



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: NOV 05 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "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 property and hospitality management company with ten employees. To continue to employ the beneficiary in what it designates as a "Hotel Manager and Night Auditor (Lodging 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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

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

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Hotel Manager and Night Auditor (Lodging Manager) position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9081, Lodging Managers from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner's prior counsel submitted evidence that the beneficiary received a bachelor's degree in business administration with a major in finance and banking from [REDACTED]. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration with a concentration in finance.

Previous counsel also submitted a letter, dated August 28, 2012, from the petitioner's owner, who stated:

[The beneficiary] also earned a post graduate diploma in Hospitality Management from the [REDACTED] where he earned high marks. He also has postgraduate diplomas in Japanese language and in Quantitative Finance.

The AAO observes that the record contains no documentary evidence to corroborate the assertion that the beneficiary has any education beyond his bachelor's degree in business administration from Assumption University. Although the statements by the petitioner's owner are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)). The beneficiary has not been shown to have the asserted degrees in hospitality management, Japanese, or quantitative finance.

The petitioner's owner further stated:

An attached credential evaluation shows that [the beneficiary's] education and experience are the equivalent of a Bachelor of Science in Hospitality Management from an accredited American university.

The AAO observes that the educational evaluation in the record states, as was observed above, that the beneficiary's bachelor's degree in business administration with a major in finance and banking from [REDACTED] is equivalent to a U.S. bachelor's degree in business administration with a concentration in finance. Beyond the petitioner's owner's assertion, the record contains no indication that the beneficiary has education equivalent to a U.S. bachelor's degree in hospitality management.

Yet further, the petitioner's owner stated the following pertinent to the duties of the proffered position:

In [the proffered position, the beneficiary] is responsible for all aspects of hotel operations, including both front-of-the-house and back-of-the-house operations. [I]n this position he is responsible for a level of detail and set an example for staff to deliver a standard of service and presentation that meets guests' expectations. This includes oversight of Assistant Managers, housekeeping staff, maintenance staff and food preparation. In addition, he utilizes his technical expertise to ensure that our wireless and data connections remain functioning, which is of high priority to our professional guests. He is ultimately responsible to cater to the needs of our guests, many of whom are regular travelers with an expectation of a high quality lodging experience.

In addition, [the beneficiary] holds significant financial and operations duties with our organization in his role as night auditor. He is responsible for planning and organizing the accommodations and services of the hotel, as well as promotion and marketing of the facility. He manages budgets and financial plans, compiles and interprets financial data, and makes ad hoc financial reports to gauge hotel performance. He is also responsible for training and mentoring staff, troubleshooting operations problems, and ensuring the safety and security of guests in accordance with local lodging regulations.

[The proffered position] requires a unique blend of personnel and business management. Specifically, [it] entails developing and reviewing budgets, which requires [sic] knowledge of business accounting and statistics. [The beneficiary] will assist in managing hotel revenue generation and maximization through full utilization

of company systems, business processes and guest service specifications. As such, he will be responsible for assuring that the high expectations of our guests are continuously exceeded through proper employee training and hiring.

Further still, the petitioner's owner stated:

[The proffered position] clearly requires at least a Bachelor's degree in Hospitality Management or a closely related field and relevant experience in the hotel industry. We have previously required a specialized degree for this position and will continue to do [so]

The AAO observes that the record contains no evidence that the beneficiary has a degree in hospitality management or a closely related field, and no indication, aside from the assertion of the petitioner's owner, that the petitioner has ever required such a degree for the proffered position.

Finally, the petitioner's owner cited a non-precedent 2002 decision of the AAO for the proposition that a petitioner may provide evidence sufficient to show that a position requires a specialized bachelor's degree.

While 8 C.F.R. § 103.3(c) provides that Immigration and Naturalization Service precedent decisions are binding on all United States Citizenship and Immigration Services (USCIS) employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel's citation of a non-precedent decision is of no persuasive impact. However, the AAO does not dispute that, given sufficient evidence, a position may be shown to require a specialized bachelor's degree. The inquiry in this case will be whether the record contains evidence sufficient to support the proposition that the proffered position in the instant case requires such a degree or its equivalent.

On January 7, 2013, 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 director outlined the specific evidence to be submitted.

In response, prior counsel submitted, *inter alia*, (1) eleven vacancy announcements; (2) a letter, dated March 14, 2013, from the petitioner's owner; and (3) counsel's own letter, dated March 25, 2013;

In his March 14, 2013 letter, the petitioner's owner reiterated the importance of the proffered position. He stated that the beneficiary is "responsible for the day-to-day financial operations of the organization." He further stated:

[The beneficiary] produces profitability and budget reports and ad-hoc financial reports to determine and identify how our operations can improve. He oversees the work of our accountant and bookkeeper.

A chart in the petitioner's owner's letter indicates that 30% of the beneficiary's duties consist of:

Audit and Financial Operations Duties, including:

- Tracking revenues and expenses
- Accounting operations and financial report production
- Budget creation and roll analysis

In his March 25, 2013 letter, prior counsel observed that the instant visa petition is not for new employment, and asserted that it is an extension of existing H-1B employment without change. Counsel also asserted that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* indicates that lodging manager positions require a bachelor's degree in a specific specialty. Counsel cited the vacancy announcements provided as evidence that, "the units owned and operated by the parent company (non-franchise locations) require a bachelor's degree for the equivalent position."

