

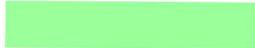
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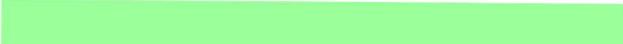
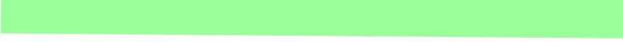


U.S. Citizenship  
and Immigration  
Services



**MAY 24 2013**

Date: Office: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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.

The Form I-129 visa petition states that the petitioner is a children's clothing firm established in 2005. To employ the beneficiary part-time in what it designates as a production manager position, the petitioner endeavors to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

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

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

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

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

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

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

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

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

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

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

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

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a production manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3051, Industrial Production Managers from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in commerce with a major in business management from San Beda College in Alabang, Philippines. An evaluation in the record dated November 14, 2011, states that the beneficiary's foreign degree is equivalent to a U.S. bachelor's degree in business administration with a major in management.

Counsel also submitted, *inter alia*, (1) a letter, dated November 17, 2011, from the petitioner's CFO and (2) three vacancy announcements. The vacancy announcements will be addressed below.

In his November 17, 2011 letter, the petitioner's CFO provided the following description of the duties of the proffered position:

**Production**

- Submit order forms to production
- Work closely with production to ensure the product is produced to the client[']s satisfaction
- Responsible for the quality and safety of all manufactured goods. As well as ensuring that all products produced meet [the petitioner's] quality standards.

- Responsible for ensuring that all current and new designs are created in machine-readable instructions to maximize workflow.
- Develop training programs to ensure that all production personnel is [sic] properly trained to safely operate production equipment
- Plan production schedules to meet our customers' orders
- Work alongside management to develop more efficient production of clothing
- Oversee the routine inspection and maintenance of the production equipment

### **Production Analysis**

- Analyze current designs and report possible improvements to management
  - Consult other departments/professionals to obtain input on the suggested improvement
  - Prepare sketches and presentations to display possible improvements
  - Provide management with a cost effective way of improving current designs
- Analyze current operations and suggests [sic] possible improvements to increase production
- Establish a production plan to meet the established standards of safety, quality, and cost.
- Analyze sales trends. Use the data from sales trends to place orders of materials and ensure that proper inventory is maintained.
- Develop an inventory database to manage sales, clothing, and list of clients

### **Management**

- Oversee that all order forms are completed in a timely manner and produced to the client[']s specifications
- Work alongside suppliers to ensure that all materials arrive in a timely manner and that the materials meet [the petitioner's] product standards
- Responsible for representing [the petitioner] with our suppliers
- Coordinate with other professionals to ensure that current and new clothing designs are cost efficient and meet [the petitioner's] high quality product standards.
- Work alongside the marketing staff to help them develop the best strategies to market [the petitioner's] clothing to department stores
- Ensure that all work is carried out safely and without injury
- Ensure that [the petitioner] is in compliance with all government regulatory requirements

- Supervise the shipment of all orders
- Provide advice and support company staff on designing process as well as customer problems
- Manage project deadlines

The petitioner's CFO further stated:

The [proffered] position requires, at a minimum, a Bachelor's degree in Business Administration, Management, or related fields.

On March 15, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center outlined the specific evidence to be submitted.

In response, counsel submitted, *inter alia*, (1) a letter, dated May 21, 2012, from the petitioner's CFO, (2) an evaluation of the proffered position dated May 2, 2012, and (3) 14 additional vacancy announcements. The vacancy announcements will be addressed below.

The petitioner's CFO's May 21, 2012 letter reiterated the duty description he previously stated. He also stated that the proffered position is a new position with the petitioner, and the petitioner has never employed anyone in the proffered position before. Yet further, he stated that the petitioner has no present or past vacancy announcements pertinent to the proffered position. Finally, he reiterated, "The [proffered] position requires, at a minimum, a Bachelor's degree in Business Administration, Management or related fields."

The May 2, 2012 evaluation states that "no one with less than a bachelor's degree in a specialty discipline such as management, accounting, or other specifically related business administration disciplines would be able to successfully function in [the proffered position]." The AAO observes that this conclusion differs somewhat from the petitioner's CFO's own statement that the proffered position requires a bachelor's degree in business administration, management, or a related field. The significance of that difference will be discussed below.

The director denied the petition on June 28, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel submitted, *inter alia*, (1) a brief, (2) a letter dated August 16, 2012, from the petitioner's CFO, and (3) eight additional vacancy announcements. The vacancy announcements will be addressed below.

In his August 16, 2012 letter, the petitioner's CFO reiterated, yet again, the duties of the proffered position that he described in both of his previous letters, and reiterated that the proffered position requires "a minimum [of] a Bachelor's degree in Business Administration, Management or a related field."

