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



U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: **OCT 29 2013** OFFICE: VERMONT 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:
[Redacted]

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,

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

DISCUSSION: The acting service center director (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 be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an educational institution¹ established in 2008, with 11 employees.² In order to employ the beneficiary in a position to which it assigned the job title, "Director of Admissions," the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on each of two separate grounds, namely, that the petitioner failed to establish (1) that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions; and (2) that the beneficiary possesses master's degree level of education that the petitioner asserted as required to perform the services of the proffered position.

The petitioner, through in-house counsel, filed a timely appeal of the decision. On appeal, the petitioner asserts that the director's bases for denial of the petition are erroneous. In support of the assertion, the petitioner submits a brief and additional evidence.

The record of proceeding before the AAO contains the following: (1) the petitioner's 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 notice denying the petition; and (5) the Form I-290B and supporting documentation.

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 611310, "Colleges, Universities, and Professional Schools." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "611310 Colleges, Universities, and Professional Schools," available on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited Sept. 30, 2013).

The petitioner is an *unaccredited* for-profit private university in Virginia. See U.S. Dep't of Education, The Database of Accredited Postsecondary Institutions and Programs, available on the Internet at <http://www.ope.ed.gov/accreditation/InstAccrDetails.aspx?756e697469643d3136363431362663616d70757349643d30267264743d362f31332f3230313320393a34363a353920414d> (last visited Sept. 30, 2013).

² In contrast, in a letter dated December 18, 2012 in response to the RFE, counsel stated that "the petitioner currently has 16 employees." Later, in the same letter, counsel states that "[o]ut of 15 employees of [the petitioner]. . . ." The petitioner and counsel also included an organization chart and list of employees (as Exhibit E to the RFE-response letter) which indicate that the petitioner has 20-21 employees (not including the CEO). No explanation was provided for the variance.

For the reasons that will be discussed below, the AAO agrees with the director's decision that the petitioner has not established that the proffered position qualifies as a specialty occupation. Accordingly, the appeal will be dismissed, and the petition will be denied.

However, the AAO hereby withdraws as an additional basis for dismissal the director's determination that the beneficiary had failed to establish that the beneficiary possessed at least a master's degree in a specific specialty.

In this regard, the AAO specifically finds that the director was correct in finding that the evidence of record had not established that the beneficiary's master's degree, which was awarded by the petitioner, qualifies as a degree conferred by an accredited United States college or university, as would be required for such a degree conferred by a U.S. college or university to qualify a person to serve in a position requiring at least a master's degree in a specific specialty. For a U.S. degree to qualify a beneficiary to serve in a specialty-occupation position that would require a master's degree or higher in a specific specialty, that degree would have to have been conferred by an accredited U.S. college or university. *See* 8 C.F.R. § 214.2(h)(4)(iii)(C)(I). Also, the submissions on appeal, however, do not refute or overcome the director's finding that the beneficiary's master's degree was awarded by an educational institution that is not accredited.

However, the AAO finds that the evidence of record does not establish that the proffered position is one that requires at least a master's degree, let alone one in a specific specialty. Therefore, the fact that the beneficiary has not attained such a degree from an accredited educational institution does not establish a legitimate basis for denying this particular petition.

Moreover, and more fundamentally, the AAO further finds that the beneficiary's educational attainment is not relevant to the proper disposition of this particular appeal. This is because the evidence of record fails to establish that the proffered position is a specialty occupation. It follows, then, that the beneficiary's credentials is a moot issue: the AAO cannot reasonably determine that the beneficiary's foreign bachelor's degree would, or would not, qualify her to fully perform services in a particular specialty-occupation position when, as here, the evidence of record has not established that proffered position as a specialty occupation.

For the present petition to be approved, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its

equivalent) as a minimum for entry into the occupation in the United States.

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

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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.

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position titled, "Director of Admissions," to work on a full-time basis at a salary of \$60,000 per year. In addition, the petitioner stated that it requires a Bachelor's degree in business administration or a related field for the proffered position. The petitioner further stated that "a qualified individual for this position will have experience with enrollment-management, admissions processes, recruitment marketing, student search campaigns and strategy."