The director denied the petition on May 10, 2013, 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 asserted that hotel management positions require a bachelor's degree and, in the alternative, that positions combining hotel manager and auditor duties require a degree. Counsel did not assert that hotel manager positions or hotel manager/auditor positions require a minimum of a bachelor's degree *in any specific specialty* or its equivalent, or, if they do, identify the specific specialty that the requisite degree would be in.

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first 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 *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9081, Lodging Managers from O*NET. The *Handbook* describes the occupation of "Lodging Managers" as follows:

What Lodging Managers Do

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.

Duties

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. Services can vary from offering a room to having a swimming pool; from free

¹ 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.

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. Dep't 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.htm> (last visited Oct. 30, 2013).

The duties the petitioner's owner attributed to the proffered position are consistent with the duties of lodging managers as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a lodging manager position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of lodging manager positions:

How to Become a Lodging Manager

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.

Education

More than 500 educational facilities across the United States provide academic training for prospective lodging managers.

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

The Accreditation Commission for Programs in Hospitality Administration accredits about 100 hospitality management programs.

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

Many technical institutes and vocational and trade schools also offer courses leading to formal recognition in hospitality management.

About 245 high schools in 45 states offer the Lodging Management Program created by the American Hotel and Lodging Educational Institute. This 2-year program for high school juniors and seniors teaches management principles and leads to a professional certification called the Certified Rooms Division Supervisor.

Work Experience

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.

Advancement

Large hotel chains may offer better opportunities than small, independently owned hotels for advancing from assistant manager to manager or from managing one hotel

to being a regional manager. However, these opportunities also usually involve relocating to a different city or state.

Important Qualities

Customer-service skills. Lodging managers must have good customer-service skills when dealing with guests. Satisfying guests' needs is critical to a hotel's success and ensures customer loyalty.

Interpersonal skills. Lodging managers need strong interpersonal skills because they interact regularly with many different types of people. They must be effective communicators and must have positive interactions with guests and hotel staff, even in stressful situations.

Leadership skills. All lodging managers must establish good working relationships to ensure a productive work environment. This objective may involve motivating personnel, resolving conflicts, or listening to complaints or criticism from guests.

Listening skills. All lodging managers should have excellent listening skills. Listening to the needs of guests allows managers to take the appropriate course of action, ensuring guests' satisfaction. Listening to the needs of workers helps them keep good working relationships with the staff.

Managerial skills. Lodging managers address budget matters and coordinate and supervise workers. Operating a profitable hotel is important, as is the need to motivate and direct the work of employees.

Organizational skills. Lodging managers keep track of many different schedules, budgets, and people at once. This task becomes more complex as the size of the hotel increases.

Problem-solving skills. The ability to resolve personnel issues and guest-related dissatisfaction is critical to the work of lodging managers. As a result, they must be creative and practical when solving problems.

Id. at <http://www.bls.gov/ooh/Management/Lodging-managers.htm#tab-4> (last visited Oct. 30, 2013).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the wage level of the proffered position as a Level I position on the LCA. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results. 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.

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. The *Handbook* clearly indicates that many applicants may qualify for positions in the occupation with a high school diploma and long-term experience working in a hotel. While the *Handbook* reports that "[m]ost full-service hotel chains hire people with a bachelor's degree in hospitality or hotel management," such a statement does not support the view that any lodging manager job qualifies as a specialty occupation as "most" is not indicative that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.² More specifically, "most" is not indicative that a position normally requires at least a bachelor's degree in a specific specialty, or its equivalent, (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).³

The *Handbook's* narrative states that candidates with an associate's degree or certificate in hotel, restaurant, or hospitality management may qualify for jobs as a lodging managers at hotels that provide fewer services. Accordingly, individuals who have less than a bachelor's degree in a specific specialty, or its equivalent, can obtain lodging manager positions. Thus, the *Handbook* does

² The AAO does not dispute that the [REDACTED] hotel that the petitioner runs is part of the [REDACTED] chain of hotels. However, the record contains no indication of what defines a "full-service hotel." The petitioner has not shown that its hotel is a full-service hotel within the industry's definition of that phrase or within the meaning of that phrase as used in the *Handbook*.

In any event, that *most* full-service chain hotels require a minimum of a bachelor's degree in a specific specialty or its equivalent for lodging manager positions is insufficient to show that such a degree is *normally* the minimum requirement for the proffered position, even if the petitioner had been shown to be a full-service hotel within the definition of the hospitality industry and the *Handbook*.

³ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions need at least a bachelor's degree, it could be said that "most" of the positions need 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. (The AAO notes again that the proffered position has been designated by the petitioner in the LCA as a low, entry-level position relative to others within the occupation). 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." § 214(i)(1) of the Act.

not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

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, in a specific specialty, or the equivalent, 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.

