documents
> - Assess the costs and benefits of a new project to justify spending to top executives
> - Learn about new technology and look for ways to upgrade their organization's computer systems

- Determine short- and long-term personnel needs for their department
- Plan and direct the work of other IT professionals, including computer systems analysts, software developers, information security analysts, and computer support specialists
- Negotiate with technology vendors to get the highest level of service for their organization

Few managers do all of these duties. There are various types of computer and information systems managers, and the specific duties of each are determined by the size and structure of the firm. Smaller firms may not employ every type of manager.

The following are types of computer and information systems managers:

Chief information officers (CIOs) are responsible for the overall technology strategy of their organizations. They help determine the technology or information goals of an organization and then oversee planning to implement technology to meet those goals.

They may focus on a specific area such as electronic data processing or information systems, but they differ from chief technology officers (CTOs; see next) in that the CIO is more focused on long-term, or "big picture," issues. CIOs who do not have technical expertise and focus solely on the business aspects of creating an overall company vision are included in a separate profile on top executives. For more information, see the profile on top executives.

Chief technology officers (CTOs) evaluate new technology and how it can help their organization. When both CIOs and CTOs are present, the CTO usually has more technical expertise.

The CTO is responsible for designing and recommending the appropriate technology solutions to support the policies and directives issued by the CIO. CTOs also work with different departments to implement the organization's technology plans.

The CTO usually reports directly to the CIO and also may be responsible for overseeing the development of new technologies or other research and development activities. When a company does not have a CIO, the CTO determines the overall technology strategy for the firm and presents it to top executives.

IT directors, including management information systems (MIS) directors, are in charge of their organizations' information technology (IT) departments, and they directly supervise other employees. They help to determine the business requirements for IT systems and they implement the policies that have been chosen by top executives. It is the IT director's job to ensure the availability of

data and network services by coordinating IT activities. IT directors also oversee the financial aspects of their department, such as budgeting.

IT security managers oversee their organizations' network and data security. They work with top executives to plan security policies and training for employees. These managers must keep up to date on IT security measures. They also supervise investigations if there is a security violation

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-2013 Edition at http://www.bls.gov/ooh/Management/Computer-and-information-systems-managers.htm#tab-2 (last visited January 16, 2013).

In the "How to Become a Computer and Information Systems Manager" section of its chapter on "Information Systems Managers," the Handbook specifies a minimum requirement of a bachelor's degree in a specific specialty for entry into the occupation:

Education

A bachelor's degree in computer or information science plus related work experience is typically required. Many computer and information systems managers also have a graduate degree.
Computer and information systems managers normally must have a bachelor's degree in a computer- or information science-related field. This usually takes 4 years to complete and includes courses in computer programming, software development, and mathematics. Management information systems (MIS) programs usually include business classes as well as computer-related ones.

Many organizations require their computer and information systems managers to have a graduate degree as well. A Master of Business Administration (MBA) is common and takes 2 years beyond the undergraduate level to complete. Many people pursuing an MBA take classes while working, an option that can increase the time required to complete it.

Bureau of Labor Statistics, U.S. Dept. of Labor, *Occupational Outlook Handbook*, 2012-2013 Edition at http://www.bls.gov/ooh/Management/Computer-and-information-systems-managers.htm#tab-4 (last visited January 16, 2013).

Aside from, and in addition to, the material evidentiary deficiencies residing in the petitioner's un-supplemented, generalized descriptions of the proffered position, the AAO also finds that the petitioner has not provided a factual foundation for accepting as credible its contention that the beneficiary would be employed in the claimed occupational classification of Computer and Information Systems Managers. In this regard, the AAO finds that the specific language and generalized tenor of the excerpts from the *Handbook* is that such positions are an organic, integral part of the internal management structure of an organization and not, as the petition indicates for the proffered position, a matter of services provided by an outside source. Further, the AAO finds, the petitioner's own brochure that it submitted into the record does not specify

that Computer and Information Systems Managers as persons it would provide its clients whether on assignment or otherwise. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further still, the AAO notes that the petitioner has stated as minimum acceptable educational credentials for entry into its position "a BA or BS in Business Administration, Accounting, Computer Science, Management Information Systems, or equivalent thereof." This range of acceptable degrees in inconsistent with the type of position specified in the LCA - as is clearly evident in the in the above-quoted excerpts from the *Handbook*. Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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. However, the AAO will continue its analysis in order to surface other material deficiencies in the petition.

The degree requirement for the particular occupational category notwithstanding, the position here proffered is one that the petitioner claims can be filled by an individual who has earned a degree in business administration, accounting, computer science, management information systems, or an equivalent thereof. It must be noted that the petitioner's claimed acceptability of a bachelor's or higher degree in these dissimilar and disparate fields for the proffered position, is indicative of a position for which a degree in a specific specialty is not a minimum entry requirement. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same.[2]

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in business administration, accounting, computer science, management information systems, or the equivalent thereof. The issue here is that it is not readily apparent that these various fields of study are closely related or that these fields are directly related to the duties and responsibilities of the particular position proffered in this

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[2] Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two or more disparate fields (such as Accounting, Computer Science, and Business Administration) would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added). In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

matter. The petitioner did not establish how each of claimed bodies of specialized knowledge directly relate to the duties and responsibilities of 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)).

