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



U.S. Citizenship
and Immigration
Services

DATE: MAR 08 2013

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner:
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:
[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 F. Kelly
Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a luxury hotel established in 1991. In order to employ the beneficiary in what it designates as a “director (lodging manager)” position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (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 letter denying the petition; and (5) the Form I-290B and supporting documentation.

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. Accordingly, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the AAO finds two additional aspects which, although not addressed in the director’s decision, nevertheless also preclude approval of the petition, namely: (1) providing as the supporting Labor Condition Application (LCA) for this petition an LCA which does not correspond to the petition, in that the LCA was certified for a wage level below that which is compatible with the levels of responsibility, judgment, and independence the petitioner claimed for the proffered position through descriptions of its constituent duties; and (2) failure to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.¹ For these additional two reasons, the petition must also be denied.

The AAO will first address the LCA issue, as the lack of an LCA that corresponds to a petition precludes that petition’s approval.

In its December 22, 2010 letter of support, the petitioner stated that the beneficiary would spend fifty percent of her time performing the following duties:

- Managing the hotel’s operations (front office, housekeeping, and guest services) in compliance with the standards of the petitioner, [REDACTED], and [REDACTED] and
- Conferring and cooperating with other managers to ensure the coordination of hotel activities.

¹ The AAO conducts appellate review on a *de novo* basis (See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified these additional grounds for denial.

The petitioner stated that the beneficiary would spend twenty-five percent of her time performing the following duties:

- Evaluating hotel operations staff;
- Establishing efficient management policies;
- Developing shared team responsibilities in accordance with human resources management principles;
- Hiring and supervising professional staff;
- Establishing performance standards; and
- Creating training and work schedules.

The petitioner stated that the beneficiary would spend fifteen percent of her time performing the following duties:

- Developing a budgetary accounting and cost control system;
- Preparing a financial plan and budget and revenue goals for hotel operations;
- Updating financial plan and budget and revenue goals on a weekly basis;
- Devising an operational plan to meet budget revenue goals;
- Authorizing expenditures;
- Approving invoices for hotel operations;
- Reconciling accounts; and
- Preparing expense reports and budget reports for submission to the General Manager.

Finally, the petitioner stated that the beneficiary would spend ten percent of her time performing the following duties:

- Developing and implementing an inventory control system; and
- Reviewing and authorizing purchases of supplies for hotel operations.

The petitioner emphasized throughout the petition the high-end nature of its business.

The record contains numerous claims regarding the complexity, uniqueness, and specialization of, and training requirements for, the duties of the proffered position. For example, in her December 29, 2010 memorandum of law counsel stated, in pertinent part, the following:

As Director (Lodging Manager). Beneficiary will assume a primary role for [the petitioner's] hotel operations [and] financial and human resources management. As a manager of other hospitality professionals who themselves possess a baccalaureate degree or equivalent experience. . . .

* * *

As Director (Lodging Manager). Beneficiary will be held accountable for the success of all of these functions . . . This feat will require knowledge that is both broad and profound, and highly specialized in the sector of hospitality management. . . .

* * *

[T]he duties of the offered position are so specialized and complex that they can be performed only by an individual with a degree. . .

On the Form I-290B, counsel stated the following:

[T]he proffered position is complex and unique, and thus can only be performed by an individual with a degree. As described above, [the] Petitioner's operations are complex and unique because [the] Petitioner is among a very elite group of small luxury hotels in the United States. Hotel management positions at such employers require a degree of skill and knowledge well beyond that required at an average property, due to the stringent quality control needed to maintain the property's high rankings and satisfy a very discerning and sophisticated clientele. . . .

Finally, it is noted that in its December 22, 2010 letter the petitioner stated that the beneficiary has been a management trainee at its hotel since November 2009, and that during this time she has received "advanced training" in all aspects of hospitality training including hotel management; financial resources management; information technology management; marketing; human resources management; managerial communication; and entrepreneurial management.