As the Labor Condition Application (LCA) for this petition, the petitioner submitted an LCA that had been certified for use with a job prospect that would be within the occupational classification of "Education Administrators, Postsecondary" – SOC (ONET/OES) Code 11-9033.00, and for which the appropriate wage level would be Level I (the lowest of the four assignable wage levels).

The petitioner provided descriptions of the proposed duties in its May 15, 2012 letter of support and, later, in its response to the RFE. The AAO will address that information in detail later, as part of its analysis of the application of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

In the support letter, the petitioner also stated that "[t]he position of Director of Admissions requires a minimum of a Bachelor's Degree in Business Administration or a related field."

Also, in the document attached as Exhibit A to the RFE, the petitioner asserted that it requires a candidate with a "[m]inimum of a Bachelor's degree with specialized course work in Marketing, Business Administration or Human Resource management, complex **business** knowledge and international experience in domestic and international higher education. . . ."³

³ However, in a letter in response to the RFE dated December 18, 2012, counsel for the petitioner stated that "[a]s stated in **Exhibit A**, the Petitioner requires [a] 'Master's degree with specialized course work in Marketing

On January 23, 2013, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish (1) that the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty; and (2) that the beneficiary a master's degree in a specific specialty. The petitioner submitted a timely appeal of the denial of the H-1B petition.

As a preliminary matter, the petitioner's claim in the letter of support that a bachelor's degree in "business administration" is a sufficient minimum requirement for entry into the proffered position is inadequate to even articulate a claim that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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

and Human Resource management, complex business knowledge and international experience in domestic and international higher education. . . .” No explanation was provided for the discrepancy in the degree requirement. However, when read in the context of the entire body of evidence and attestations in this record of proceeding, it appears that assertion of a master's degree requirement was a mistake on the part of counsel. Accordingly, the AAO will not evaluate this petition as one that specified a master's degree as a minimum requirement for the proffered position.

⁴ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

The AAO will now discuss the director's first basis for denial of the petition, namely whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

At the outset, the AAO will address the nature and evidentiary value of the petitioner's descriptions of the duties comprising the proffered position.

The petitioner's May 15, 2012 letter of support, filed with the Form I-129, provided the following description of the proffered position:

[The beneficiary's] major duties as The Director of Admissions will include overseeing the effectiveness and productivity of the [petitioner's] planning and direction of the administrative and operational activities with regards to student recruitment[,] marketing[,] and admissions within the Office of Admissions. [The beneficiary's] primary responsibilities as The Director of Admissions include developing and leading staff members who provide niche services in the areas of admission application processing, recruitment marketing and communication, retention management programs, and deliver superior customer services to prospective and enrolled students, academic faculty, administration, and the general public in matters relating to domestic and international students. The Director of Admissions, as a member of the senior management team, works under the supervision of and closely with the **Chief International Business Officer** for the University, in developing, planning, executing, and controlling effective student prospecting, marketing, recruitment, admissions counseling, and retention strategies to achieve domestic and international goals and objectives of the [petitioner]. Specific duties include the following:

1. Provide student-centered managerial leadership and supervision, including recruitment of exempt and non-exempt full-time and part-time staff (professional and others) engaged in the daily operations of domestic and

international recruitment marketing, admissions processing, and retention programs.