As stated earlier, 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry 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 eleven vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

Ten of the vacancy announcements submitted were placed by [REDACTED]. The AAO observes that the petitioner operates a [REDACTED] location.

Seven of the [REDACTED] vacancy announcements are for general manager positions at [REDACTED] locations in Austin, Texas; Santa Fe, New Mexico; Ventura, California; Vista, California; Madison, Wisconsin, Phoenix, Arizona; and San Antonio, Texas. Each of those vacancy announcements states, "Bachelor's Degree in Hotel/Restaurant Management or Business is a plus. Equivalent experience is acceptable."

The remaining three [REDACTED] vacancy announcements are for Assistant General Manager positions in [REDACTED] Minnesota; [REDACTED] Louisiana; and [REDACTED] California. Each of those vacancy announcements also states, "Bachelor's Degree in Hotel/Restaurant Management or Business is a plus. Equivalent experience is acceptable."

The last vacancy announcement is for a night manager for the [REDACTED] hotel, and states that the position requires a "College Degree or equivalent."

None of the [REDACTED] vacancy announcements indicates that a minimum of a bachelor's degree in a specific specialty or its equivalent is required for the positions announced. They indicate that a degree is "a plus." That is an indication that a bachelor's degree is preferred, but not the minimum acceptable qualification for the position.

Further, each of the [REDACTED] vacancy announcements indicates that some undefined "equivalent" may be substituted for the preferred bachelor's degree, as does the vacancy announcement placed by the [REDACTED] hotel. What training, experience, or other qualifications the hiring authorities might consider to be equivalent to a bachelor's degree is unstated, and whether that training or education would be considered equivalent to a specialized bachelor's degree when considered pursuant to the statutes and regulations governing the instant visa type is unknown.

Further still, each of the [REDACTED] vacancy announcements indicates that an otherwise undifferentiated degree in business would be an acceptable substitute for a specialized degree in hotel/restaurant management. Even if such a degree were required, rather than "a plus," a requirement of an otherwise undifferentiated degree in business administration is not a requirement of a degree in a specific specialty. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Yet further, the [REDACTED] hotel vacancy announcement contains no reference to any specific specialty, which makes clear that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

None of the vacancy announcements provided have been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent. However, even if all of the vacancy announcements required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from eleven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁴

⁴ 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 these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom

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

The petitioner also has not satisfied 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I lodging manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of a lodging manager position. 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, especially as the *Handbook* suggests that some lodging manager positions do not require such a degree.

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 lodging manager for firms similar to and in the same industry as the petitioner 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 appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not necessarily require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that a specialized degree may not be necessary for the position. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has 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 minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁵ In his August 28, 2012 letter, the petitioner's owner stated, "We have previously required a specialized degree for this position" However, the record contains no evidence pertinent to anyone the petitioner has ever hired to fill the proffered position, other than the instant beneficiary, who has not been shown to have a specialized degree closely related to the proffered position. The petitioner has submitted no other evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), and has not, therefore, demonstrated that criterion to have been satisfied.

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as 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 the duties of lodging manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

⁵ 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 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").

Further, as was noted above, the petitioner filed the instant visa petition for a Level I position, the lowest of four assignable wage-levels, a position for a beginning level employee with only a basic understanding of lodging manager duties. The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

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.

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.

In contrast, a Level IV wage rate is described 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.

Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV position, requiring a substantially higher prevailing wage. As noted above, a Level IV position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and "generally have management and/or supervisory responsibilities."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO,

therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

The AAO also observes that the petitioner's owner stated, in his August 28, 2012 letter, that the proffered position "clearly requires at least a Bachelor's degree in Hospitality Management or a closely related field and relevant experience in the hotel industry." The beneficiary, however, has only been shown to have a foreign degree in business administration with a major in finance and banking, which has been evaluated as equivalent to a U.S. degree in business administration with a concentration in finance. He has not been shown to have a bachelor's degree in hospitality management or a closely-related field, which the petitioner's owner has stated is required for the proffered position.

The AAO observes that if the petitioner had demonstrated that the proffered position required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged, in order for the visa petition to be approvable, to demonstrate, not only that the beneficiary has a bachelor's degree or its equivalent, but that the beneficiary has a minimum of a bachelor's degree or its equivalent *in that specific specialty*. See *Matter of Matter of Ling*, 13 I&N Dec. 35 (R.C. 1968).

Pursuant to the instant visa category, however, a beneficiary's credentials to perform a particular job are relevant only when the job is found to qualify as a specialty occupation. As discussed in this decision, the proffered position has not been shown to require a baccalaureate or higher degree, or its equivalent, in a specific specialty and has not, therefore, been shown to qualify as a position in a specialty occupation. Because the finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation position is dispositive, the AAO need not further discuss the beneficiary's qualifications.

As a final matter, the AAO recognizes that this is an extension petition. The director's decision does not indicate whether she reviewed the prior approval of the previous nonimmigrant petition filed on behalf of the beneficiary. If the previous nonimmigrant petition was approved based on the same evidence contained in the current record, that approval constituted material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the instant nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The prior approval does not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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.