However, as will now be discussed, these assertions materially conflict with the wage level designated in the LCA that the petitioner submitted with the petition. The LCA submitted by the petitioner in support of the instant position indicates that the occupational classification for the position is "Lodging Managers," SOC (O*NET/OES) Code 11-9081.00, at a Level I (entry level) wage. The *Prevailing Wage Determination Policy Guidance*² issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine

² Available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed February 25, 2013).

tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The petitioner's assertions regarding the proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and responsibility and the occupational understanding required to perform them, are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage level indicates that the proffered position is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and have her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proffered position's demands and level of responsibilities. 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. 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).

It should be noted that, for efficiency's sake, the AAO's discussion and findings regarding the material conflict between assertions in the petition and the LCA wage-level are hereby incorporated as part of this decision's later analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Aside from the adverse impact of the LCA wage-level against the overall credibility of the petition, the AAO will now discuss that additional issue raised by the LCA which was noted at the outset of this decision as precluding approval of the petition, namely, the fact that the LCA does not appear to correspond to the instant petition.

The DOL has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA.

With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that “[i]t is the employer’s responsibility to ensure that ETA [(the DOL’s Employment and Training Administration)] receives a complete and accurate LCA.”

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. As reflected in this decision’s earlier discussion of the conflict between the assertions of record regarding the proffered position, on the one hand, and, on the other, the position’s low-level characterization inherent in the LCA’s Level I wage-rate designation, the petitioner has failed to submit an LCA that corresponds to the claimed duties of the proffered position. Specifically, it has failed to submit an LCA whose wage-level corresponds to the level of work, responsibilities, and occupational proficiency that the petitioner claims for the proffered position. Thus, even if it were determined that the petitioner had overcome the director’s ground for denying this petition (which it has not), the petition could still not be approved.

The AAO will now address the director’s determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

As reflected in this decision's earlier discussion regarding the fact that the LCA does not correspond to the petition, that conflict between the petition and the LCA in itself precludes approval of this petition, independently from and regardless of the merits of the petition. Also, as previously noted, the conflict between the LCA and the petition also adversely affects the merits of the petition, because it materially undermines the credibility of the petition's statements therein with regard to the nature and level of work that the beneficiary would perform.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as 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 rely simply upon a proffered position’s title. The specific duties of the position, combined with the nature of the petitioning entity’s business operations, are factors to be considered. USCIS must examine the ultimate employment of the beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree *in the specific specialty* as the minimum for entry into the occupation, as required by the Act.

The AAO finds that, even when read in the aggregate, neither the earlier quoted duty descriptions, nor any other in this record of proceeding, distinguish the proposed duties, or the position that they comprise, as so complex, specialized, and/or complex as to require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required to establish a specialty occupation in accordance with the definitions at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii). Rather, the AAO finds, the proffered position and its duties are described in terms of numerous but generalized functions that are neither explained nor documented in substantial details that would establish both the substantive aspects of actual work into which their actual performance would translate, and any necessary correlation between knowledge that must be applied in that work and attainment of any particular level of highly specialized knowledge in a specific specialty.

As a preliminary matter, the AAO will address *Matter of Sun*, 12 I&N Dec. 535 (BIA 1966), which counsel cited in her December 29, 2010 memorandum. As noted by counsel, the court in that case recognized a hotel manager as a member of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as interpreted in 1966. However, the issue before the AAO is whether the petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation, not whether it is a profession. *Matter of Sun* is therefore irrelevant here.³

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide

³ Counsel argued, incorrectly, that the legal standards for qualifying as a profession and qualifying as a specialty occupation "are virtually identical" to one another. While similar, the terms "profession" and "specialty occupation" are not interchangeable as counsel suggests. The current, primary, and fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or equivalent, to be in a specific specialty. There is no such requirement to qualify as a profession. Even a position specifically identified as qualifying as a profession in section 101(a)(32) of the Act would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

Furthermore, it is noted that the Board of Immigration Appeals (BIA) in *Matter of Sun* did not state that all hotel managers qualify as members of the professions. To the contrary, it stated only that "the vocation of hotel manager in its more complex form involving the duties described above for a large hotel may be considered as a profession." *Matter of Sun*, 12 I&N Dec. at 535. The petitioner is not "a large hotel," and, as previously discussed, the petitioner submitted a wage-level designation on the LCA for a comparatively low, entry-level position relative to others within the occupation.

variety of occupations it addresses.⁴ The AAO agrees with counsel that the proposed duties align with those of lodging managers.

