



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **OCT 02 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: SELF-REPRESENTED

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 Acting Director, California Service Center (hereinafter "the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a motel established in 2009 with 6 employees. In order to employ the beneficiary in what it designates as a "Night Manager Front Desk" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

### The Law

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

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

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

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

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

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

### **Facts and Procedural History**

In support of the petition, the petitioner submitted a copy of its offer of employment letter addressed to the beneficiary. In the January 27, 2012 letter, the petitioner stated that the beneficiary would be employed in the position of Hotel Manager, and his duties would be as follows:

- Demonstrates and promote a 100% commitment to providing the best possible experience for our guests and employees

#### **Financial**

- Responsible for maximizing revenue to meet or exceed budgets.
- Responsible for preparation of property budget and forecasts.
- Manage labor standards and property level expenses to achieve maximum flow through to the bottom line profit.
- Explain and manage financial activities. Reconcile all financial accounts.
- Monitor collection of in-house guest balances and direct bill receivables, commission payments by vendors, and issuance of refund checks.
- Participates and monitor monthly inventory of supplies and equipment. Ensure purchases made are within budget and by approved vendors.

**Sales**

- Work with General Manager to manage all sales activities of the property and meet revenue objectives. Activities include setting goals, completing competitive surveys, taking reservations and compiling reports.
- Identify and seek out potential business in local market. Maintains relationships with local companies and key people to increase visibility within the local market.
- Coordinate and implement sales and marketing activities of the property.

**Guest Satisfaction**

- Promote 100% guest satisfaction throughout property. Instills the 100% guest satisfaction objective to all hourly associates.
- Ensure that all guest related issues are resolved in a manner consistent with the company's goals and objectives.

**Employee Management**

- Recruit qualified applicants. Train employees in accordance with company standards.
- Motivate and give direction to all employees.
- Communicate all policies and procedures to entire staff. Conduct regular meetings to provide various information including company communications, policy reviews, local property activities, goals, etc.
- Adhere to federal, state and local laws employment related laws and regulations.
- Manage employee personnel forms, including hiring, performance evaluations, payroll and benefits related information, required Federal and State postings, etc.
- Conduct coaching/counseling sessions; performance evaluations; prepares performance improvement plans, disciplinary documentation; conducts terminations.
- Ensure that employee related issues are resolved in a manner consistent with company policies.
- Perform duties in all aspects of hotel operations whenever needed.

**Property Appearance**

- Inspect and document repairs and cleanliness of property [to] ensure optimum upkeep and repair, room cleanliness and overall property appearance.

The petitioner provided the required certified Labor Condition Application (LCA) which indicates that the occupational classification for the position is "Hotel, Motel, and Resort Desk Clerks," SOC

(ONET/OES) Code 43-4081, at a Level I (entry-level) wage.<sup>2</sup> Finally, the petitioner submitted a copy of the beneficiary's educational credentials as well as an educational credentials evaluation and a work experience evaluation.

The director found the initial evidence submitted to be insufficient to establish eligibility, and consequently issued an RFE on September 26, 2012. The director requested a detailed description of the proffered position, including the approximate percentages of time for each duty the beneficiary will perform. The director further requested other evidence demonstrating that the proffered position is a specialty occupation including the petitioner's prior employment of individuals in the proffered position.

In response, the petitioner claimed that it required the services of a night manager, and that the incumbent should possess a minimum of a bachelor's degree. Regarding the director's request for additional details pertaining to the proffered position, the petitioner stated that, since the petitioner's motel caters to many travelers from India, the beneficiary's fluency in Indian languages and his familiarity with the culture "serves to benefit the hotel guest in meeting their special accommodations and needs." The petitioner submitted the following updated description of job duties with the percentage of time the beneficiary would devote to each duty:

Demonstrate and promote a 100% commitment to providing the best possible experience for our guests and employees.

The hotel is open 24 hours a day, 365 days a year. The position of night manager will serve between 11:00 p.m. – 8:00 a.m. However as a manager, you are always on-call.