2. Develop, coordinate, and implement marketing research and recruitment strategies for domestic and international markets with supportive focus on the needs and goals of the [petitioner] and its programs.
3. Direct the preparation of the operating budgets of the Office of Admissions, with responsibility for financial management and control oversight of the admissions and recruitment operations costs.
4. Assist the Office of the Registrar and Enrollment Management with the University's overall student recruitment planning and strategic management of: enrollment, registration, and retention processes[.]
5. Supervise provisions of appropriate training for the [petitioner's] faculty and staff with respect to domestic and international admissions, applications processing, and applicable information systems technologies.
6. Plan, develop, organize, and implement all programs admissions application processes and procedures (i.e. admissions policies and procedures manual, catalog, and web contents [sic] development and updates) for domestic and international student admissions, and up-to-date information on [the petitioner's] accreditation agencies', and regulatory authorities' regulations, rules, and policies.
7. Oversee the communications of admission requirements and application processing information to prospective students using appropriate targeting media possible to reach target markets[.]
8. Manage the admissions module of [redacted] to support internal processes and improvements, necessary to delivering competitive services to prospective students; and effectively coordinate recruitment and admissions with the Office of the Registrar and Enrollment Management.
9. Review updates and new releases of [redacted] software and inform appropriate stakeholders of such updates, and where necessary, identify problems in the admissions module and notify *Office of Technology and Campus Information Systems* to improve or implement updates.
10. Evaluate regularly for re-engineering, all existing [petitioner] policies and procedures, strategies, processes, resources, and systems – technologies, and strives to formulate new changes, recommend and obtain senior management

approvals for the implementation of necessary changes to improve operational efficiency and effectiveness of the Office of Admissions and the [petitioner].

11. Evaluate, interpret, and execute university, state and federal policies and regulations related to recruitment marketing, admissions application processing, student privacy, and information/data collection, storage, and management; develops and implements appropriate policies, processes, and procedures to ensure compliance with all related policies, procedures, regulations, and laws.
12. Develop and lead-manage internal processes and policies to effectively ensure [the petitioner] compliance with audit engagements to be periodically conducted by accrediting and external regulatory agencies, regarding [petitioner's] admissions systems and records.
13. Assist with internal processes for collecting, processing, disseminating, and reporting domestic and international admission statistical data to ensure compliance with, completion, and submission of federal, state, agency, and institutional periodic reports.
14. Ensure attendance and representation of the Office of Admission in internal and external institutional committees and teams.
15. Maintains high visibility within and outside the [petitioner's] community to build strong networking and operating relationships with all internal and external stakeholders' constituencies – such as attendance and representation at professional, private and public sector institutions/organizations', associations', and communities' events, seminars, and conferences, to foster the interests and goals of the [petitioner].
16. Institutionalize appropriate procedural processes, policies, and systems for international academic transcripts evaluation and conversion for admission purposes.
17. Evaluate and recommend admissions decisions to the [petitioner's] Admissions Committees, deans, and chairs for all school's programs and [the petitioner's] campuses[.]
18. Develop, manage, and foster viable operating relationships with international agents, educational institutions, overseas programs advisors and partnerships (NB: extensive domestic and international travels is essential to ensure effective discharge of these duties and other responsibilities)[.]
19. Performs additional duties in collaboration with *Chief International Business Officer*[.]

The document submitted as Exhibit A to the petitioner's response to the RFE includes the following revised description of the proposed duties:

Develop goals, strategies and policies for the Department of Admissions which are in compliance with the strategic goals of [the petitioner]. Confer with other departments of [the petitioner] to develop goals and policies and communicate the same to Admissions Manager for implementation.

Responsible for the direct supervision of the Admissions Manager and the indirect overview, monitoring and supervision of staff to assure the effective and efficient advising and counseling of prospective students concerning acceptance standards, admission to the university and specific university programs; attendance and matriculation requirements, student immigration, visa, and other regulatory requirements, curricula and curriculum requirements, transfer credit and equivalency, and related academic admission and enrollment processes and operations.

- Develop and Implement Applicant **Screening, Interview** and **Selection Process**.
- Develop admissions marketing services plan. Continuously evaluate and improve customer service processes and strategies for admissions counselors and staff to follow in order to reach or exceed completed application and student enrollment goals, including generating and revising communication with applicants.
- Confer with IT Department in the design and continual upgrade for the electronic data for admissions process: inquiry, phone screen, interview, enrollment, and orientations.
- Develop the admission customer relationship management system in consultation with the technology resources department.
- Manage complex admissions database systems.
- Monitor trends in technology and make recommendations for business process improvements.
- Represent [the petitioner] before other universities, education conferences, local business organizations and before state and federal government agencies as required.
- Familiar in working with international student environment including education levels, transcripts, grading systems, international Accreditation systems and all manner of international secondary education evaluations in order to properly supervise and monitor decisions made by Admissions Staff and to answer complex questions provided by staff and prospective students.
- Knowledge of SEVIS and transfer rules with respect to admissions and enrollment.
- In depth/intense knowledge of **USCIS Visa/status rules** (e.g. F1, F2, L1, H1B as well as H4)[.]