The *Handbook's* discussion of the duties typically performed by lodging managers states, in pertinent part, the following:

Lodging managers make sure that guests on vacation or business travel have a pleasant experience, while also ensuring that an establishment is run efficiently and profitably. . . .

Lodging managers typically do the following:

- Inspect guest rooms, public areas, and grounds for cleanliness and appearance
- Greet and register guests
- 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
- Set room rates and budgets, approve expenditures, and allocate funds to various departments

A comfortable room, good food, and a helpful staff can make being away from home an enjoyable experience for guests on vacation or business travel. Lodging managers make sure that guests have that good experience.

Lodging establishments vary in size from independently owned bed and breakfast inns and motels with just a few rooms to hotels that can have more than 1,000 guests.

⁴ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

Services can vary from offering a room to having a swimming pool; from free breakfast to having a full-service restaurant; from having a lobby to also operating a casino and hosting conventions.

The following are types of lodging managers:

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. For more information, see the profiles on human resources managers; public relations managers and specialists; financial managers; advertising, promotions, and marketing managers; and food service managers.

Revenue managers work in financial management, monitoring room sales and reservations, overseeing accounting and cash-flow matters at the hotel, projecting occupancy levels, and deciding which rooms to discount and when to offer special rates.

Front-office managers coordinate reservations and room assignments and train and direct the hotel's front-desk staff. They ensure that guests are treated courteously, complaints and problems are resolved, and requests for special services are carried out. Most front-office managers also are responsible for handling adjustment to bills.

Convention service managers coordinate the activities of various departments to accommodate meetings, conventions, and special events. They meet with representatives of groups to plan the number of conference rooms to be reserved, design the configuration of the meeting space, and determine what other services the group will need, such as catering or audiovisual requirements. During the meeting or event, they resolve unexpected problems and ensure that hotel operations meet the group's expectations.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Lodging Managers," <http://www.bls.gov/ooh/management/lodging-managers.htm#tab-2> (accessed February 25, 2013).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

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.

* * *

Many hotel employees who do not have hospitality management training, but who show leadership potential and have several years of experience, may qualify for assistant manager positions.

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

These findings do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupation. First, the *Handbook* specifically states that applicants may qualify for lodging manager positions on the basis of a high school diploma and work experience. Nor does the *Handbook's* finding that "most" large, full-service hotels require a bachelor's degree establish eligibility under this criterion. 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 lodging manager positions in large, full-service hotels require at least a bachelor's degree in a specific specialty, it could be said that "most" industrial production manager 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. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act. Furthermore, it is noted that the petitioner is not a large, full-service hotel.

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

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proposed position qualifies as a specialty occupation under the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET's OnLine's JobZone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. Also, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Finally, as previously discussed, the petitioner submitted on the LCA a wage-level designated for a comparatively low, entry-level position relative to others within the occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is 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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent.

As evidence of the petitioner's eligibility under the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), the record contains letters from [REDACTED] which she describes as an international association of small luxury inns, hotels, and restaurants; [REDACTED]

Despite their self-endorsements and claimed expertise, it is noted that none of these individuals present any documentation to establish they possess expertise or recognition as an authority in the specific areas in which they are opining, namely, the recruiting and hiring practices of firms for the type of position claimed by the petitioner; and also a position's satisfaction of the statutory and regulatory requirements for USCIS recognition as a specialty occupation. 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, the AAO finds, none of these individuals have established that their opinion merits any deference or significant weight in the consideration of this appeal. Having made this initial finding with regard to these letters, the AAO will now separately address the additional deficiencies present in each of these letters.