The position requires the finesse and expertise to provide specialty concierge services to our guest from India. You are required to be fluent in the following languages[:] English, Bengali, Gujarti, Hindi and Urdu to assist our guest.

Managers are expected to follow the guidelines set forth in the following:

Forecasting Hotel Arrivals and Occupancy Using Monte Carlo Simulation Techniques<sup>3</sup> in the preparation of financial forecast and budgeting for the hotel.

**30% of time is spent  
Financial**

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<sup>2</sup> 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).

<sup>3</sup> This reference is to a 32-page article submitted in response to the RFE regarding methods employed in the industry.

- Responsible for maximizing revenue to meet or exceed budgets.
- Responsible for preparation of property budget and forecasts.
- Manage labor standards and property level expenses to achieve maximum flow through to the bottom line profit.
- Explain and manage financial activities. Reconcile all financial accounts.
- Monitor collection of in-house guest balances and direct bill receivables, commission payments by vendors, and issuance of refund checks.
- Participates and monitor monthly inventory of supplies and equipment. Ensure purchases made are within budget and by approved vendors.

**20% of time is spent**

**Sales**

- Work with General Manager to manage all sales activities of the property and meet revenue objectives. Activities include setting goals, completing competitive surveys, taking reservations and compiling reports.
- Identify and seek out potential business in local market. Maintains relationships with local companies and key people to increase visibility within the local market.
- Coordinate and implement sales and marketing activities of the property.

**25% of time is spent**

**Guest Satisfaction**

- Promote 100% guest satisfaction throughout property. Instills the 100% guest satisfaction objective to all hourly associates.
- Ensure that all guest related issues are resolved in a manner consistent with the company's goals and objectives.

**20% of time is spent**

**Employee Management**

- Recruit qualified applicants. Train employees in accordance with company standards.
- Motivate and give direction to all employees.
- Communicate all policies and procedures to entire staff. Conduct regular meetings to provide various information including company communications, policy reviews, local property activities, goals, etc.
- Adhere to federal, state and local laws employment related laws and regulations.

- Manage employee personnel forms, including hiring, performance evaluations, payroll and benefits related information, required Federal and State postings, etc.
- Conduct coaching/counseling sessions; performance evaluations; prepares performance improvement plans, disciplinary documentation; conducts terminations.
- Ensure that employee related issues are resolved in a manner consistent with company policies.
- Perform duties in all aspects of hotel operations whenever needed.

**5% of time is spent****Property Appearance**

- Inspect and document repairs and cleanliness of property [to] ensure optimum upkeep and repair, room cleanliness and overall property appearance.

The AAO notes that aside from the introductory comments and the percentage breakdown, the updated description of duties is identical to the one initially submitted. The petitioner also submitted a number of job vacancy announcements for position it contends are similar to that of the proffered position within the petitioner's industry.

The director denied the petition, determining that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* did not indicate a baccalaureate degree in a specific field of study as the minimum educational requirement for lodging managers. The director also found that the advertisements submitted and additional evidence submitted was insufficient to establish the proffered position as a specialty occupation.

On appeal, the petitioner asserts that the director erred by relying solely on the *Handbook* when evaluating the proffered position as a specialty occupation, and contends that the director should have focused on the actual jobs available in the U.S. workforce. The petitioner contends that the beneficiary's position requires at a minimum the attainment of a bachelor's degree or the equivalent in order to be eligible for the job, and avers that this degree requirement is common to the industry in parallel positions among similar organizations.

**Analysis**

As a preliminary matter, the petitioner's claim that a bachelor's degree 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. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, 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) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). Thus, while a general-purpose bachelor's degree 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 at 147 (1st Cir. 2007).