- Processing admissions applications each year **by maintaining a computer record** as well as a **paper file** for each applicant on a **daily basis**, this includes the processing of initial application for admission, supporting documents, daily mail, admission decisions, tuition deposits, etc.
- Maintain currency in field of higher education evaluation both domestically and internationally.
- Motivate **Manager and Admissions Staff** to achieve competencies and **develop skill** sets to provide a high level of student service.
- Work effectively with co-workers as part of the student services team to ensure each student's experience with the [petitioner's] professional, service-focused, and productive [sic][.]
- Ensure university admissions standards and ethical expectations are communicated to new employees and upheld at all times.
- Enforce all policies relating to the acceptance and subsequent **registration process** of new students entering the [petitioner.]
- Work with campus leadership team to schedule and monitor new student orientation and online orientation sessions as well as implement other campus directives.
- Actively participate in all aspects of the new student recruitment and enrollment process.
- Partner with other departments as necessary to **finalize enrollment** process, including the Business Office, Academics, and the [petitioner's] Registrar's Office.
- Adhere to all [petitioner] policies and procedures and federal, state, and accrediting agency rules with respect to recruitment and admissions.
- Maintain knowledge of programs offered and takes responsibility for keeping current with program changes and new programs offered.
- Carry out all other supervisory responsibilities which include the following: planning, assigning, and directing work of subordinates; appraising their performances; rewarding and disciplining employees; addressing complaints and resolving problems[.]
- Hire, train, motivate and **lead** an effective **Admissions team**. Perform reviews on a timely basis to assure that we provide new hire/veteran training and ongoing observations to improve employee success.
- Providing department operating budget proposals with supporting documentation. Review provided budget and implement guidelines. Monitor expenses to assure **budget compliance**.
- Meet and Exceed **Recruitment Goals** – Monitor, meet, and exceed independent professional goals and department goals set for generating applications and confirming applicants to enrolled students.
- Develop **Recruitment Strategy** – As a member of the recruitment team, participate in the development and implementation of the overall recruitment strategy.
- Provide feedback to the Marketing Department to support business objectives[.]

- Ensure that representatives complete all necessary forms, including daily activity reports[.]

That Exhibit A of the RFE-reply also included the following estimations of the percentages of work time that the beneficiary would devote to the positions duties:

- 5% Designing and updating strategic customer service plan.
- 5% Designing, updating and implementing continual education program for Admissions Manager and other subordinates.
- 25% Conferring [sic] with Senior Management to stay abreast of [the petitioner's] student matters, and design and draft policy and procedures.
- 5% Providing department budget proposals with supporting documentation. Review provided budget and implement guidelines.
- 30% Conferring and planning with Admissions Manager regarding implementation of policy.
- 5% Supervising and evaluating Manager and support staff.
- 5% Appear and represent [the petitioner] at fairs, conferences, direct marketing endeavors and before regulatory agencies.
- 10% Maintaining knowledge of admissions requirements and regulations.
- 5% Counseling of students in special advisement cases.
- 3% Conferring [sic] with Marketing and other departments.
- 5% Maintaining filing and data base system.
- 2% Interviewing prospective employees[.]
- 5% Conferring with International Student Advisor and/or General Counsel regarding complex issues.⁵

The AAO acknowledges the volume and variety of duties that the petitioner ascribes to the proposed duties. However, as will now be discussed, those aspects as are not in themselves sufficient to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁵ The percentage breakdown amounts to 110%. No explanation was provided.