In her January 27, 2009 and April 13, 2011 letters [REDACTED] claimed the following:

It is understood within the hospitality industry that hotel management professionals at **high-end hotels and inns** must satisfy an extraordinarily demanding clientele in performing their duties, and are expected to possess a formal university degree in hotel management as well as prior management experience [emphasis in original].

According to Ms. Homick, it is only through such education and experience that such individuals “gain the skills necessary to perform their hotel management duties at prestigious properties.”

The AAO notes that [REDACTED] did not discuss the duties of the proffered position. Nor did she address the beneficiary’s lack of a bachelor’s degree, or the equivalent, which will be addressed later in this decision. Nor did [REDACTED] address the findings by DOL and published in the *Handbook*, which were discussed above, and which do not indicate that a bachelor’s degree, or its equivalent, in a specific specialty, is normally required for positions such as the one proffered here. Finally, [REDACTED] did not address the petitioner’s certification of the LCA for a low-level, entry position relative to others within the occupation requiring only a basic understanding of the position, and which is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy.

Thus, aside from and in addition to her aforementioned failure to provide a factual foundation for assigning any significant weight to the opinion formed in her letter, the AAO also finds that [REDACTED] failed to provide a persuasive analytical explanation of the substantive aspects of this particular position that led her to her findings and conclusions with regard to it.

[REDACTED] stated that hotel managers at award-winning properties, such as the one she manages, are required to possess a degree in hotel management. [REDACTED] all attested to an industry standard among high-end, luxury hotels of requiring their hotel managers to possess a bachelor’s degree, or the equivalent, in hotel management. However, the AAO finds no basis for according any significant weight to these five letters as evidence of an industry standard.⁵

No evidence beyond internet printouts has been submitted to demonstrate that any of these individuals work for hotels “similar” to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions. Nor does the record contain any evidence, such as payroll records and copies of diplomas, regarding their past recruiting and employment practices. Again, simply going on record without supporting documentary evidence is

⁵ The AAO notes that these five letters were all prepared in either January or February of 2009, nearly two years before the instant petition was filed on January 3, 2011. When considered in combination with the fact that none of these five letters address the duties of the proffered position proposed here (a deficiency which will be addressed below), this timing suggests that these letters were not necessarily written with the position proffered here in mind.

not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Nor did any of these individuals discuss the findings by DOL and published in the *Handbook*, which were discussed above, and which do not indicate that a bachelor's degree, or its equivalent, in a specific specialty, is normally required for positions such as the one proffered here. Nor did they address the petitioner's certification of the LCA for a low-level, entry position relative to others within the occupation requiring only a basic understanding of the position, and which is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy. None of these authors indicated whether they had visited the petitioner's premises or spoken with anyone affiliated with the petitioner. They did not discuss the petitioner's business operations or the duties of the proffered position in probative detail, or list any reference materials upon which they relied as a basis for their conclusions. Furthermore, [REDACTED] did not even specify that the requisite "degree" must be, at minimum, a bachelor's degree or the equivalent.

For all of these reasons, The AAO finds that none of these letters, nor any other evidence of record, establishes that [REDACTED] possess sufficient knowledge of the petitioner's pertinent recruiting and hiring practices, and their bases, for their opinions to merit deference or significant weight. 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).⁶

Nor does the single job vacancy announcement submitted below satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petition has not submitted any evidence to demonstrate that this advertisement is from a company "similar" to the petitioner. The petitioner has submitted no evidence to establish that this advertiser is similar to the petitioner in size, scope, scale of operations, business efforts, expenditures, or other fundamental dimensions. Second, the petitioner has not established that performance of the duties of the position advertised in this job vacancy announcement requires a bachelor's degree, or the equivalent, in a specific specialty.⁷ Nor does the petitioner submit any evidence regarding how representative this advertisement is of the usual recruiting and hiring practices with regard to the position advertised. Again, simply 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. at 165.⁸

⁶ For all of these reasons, these letters do not establish the proffered position as a specialty occupation under any of the other statutory and regulatory criteria cited above, either.