Accordingly, the petitioner's assertion that its minimum requirement for the proffered position is only a bachelor's degree, without further requiring that that degree be in any specific specialty, is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To reach this conclusion, the AAO first turned to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). To satisfy this criterion, the evidence must establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition. The AAO recognizes the Department of Labor's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup>

The Department of Labor's Occupational Employment Statistics' May 2012 publication states that hotel, motel, and resort desk clerks "[a]ccommodate hotel, motel, and resort patrons by registering and assigning rooms to guests, issuing room keys or cards, transmitting and receiving messages, keeping records of occupied rooms and guests' accounts, making and confirming reservations, and presenting statements to and collecting payments from departing guests." *See* <http://www.bls.gov/oes/current/oes434081.htm> (last visited Sept. 25, 2013).

A review of the description of the duties of the proffered position, however, demonstrates that this is not the appropriate classification for the proffered position.

The AAO takes note of the *Handbook's* section entitled "Lodging Managers," which appears to more accurately encompass the duties of the proffered position as described by the petitioner. The *Handbook* reports that lodging managers typically do the following:

- Inspect guest rooms, public areas, and grounds for cleanliness and appearance;
- Greet and register guests;
- Ensure that standards for guest service, décor, housekeeping, and food quality are met;
- Answer questions from guests about hotel policies and services;

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<sup>4</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

- Keep track of how much money the hotel or lodging facility is making;
- Interview, hire, train, and sometimes fire staff members;
- Monitor staff performance to ensure that guests are happy and the hotel is well run;
- Coordinate front-office activities of hotels or motels and resolve problems; and
- Set room rates and budgets, approve expenditures, and allocate funds to various departments

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

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

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

*Id.*

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

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

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

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

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

part of many degree programs, because hotels use hospitality-specific software in reservations, billing, and housekeeping management.

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

U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Lodging Managers," at <http://www.bls.gov/ooh/management/lodging-managers.htm#tab-4> (last visited Sept. 25, 2013).

In this matter, the petitioner has not established whether it is a full-service hotel chain or a hotel that provides fewer services. However, even if the petitioner is a full-service hotel chain, the *Handbook's* report that most of these chains hire individuals with a bachelor's degree in hospitality or hotel management does not support the view that any lodging manager job qualifies as a specialty occupation. "Most" is not indicative that a particular position within the wide spectrum of lodging manager jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1)), or that a particular lodging manager position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)).<sup>5</sup>

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

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

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<sup>5</sup> 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 accountant positions require at least a bachelor's degree in accounting or a related field, it could be said that "most" accountant positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

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

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

The job vacancy announcements submitted by the petitioner also do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). None of the advertisements submitted required that the successful incumbent possess a four-year degree in a specific specialty. Specifically, the degree requirements for each position are restated below:

1. Pillar Hotels & Resorts: Four year college degree *or* previous experience in the hospitality field
2. Salish Lodge & Spa: A college or university degree with two or more years of experience
3. Confidential Hotel Posting: Bachelor's Degree
4. Highgate Hotels: 2 Year or 4 Year College Degree plus related experience

On appeal, the petitioner submits the following job postings:

1. Wyndham Worldwide: Bachelor's Degree in Business Administration, Hotel and Restaurant Management, or related major *preferred*
2. Hilton Grand Vacations: *Preferred* qualifications include four year college degree or advanced degree
3. Bluegreen: Bachelor's degree *or* equivalent work experience required
4. HMV Hotels Group: Bachelor's Degree or equivalent in Hotel Administration, Business Administration, or

equivalent combination of education and experience

5. InnVite Hospitality: Bachelor's Degree

We herein recall that the petitioner requires only a bachelor's degree, with no specific specialty identified.

Only two of the nine advertisements, by Wyndham Worldwide and HVM, noted a preference for a business or hospitality/hotel management degree; however, employer *preference* is not synonymous with a normal minimum *requirement* for entry into an occupation. The statement that some employers "prefer" a certain degree is not sufficient to establish that a bachelor's degree *in a specific field of study* is a common minimum entry requirement. Only two of the postings, by Salish Resort & Spa and the confidential posting that appeared on [www.monster.com](http://www.monster.com), state that a bachelor's/college degree is required; however, they did not list a specific discipline.