The above-quoted series of duty descriptions all present the proposed duties - and hence also the proffered position that they comprise - in terms of generalized functions to be performed on matters that are also described in generalized and relatively abstract terms. By way of illustrative examples that are fairly representative of the petitioner's duty-descriptions as a whole, the AAO notes, from Exhibit A of the RFE reply, the assertions that the beneficiary would "[d]evelop goals, strategies and policies for the Department of Admissions"; "[d]evelop admissions marketing services plan"; and [m]anage complex admissions database systems." However, the AAO finds that neither the duty-description documents themselves, nor any other documents within the record of proceeding, establish the substantive nature of either the referenced development and management functions, or the matters upon which such functions would be applied. The AAO further finds that, to the extent that they *are* described, the proposed duties do not establish any correlation between them and a requirement for the attainment of at least bachelor's degree, or the equivalent, in any specific specialty.

Based upon its consideration of the totality of the evidence of record regarding the proposed duties, the AAO finds that - as limited as they are to terms of generalized functions to be performed upon matters also described in relatively abstract terms - the petitioner's duty descriptions do not establish that the duties' performance would require the practical and theoretical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty, as would be necessary to establish the proffered position as a specialty occupation as defined at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

The petitioner should note that the AAO intends that the above comments and findings be incorporated into the analyses of the application of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to this record of proceeding, which follows below.

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

The petitioner stated that the beneficiary would be employed in a director of admissions position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered 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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

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

of occupations that it addresses.⁶ As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational category "Education Administrators, Postsecondary."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Postsecondary Education Administrators." However, the *Handbook* does not indicate that postsecondary education administrators comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Postsecondary Education Administrator" states the following about this occupational category:

Although a bachelor's degree may be acceptable for some entry-level positions, a master's or higher degree is often required. Employers often require candidates for some positions, particularly for registrars and academic deans, to have some experience.

Education

Educational requirements vary for different positions. For entry-level positions, a bachelor's degree may be sufficient. Degrees can be in a variety of disciplines, such as social work, accounting, or marketing.

For higher level positions, a master's degree or doctorate is generally required. Provosts and deans often must have a Ph.D. Some provosts and deans begin their career as professors and later move into administration. These administrators have doctorates in the field in which they taught, such as English or chemistry. Other provosts and deans have a Ph.D. in higher education or a related field.

Work Experience

Employers often require candidates for some positions, particularly for registrars and academic deans, to have some experience. For other positions, such as those in admissions and student affairs, experience may or may not be necessary depending on the position.

Advancement

Education administrators with advanced degrees can be promoted to higher level positions within their department or the college. Some become college presidents. For more information about college presidents, see the profile on top executives.

⁶ The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Postsecondary Education Administrators," <http://www.bls.gov/ooh/management/postsecondary-education-administrators.htm#tab-4> (last visited Oct. 10, 2013).

When reviewing the *Handbook*, the AAO must note again that, by virtue of the LCA that the petitioner submitted, it attested that the appropriate prevailing wage for the proffered position was that of a Level I (entry level) position.⁷ This designation is only appropriate for a comparatively low, entry-level position relative to others within the occupation.⁸ That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment.

⁷ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of occupational understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁸ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes 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.

Id.

By submitting an LCA certified for a Level 1 job, the petitioner basically attested that the beneficiary would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

Here, although the *Handbook* indicates that a bachelor's or higher degree is normally required, it also indicates no limitation upon the specialties in which a bachelor's or higher degree would be acceptable for entry into the Postsecondary Education Administrators occupational group, to which the proffered position appears to belong. Also, while the *Handbook* notes "social work, accounting, or marketing" as examples of the "variety of disciplines" in which degrees would be acceptable, the *Handbook* expresses no specific limitation as to the range of disciplines from which degrees would be acceptable. Accordingly, as the *Handbook* indicates that the Postsecondary Education Administrators occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry, it does not support the proffered position as satisfying this criterion.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.⁹ Section 214(i)(1)(b) of the Act (emphasis added). Here, the pertinent information in the *Handbook* simply does not indicate such a close correlation between the performance requirements of the proffered position and a body of highly specialized knowledge gained by attaining a degree in a particular specialty or group of closely related specialties.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation

⁹ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

. . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a bachelor's degree or higher, in a specific specialty, or its equivalent, is normally required for entry. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the evidence of record has not satisfied the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. 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 submitted a total of three job-vacancy announcements for positions bearing the Director of Admissions title. These announcement were submitted on the Internet by the following educational institutions: (1) [REDACTED] (located in [REDACTED] Oregon), (2) [REDACTED] Colorado), and [REDACTED] (of [REDACTED] Florida).