In his brief, counsel asserted that the evidence submitted demonstrates that the proffered position is a specialty occupation position.

As a preliminary matter, 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).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>1</sup>

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact

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<sup>1</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup> In the "Industrial Production Managers" chapter, the *Handbook* provides the following description of the duties of those positions:

### **What Industrial Production Managers Do**

Industrial production managers oversee the daily operations of manufacturing and related plants. They coordinate, plan, and direct the activities used to create a wide range of goods, such as cars, computer equipment, or paper products.

### **Duties**

Industrial production managers typically do the following:

- Decide how best to use a plant's workers and equipment to meet production goals

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<sup>2</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

- Ensure that production stays on schedule and within budget
- Hire, train, and evaluate workers
- Analyze production data
- Write routine production reports
- Monitor a plant's workers to ensure they meet performance and safety requirements
- Create ways to make the production process more efficient
- Determine whether new machines are needed, or whether overtime work is necessary
- Fix any production problems that may arise

Depending on the size of the manufacturing plant, industrial production managers may oversee the entire plant or just one area of it.

Industrial production managers are responsible for carrying out quality control programs to make sure the finished product meets a prescribed level of quality. They generally choose from a number of programs that are standard in manufacturing industries, such as ISO 9000 or Six Sigma. These programs help a manager identify defects in products, identify the cause of the defect, and solve the problem creating it. For example, a manager may determine that a defect is being caused by parts from an outside supplier. The manager can then work with the supplier to improve the quality of the parts.

Industrial production managers work closely with managers from other departments. For example, the procurement (buying) department orders the supplies that the production department uses. A breakdown in communication between these two departments can cause production slowdowns. Just-in-time production techniques mean that companies keep inventory low, so communication among managers in each department and suppliers is important.

They also communicate with other departments, such as sales, warehousing, and research and design, to assure the company's success.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Industrial Production Managers," <http://www.bls.gov/ooh/management/industrial-production-managers.htm#tab-2> (last visited May 21, 2013).

The AAO finds that the duties the petitioner's CEO attributed to the proffered position in his letters are consistent with the duties of industrial production managers as described in the *Handbook*. The *Handbook* states the following about the educational requirements of industrial production manager positions:

### **How to Become an Industrial Production Manager**

Most employers require production managers to have a bachelor's degree and 2 to 5 years of related work experience.

### **Education**

Most industrial production managers have a bachelor's degree in business administration or industrial engineering. Sometimes, production workers with many years of experience take management classes and become a production manager. At large plants, where managers have more oversight responsibilities, employers may look for managers who have a Master of Business Administration (MBA) or a graduate degree in industrial management.

### **Training**

Some managers begin working at a company directly after college or graduate school. They spend their first few months in training programs, becoming familiar with the production process, company policies, and safety regulations. In large companies, many also spend short periods of time working in other departments, such as purchasing or accounting, to learn more about the company.

### **Work Experience**

Some industrial production managers begin as production workers and move up through the ranks. They first advance to a first-line supervisory position before eventually being selected for management. Most get a college degree in business management or take company-sponsored classes to increase their chances of a promotion.

Production managers who join a firm immediately after graduating from college sometimes work as first-line supervisors before beginning their jobs as production managers.

### **Certification**

Industrial production managers can earn optional certificates that show a higher level of competency in quality or management systems. The Association for Operations Management offers a Certified in Production and Inventory Management (CPIM) credential. The American Society for Quality offers credentials in quality control.

### **Important Qualities**

**Interpersonal skills.** Industrial production must have excellent communication skills so they can work with managers from other departments, as well as with the company's senior-level management.

**Leadership skills.** To keep the production process running smoothly, industrial production managers must motivate and direct the employees they manage.

**Problem-solving skills.** Production managers must be able to identify problems immediately and solve them. For example, if a product has a defect, the manager determines whether it is a onetime problem or the result of the production process.

**Time-management skills.** To meet production deadlines, managers must carefully manage their employees' time as well as their own.

*Id.* at <http://www.bls.gov/ooh/management/industrial-production-managers.htm#tab-4> (last visited May 21, 2013).

The *Handbook* indicates that most industrial production managers have a bachelor's degree in business administration or industrial engineering. That does not demonstrate that such a degree is a normal minimum requirement.

For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of industrial production manager positions require at least a bachelor's degree in accounting or a related field, 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 offered 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.