⁷ The job vacancy announcement states only that "a 4-year college degree" is required. A specific specialty was not provided.

⁸ Furthermore, according to the *Handbook* there were approximately 51,400 persons employed as lodging managers in 2010. *Handbook* at <http://www.bls.gov/ooh/management/lodging-managers.htm#tab-6> (last accessed February 25, 2013). Based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the single submitted vacancy announcement with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that this advertisement was randomly selected, the

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not 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 particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. The duties proposed for the beneficiary are very similar to those outlined in the *Handbook* as normally performed by lodging managers, and the petitioner's description of the duties which collectively constitute the proffered position lacks the detail and specificity required to establish that they surpass or exceed the duties performed by typical lodging managers in terms of complexity or uniqueness. As noted above the *Handbook* indicates that the performance of these typical duties does not require a bachelor's degree, or the equivalent, in a specific specialty. The AAO finds further that, even outside the context of the *Handbook*, the petitioner has simply not established complexity or uniqueness as attributes of the proffered position, let alone as attributes of such an elevated degree as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy.⁹

validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if one job vacancy announcement supported the finding that a Director (Lodging Manager) for the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that this single job vacancy announcement that appears to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

⁹ This wage-level designation on the LCA undermines the multiple assertions of record regarding the upscale nature of the petitioner's clientele and the manner in which this characteristic of its clientele affects the

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.¹⁰ In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position of only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory

nature of the duties the beneficiary would perform, namely, that it elevates the duties above those performed by other lodging managers such that a bachelor's degree, or the equivalent, in a specific specialty is required. Those assertions are simply not credible given the petitioner's certification of the LCA for a low-level, entry position relative to others within the occupation requiring only a basic understanding of the position, and which is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy.

¹⁰ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the occupation.

or regulatory definition of a specialty occupation. See section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term “specialty occupation”).

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

In this particular case the record lacks any documentary evidence regarding any previous history of recruiting and hiring for the proffered position only individuals who possess at least a bachelor’s degree, or the equivalent, in a specific specialty. Accordingly, the record of proceeding lacks evidence for consideration under this criterion, 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered 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 in the specialty.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner’s designation of an LCA wage-level I is indicative of duties of relatively low complexity.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer’s methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy.

Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only “moderately complex tasks that require limited judgment.” The fact that this higher-than-here-assigned, Level II wage rate itself indicates performance of only “moderately complex tasks that require limited judgment,” is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer’s job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems.

These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.¹¹

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

Finally, as noted at the outset of this discussion, the AAO also finds, beyond the decision of the director, that the petitioner has also failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, even if the petitioner had established that the proffered position qualifies for classification as a specialty occupation, which it did not, the petition still could not be approved because the petitioner has not demonstrated the beneficiary's qualifications to perform its duties.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

¹¹ Again, this designation of the proffered position on the LCA undermines the multiple assertions of record regarding the upscale nature of the petitioner's clientele and the manner in which this characteristic of its clientele affects the nature of the duties the beneficiary would perform, namely, that it elevates the duties above those performed by other lodging managers such that a bachelor's degree, or the equivalent, in a specific specialty is required. As the AAO noted above, these assertions are simply not credible given the petitioner's certification of the LCA for a low-level, entry position relative to others within the occupation requiring only a basic understanding of the position, and which is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy.