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, simply fails to establish either (1) that business administration, accounting, computer science, management information systems, or the equivalent thereof are closely related fields or (2) that the fields of business administration, accounting, computer science, management information systems, or the equivalent thereof are directly related to the duties and responsibilities of the proffered position. 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. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as satisfying the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) and, in fact, it supports the opposite conclusion.

Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. 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 139, 147 (1st Cir. 2007).

As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge or a specific specialty or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a bachelor's degree in any one of these unrelated fields is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Further, the petitioner's claim that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. 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).

As the evidence of record does not establish the nature of the duties with sufficient clarity 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 closely related to the position's duties, 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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, in determining whether there is 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 at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As already discussed, the occupational classification claimed by the petitioner is not one for which the *Handbook* indicates an industry requirement for at least a bachelor's degree in a specific specialty Additionally, 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. Also, as already discussed, the petitioner has not established the substantive nature of the position and its constituent duties, and this aspect of the petition precludes classification as a position for which the *Handbook* reports an industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

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 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 shows that the particular position proffered in this petition is "so complex or unique" that it can be performed only by an individual with at least a bachelor's degree in a specialty occupation.

The petitioner does not assert or provide any documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty. A review of the record indicates that the petitioner has failed to credibly demonstrate the substantive nature and substantive performance requirements of whatever duties the beneficiary would responsible for or would perform on a day-to-day basis. Even assuming the beneficiary will perform the duties as described at each project to which she may be assigned, these duties have not been shown to entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty or its

equivalent.

As the evidence in the record of proceeding has not established that the particular position proffered in this petition is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in the specific specialty, or the equivalent, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

As the petitioner has not established that a baccalaureate or higher degree or its equivalent is common to the industry in parallel positions among similar organizations or, in the alternative, that the proffered position is so complex or unique that it can be performed only by an individual with a degree in a specific discipline, the petitioner has not satisfied either of the alternative prongs of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

Next, the regulatory criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*) entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

In the instant matter, the proffered position is a newly created position, and as such, there is no prior history of past employment practices for consideration.

As the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Now, the AAO looks to the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires a petitioner to establish that the nature of the specific 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.

Aside from the petitioner's silence on the issue, the AAO finds that the petitioner did not submit evidence developing the proposed duties with sufficient detail and substantive content to show that their nature is so specialized and complex that their performance would require knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO hereby incorporates here its earlier discussions and findings with regard to the generalized, functional level at which the petitioner described the constituent duties of the proffered position.

For the reasons related in the preceding discussions, the petitioner has failed to establish that it has satisfied any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition will be denied for this reason.

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

petitioner did not submit sufficient evidence regarding the proffered position to determine that it is a specialty occupation and, therefore, the beneficiary's qualifications are not relevant to the outcome of this appeal.

Finally, counsel emphasizes that the proffered position is the same position in job title and duties as two previously approved H-1B petitions filed by the petitioner on behalf of other beneficiaries, but cites no legal authority that would support a finding that the instant petition should be approved based on prior approvals. Notably, an April 23, 2004 memorandum authored by William R. Yates (hereinafter Yates memo) establishes that USCIS is not bound to approve subsequent petitions. Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3, (Apr. 23, 2004).

It must be noted that the Yates memo specifically states as follows:

> [A]djudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International,* 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. *See* 8 C.F.R. § 103.8(d). . . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

Thus, the Yates memo does not advise adjudicators to approve even an extension petition when the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the memorandum's language quoted immediately above acknowledges that a petition should not be approved, where, as here, the petitioner has not demonstrated that the petition should be granted.

Again, as indicated in the Yates memo, the AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International,* 19 I&N Dec. 593, 597 (Comm'r 1988). If the two previous nonimmigrant petitions were approved based on the same description of duties and assertions that are contained in the current record, they would constitute material and gross error on the part of the director. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to

follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. There is no requirement either in the regulations or in USCIS procedural documentation requiring nonimmigrant petitions to be combined in a single record of proceeding.[3] Accordingly, the director was not required to request and obtain a copy of the prior H-1B petitions.

Again, the petitioner in this case failed to submit copies of the prior H-1B petitions and their respective supporting documents and approval notices. As the record of proceeding does not contain any evidence of the allegedly approved petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive reasons could have been provided to explain why deference to the approvals of the prior two H-1B petitions was warranted. The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. For this additional reason, the Yates memorandum does not apply in this instance.

Beyond the decision of the director, the AAO rejects the education evaluator's conclusion, in his report prepared for the petitioner, that the beneficiary's apparent foreign-degree as reflected in the associated diploma and transcript is equivalent to a U.S. bachelor's degree in Management Information Systems. Neither the diploma nor transcript bear such a title, the transcript does not appear to have a concentration in Management Information Systems, and the evaluator has failed to satisfactorily explain the bases for his conclusion. 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).

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).

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[3] USCIS does not engage in the practice of reviewing previous nonimmigrant petitions when adjudicating extension petitions. Given the various and changing jurisdiction over various nonimmigrant petitions and applications, requiring previously adjudicated nonimmigrant petitions to be reviewed before any newly filed application or petition could be adjudicated would result in extreme delays in the processing of petitions and applications. Furthermore, such a suggestion, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

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.