The remaining postings state that either a bachelor's degree, a two-year degree, or a four-year *OR* experience will suffice. A variety of acceptable degrees is insufficient to establish that the position requires a precise and specific course of study that relates directly and closely to the proffered position. Likewise, the advertisement that provided a variety of paths available for entry into a general lodging manager position did not require a precise and specific course of study to qualify. While one of the advertisements states that it requires a degree in hotel administration, business administration, or equivalent combination of education and experience, requiring a general-purpose bachelor's degree, such as a degree in business administration, 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 at 147. 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). Furthermore, a variety of acceptable degrees such as hotel administration and business administration is insufficient to establish that the position requires a precise and specific course of study that relates directly and closely to the proffered position.

The petitioner also fails to submit any evidence of how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were

sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

The petitioner also submits an article entitled "Hospitality: Heaven on Earth for Some," by Rebecca Palmer, which states that "A bachelor's degree is the industry standard for hospitality management." However, there is no statement that a bachelor's degree in a specific discipline or specialty is the industry standard. Moreover, the article continues by stating that either a bachelor's degree "or years of business and management experience are required for most job applications." This statement demonstrates that there are alternate routes for entry into this occupational category aside from a bachelor's degree.

An additional article, entitled "Pros and Cons of a Travel Manager Career," is submitted by the petitioner in support of its contention that a bachelor's degree is an industry-wide standard. This article states that an alternate career to a travel manager is that of a lodging manager, and notes that this occupation has a median annual salary of \$47,000 "and only a bachelor's degree is required." Again, this article does not establish that a bachelor's degree in a specific specialty is the industry standard for entry into this occupational category.

Another article excerpted from the Internet, entitled "Bachelor's Degree Program in Hospitality Management," is submitted in support of an industry-wide requirement. This article simply states that a bachelor's degree in hospitality management is "particularly suitable" for those interested in working in the travel industry.

Finally, the petitioner submits an article on appeal entitled "What is the Employment Outlook for a Career in Hospitality?" According to this article, "a bachelor's degree is usually needed to qualify for professional level career positions that require a higher skill level." Again, this article neither establishes that an industry standard for a bachelor's degree in a specific specialty exists for entry into this occupational category, nor does it demonstrate that a degree in a specific specialty is even required.

Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

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

Next, we consider whether the petitioner's prior history of recruiting and hiring for the proffered position establishes the proffered position as a specialty occupation. The petitioner does not address this issue nor does it submit any evidence that responds to this criterion. Accordingly, the record contains no evidence to establish that the petitioner has a prior history of only recruiting and hiring candidates with a specific bachelor's degree for the proffered position.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner, supra*. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized nature of the petitioner's descriptions of the proposed duties. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge at a level usually associated with at least a bachelor's degree in a specific discipline or the equivalent. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than other types of employees, including

those bearing the title "general manager" or "lodging general manager." In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than a lodging general manager position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.<sup>6</sup>

The record does not support that the proffered position is one with specialized and complex duties when the petition was filed. The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

Finally, beyond the decision of the director, the petition must also be denied due to the petitioner's failure to provide a certified LCA that corresponds to the petition. Specifically, the job title on the LCA submitted with the petition reads "Hotel Manager" and was certified for SOC code 43-4081, "Hotel, Motel, and Resort Desk Clerks." The job as titled and as described by the petitioner, however, is classified correctly under occupation SOC code 11-9081, or "Lodging Managers." As such, the petitioner was required to provide at the time of filing an LCA certified for SOC code 11-9081, not SOC code 43-4081, in order for it to be found to correspond to the petition.<sup>7</sup>

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

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion*

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<sup>6</sup> The petitioner has designated the proffered position as a Level I Lodging Manager 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). Therefore, even if counsel or the petitioner contended that the duties of the proffered position were significantly complex or specialized, such assertions would not be credible, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage.

<sup>7</sup> It is noted that the petitioner lists the beneficiary's proposed salary as \$29,598 per year, which corresponds to the prevailing wage rate for a Level I Lodging Manager position.

model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that has been certified for the proper occupational classification, and the petition must be denied for this additional reason.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.