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
 - (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As she does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or

university in the United States, she does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either.¹² As the petitioner has not demonstrated that the beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proposed position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹³
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

¹² Although the record of proceeding contains two evaluations of the beneficiary's academic credentials, they do not establish that those credentials are equivalent to bachelor's degree awarded by an accredited institution of higher education in the United States. Instead, the evaluation from Professor [REDACTED] finds them equivalent to "one year of lower-division undergraduate transfer credit toward a Bachelor's degree" from such an institution, and the evaluation from [REDACTED] reached the same conclusion. Accordingly, these evaluations do not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Although these evaluations will be discussed in further detail below when the AAO analyzes the beneficiary's qualifications under and 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), they are not material to the AAO's analysis under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2) because they also address the beneficiary's work experience. In order to be relevant under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), the evaluations would have had to be based upon the beneficiary's academic credentials alone.

¹³ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

As indicated above, the record contains two evaluations of the beneficiary's academic and work experience. The first evaluation was prepared by [REDACTED] who identified himself as a Professor of Tourism and Hospitality Management at [REDACTED]. In his December 23, 2010 evaluation, [REDACTED] found the beneficiary's combination of education and work experience equivalent to a bachelor's degree in hospitality management.

However, [REDACTED] evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), as the petitioner has not demonstrated both: (1) that [REDACTED] has the authority to grant college-level credit in the pertinent specialty for training and/or experience at [REDACTED] and (2) that [REDACTED] has a program for granting such credit based on an individual's training and/or work experience. Again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

The second evaluation was prepared by [REDACTED] who identified himself as the [REDACTED]. In his December 22, 2010 evaluation, Professor [REDACTED] also found the beneficiary's combination of education and work experience equivalent to a bachelor's degree in hospitality management.

However, [REDACTED] evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(I), either. As with [REDACTED] the petitioner has not demonstrated both: (1) that [REDACTED] has the authority to grant college-level credit for training and/or experience at [REDACTED]⁴ and (2) that [REDACTED]

¹⁴ In her August 3, 2009 letter [REDACTED], stated the following:

Although, as explained above, no one official at our college (or at most U.S. colleges, for that matter) has sole authority to grant college-level credit, I believe that [REDACTED] meets the spirit of your regulations as he has the expertise, experience, and authority to evaluate credentials and recommend credit for completed coursework.

[REDACTED] letter does not establish that [REDACTED] has the authority to grant college-level credit for training and/or experience at [REDACTED] as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(I). First, she concedes that [REDACTED] "sole authority to grant college-level credit." Nor does the fact that [REDACTED] possesses authority to "evaluate credentials and recommend credit" does not rise to the "authority to grant college-level credit for training and/or

has a program for granting such credit based on an individual's training and/or work experience.¹⁵ Once again, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

For all of these reasons, the beneficiary does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2), the beneficiary is unqualified under this criterion because she did not earn a baccalaureate or higher degree from an accredited college or university in the United States and does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States.

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the

experience in the specialty" language contained at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).¹⁵ Furthermore, in addition to the fact that appears only to only possess authority to "recommend credit," as opposed to the regulatory requirement that he possess authority to "grant college-level credit," it further appears that he may only recommend credit for "coursework" as opposed to credit for work experience. Finally, the regulations do not award the AAO authority to waive any provisions of 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) on the basis of an evaluator meeting that regulation's "spirit."

¹⁵ letter does not establish that has a program for granting college-level credit based upon an individual's work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). states the following:

Our curriculum is approved through the local Curriculum Committee which works through Title V (California Education Code) and the Chancellor's office for approval of every course. The faculty at are the content experts, and therefore, recommend and write the curriculum for their programs, including the amount of credit determined by lecture and lab contact hours. They make the decision, along with the Curriculum Committee, Instructional Deans, and the Vice-[P]resident of Instruction, to grant credit for courses. The amount of credit granted is also closely monitored and agreed upon during this process. This is a rigorous process and one that follows strict guidelines.

This description does not establish that has a program for granting college-level credit based upon an individual's work experience. This excerpt from letter addresses credit granted for coursework only; it does not address credit granted for work experience. It does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to analyzing an alien's qualifications:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;¹⁶
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i)-(v).

¹⁶ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i)-(v) and therefore does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation, and the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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