The AAO need not address any aspect of these advertisements other than the fact that none of them specifies as a minimum hiring requirement a bachelor's or higher degree in a specific specialty. In light of this aspect, the submitted job-vacancy documents are not evidence that even the three

educational institutions that issued them commonly recruit and hire for their directors of admissions positions only persons with at least a bachelor's degree in a specific specialty.

The degree-requirements specified in the job announcements are as follows: (1) for [REDACTED] "Regional Director of Admissions (Sales Manager)": "Bachelor degree required"; (2) for [REDACTED] "Director of Admissions": "Bachelor's degree required; master's degree required"; and (3) for [REDACTED] "Director of Admissions": "Education: 4 Year Degree."

As earlier discussed, the degree-requirement that marks a position as an H-1B specialty occupation is one for a bachelor's or higher degree in a specific specialty that is closely related to the performance requirements of the proffered position. The three job advertisements are not evidence of such a requirement. In fact, they are indicative of the accuracy of the *Handbook's* information to the effect that there is no degree major or academic concentration that would necessarily preclude entry into the occupational group to which admissions directors belong. Moreover, because the three submitted advertisements do not reflect a common requirement for a degree in a specific specialty, they are not probative evidence towards satisfying this first of the two alternative prongs of at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner should also note that, absent authoritative documentary evidence establishing otherwise, three job advertisements are not sufficient to establish a hiring and recruiting practice as common to the industry for the type of position advertised.¹⁰

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

¹⁰ 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 just three job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. See *id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported a finding that their institutions required a bachelor's or higher degree in a specific specialty or its equivalent for the type of position proffered here, 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 normally require at least a baccalaureate degree in a specific specialty for entry.

Next, the AAO finds that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that “an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree.”

The petitioner should note that, as earlier stated, the AAO here incorporates, and adopts as part of its analysis of this criterion, its earlier comments and findings with regard to the generalized nature of the petitioner’s descriptions of the duties of the proffered position.

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor’s degree, or the equivalent, in a specific specialty. Given the generalized and relatively abstract terms in which they are described, and the lack of evidence with regard to the substantive nature and performance requirements of whatever work their performance would actually entail, the proposed duties as described in the record do not establish that they would comprise a position materially more complex or unique than positions in the same occupational group that, the *Handbook* suggests, are performed by persons with a wide variety of educational backgrounds that are not limited to bachelors or higher degrees in a specific specialty. Rather, the AAO finds that the evidence of record has not distinguished the proffered position from generic postsecondary-education-administration positions, which, the *Handbook* indicates, may normally require a person with at least a bachelor’s degree, or the equivalent, but without additionally requiring that the degree be in a specific specialty.

Although not essential to its conclusion that the petitioner has not satisfied the present criterion, the AAO also finds that the wage level of the LCA that the petitioner submitted as corresponding to the proffered position is materially inconsistent with the level of complexity or uniqueness required to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Again, the AAO incorporates by reference and reiterates its earlier discussion that the submitted LCA indicates a wage level based upon the occupational classification “Postsecondary Education Administrators” at a Level I (entry level) wage. This wage level designation is appropriate for positions for which the petitioner expects the beneficiary to have a basic understanding of the occupation. That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work will be closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.” Thus, the wage level designated by the petitioner in the LCA submitted for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor’s degree in a specific specialty.

The AAO also finds that the evidence of record does not establish that this position is significantly

different from other director of admissions positions such that it refutes the *Handbook's* information that there are various acceptable degrees for entry into such positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the evidence of record does not show that the proffered position is so complex or unique that it can only be performed by a person with at least a baccalaureate degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past. Here, the petitioner did not submit evidence to satisfy this criterion.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position. In the instant case, while the petitioner states in a letter in response to the RFE, that "all employees similarly situated with the Petitioner . . . hold a minimum of a Bachelor's degree[.]" the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

While a petitioner may assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree-requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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").