Further, the *Handbook* indicates that an otherwise undifferentiated bachelor's degree in business administration is a sufficient educational qualification for an industrial production manager position. As was explained above, a position with an educational requirement that can be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a specialty occupation position, as it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

For the reasons explained above, the *Handbook* does not indicate that industrial production manager positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who

has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that the *Handbook* suggests that some industrial production manager positions do not require such a degree.

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of industrial production management, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

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

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

As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or any other authoritative, objective, and reliable resource, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit 25 vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. The announcements provided, however, establish at best that a bachelor's degree is generally required for most of the positions posted, but a bachelor's degree in a *specific specialty* or the equivalent is not.

Some of the vacancy announcements, for instance, indicate that the positions announced require either a bachelor's degree or a technical school education, with no indication that the technical school education alternative must encompass four years or be equivalent to a bachelor's degree program in any other way.

Some of the announcements provided indicate that a bachelor's degree is required, but not that the degree must be in any specific specialty, or even within any array of specialties.

Of those announcements that announce a position that requires a bachelor's degree, almost all state that a bachelor's degree in business or business administration would be an acceptable educational qualification for the position. As was explained in detail above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r. 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.<sup>3</sup>

Further, many of the advertising organizations do not appear to be similar to the petitioner's organization in terms of size and the type and level of services provided such that the advertising organizations could be found to be similar to the petitioner. One, for instance, is for an operations manager for Walmart, while another announcement is for a creative packaging manager for Dillard's, a large retailer. Others are for a food and beverage company, a bottled water company, and a call center. Others are for manufacturers, but of aerospace parts, heat transfer products, mining industry equipment, packaged concrete, plastic products, electrochromic insulated glass units, and medical products. The industry of some other companies that placed those vacancy announcements is unclear.

Further still, although most of the vacancy announcements include duty descriptions, none are both sufficiently detailed and so similar to the duties of the proffered position that the positions have been demonstrated to be positions parallel to the proffered position.

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<sup>3</sup> It is noted that some of the announcements state a requirement of an undifferentiated bachelor's degree in engineering. However, the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to industrial production or that all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

Yet further, all of the vacancy announcements provided require experience, and some require a minimum of eight years of experience. The LCA submitted states that the proffered position is a Level I Industrial Production Manager position. If this is so, it indicates that the proffered position is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). To demonstrate that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to show that other Level I positions, entry level positions that require only a basic understanding of the position, require such a degree or equivalent. None of the vacancy announcements provided is for a parallel position with a similar organization in the petitioner's industry and requires a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, they are of little weight in addressing the requirement of the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner establishes that the particular position proffered in the instant case is so complex or unique that it can be performed only by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent.

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<sup>4</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from 25 job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of industrial production manager for a clothing manufacturer required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The evaluation of the proffered position submitted by counsel in response to the RFE does not list any reference materials on which the evaluator relied as a basis for his conclusion that the proffered position requires a bachelor's degree in management, accounting, or another specifically related business administration discipline. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment. Further, the evaluator appears to have concluded that an otherwise undifferentiated bachelor's degree in business administration would not satisfy the educational requirement of the proffered position, which conflicts with the assertion of the petitioner's CFO, that an otherwise undifferentiated bachelor's degree in business administration *would* satisfy the position's educational requirement. Specifically, the content of the professor's letter does not demonstrate that the professor's opinion is based upon sufficient information about the particular position at issue. Finally, the professor does not relate any personal observations of those operations or of the work that the beneficiary would perform, nor does he state that he has reviewed any projects or work products related to the proffered position.

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 Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). Therefore, the AAO finds that the letter May 2, 2012 evaluation of the proffered position does not establish that the proffered position is a specialty occupation position.

The record contains little evidence that would differentiate the work of the proffered position from the work of industrial production manager positions in general. The proffered position, involves monitoring, analyzing, and managing production, functions consistent with the duties of industrial production manager positions in general, and so have not been shown to be more complex or unique than the duties of other industrial production manager positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I industrial production manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of industrial production management. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, notwithstanding that the *Handbook* suggests that some industrial production management positions do not require such a degree.

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

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a degree or its equivalent for the position.<sup>5</sup>

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<sup>5</sup> 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

The petitioner's president stated that the petitioner has never previously hired anyone to fill the proffered position. The petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Relative specialization and complexity of the proffered position which includes duties such as submitting order forms to production, working closely with production to ensure the product is produced to the client's specifications and satisfaction, being responsible for the quality and safety of all manufactured goods, etc., have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than positions within the same occupational category that are not usually associated with a degree in a specific specialty. Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).<sup>6</sup>

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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

<sup>6</sup> Moreover, as noted above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would likely be classified at a higher level, such as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

(b)(6)

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

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that specialty degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. §1361. Here, that burden has not been met. The appeal will be dismissed and the petition denied.

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