To satisfy this criterion, the evidence of record must show that the specific performance

requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

In any event, the record contains no evidence regarding any prior individuals employed by the petitioner in this position. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that the petitioner normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the evidence in the record of proceeding does not establish a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty, or its equivalent.

The AAO also finds that the record of proceeding contains no evidence that establishes the nature of the proposed duties as being so specialized and complex. Rather, to the extent that they are described in the record, the AAO finds that the petitioner has not distinguished the proposed duties from generic postsecondary-education-administration duties, which, the *Handbook* indicates, may normally require a person with at least a bachelor's degree, or the equivalent, but do not additionally require that the degree be in a specific specialty. In this regard, the AAO here also incorporates and adopts into its analysis its earlier comments and findings with regard to the evidentiary deficiency of the generalized terms in which the petitioner describes the proposed duties.

Further, the AAO here also incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is appropriate for

a low, entry-level position relative to others within the occupational category and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. That is, the petitioner has not established that the nature of the duties of the position is so specialized and complex that 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 has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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.

Before closing, the AAO will make some additional, clarifying comments with regard to the petitioner's assertions on appeal with regard to the issue of its accreditation. As reflected in this decision's earlier finding that the evidence in the record of proceeding does not establish that the beneficiary master's degree awarded by the petitioner was from an accredited U.S. college or university, the AAO expressly rejects the petitioner's arguments that, either alone or in conjunction with each other, the [REDACTED] or the February 19, 2013 letter from the Accrediting Council for Independent Colleges and Schools establish that the petitioner was, either at the time of the petition's filing or when the beneficiary's master's degree was conferred, an accredited college or university within the meaning of the H-1B education-qualifying provision at 8 C.F.R. § 214.2(h)(4)(iii)(C)(I). A fair and reasonable reading of that clear and unambiguous provision does not allow its term "accredited" to be interpreted as encompassing anything less than formal, official, and unconditional accreditation; and the petitioner provides no statute, regulation, precedent decision, case law, or other authoritative source for its contrary position.

Next, as noted earlier in this decision, the AAO withdraws the director's second basis of denial, that is, the director's determination to the effect that the beneficiary could not qualify for the proffered position because the petitioner asserted that it required a master's degree. It is worth again noting that the AAO also disagrees with – and therefore withdraws – the director's finding that the petitioner contended that the proffered position required a master's degree. At issue is the statement in a letter in response to the RFE, dated December 18, 2012, where counsel asserted that "[a]s stated in **Exhibit A**, the Petitioner requires [a] 'Master's degree with specialized course work in Marketing and Human Resource management, complex business knowledge and international experience in domestic and international higher education. . . .'" The director stated that "the petition was filed on the basis of the beneficiary's bachelor's degree," and, as such, "[i]mposing an educational requirement other than that conferred by the degree of education upon which your petition was initially based would constitute a material change to your request for H-1B status." However, upon review of the Exhibit A attached to the RFE response, the AAO finds that in the document attached as Exhibit A to the RFE, the petitioner asserted that it requires a candidate with a "**[m]inimum of a Bachelor's degree** with specialized course work in Marketing, Business Administration or Human Resource management,

complex **business** knowledge and international experience in domestic and international higher education. . . ." Thus, it appears that counsel's statement that "the Petitioner requires [a] 'Master's degree . . ." in Exhibit A is incorrect, and possibly a typographical error.

Consonant with its earlier statements in this regard, however, the AAO notes its agreement with the director's position "that a degree completed or conferred by [an unaccredited] school is [not] equivalent to a U.S. master's degree [from an accredited school]," and if the petition had "been filed . . . for H-1B status for the beneficiary based on her attainment of a master's degree, the . . . [evidence in the] record does not establish that the beneficiary possesses a level of education in any field higher than a bachelor's degree."

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. The petition is denied.