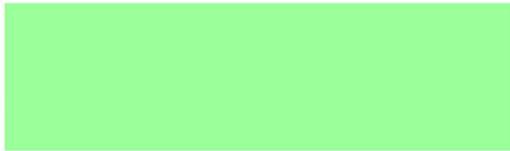


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

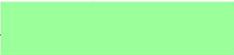


U.S. Citizenship
and Immigration
Services



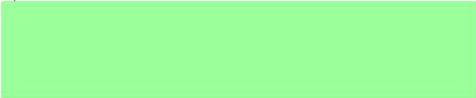
DATE: **SEP 25 2013**

OFFICE: VERMONT SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary: 

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

ON BEHALF OF PETITIONER:

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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129 visa petition, the petitioner states that it is a distributor of natural stone products with ten employees. In order to employ the beneficiary in what it designates as an import and account executive, 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

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

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

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

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

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

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See

Royal Siam Corp. v. Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is "Import & Account Executive," and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1199, "Business Operations Specialists, All Others" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

Regarding the beneficiary's qualifications, the petitioner submitted evidence that the beneficiary received a bachelor's degree in marketing and a master's degree in business administration from [REDACTED]

The petitioner also submitted a letter, dated April 26, 2012, from its president, [REDACTED]. In her letter, [REDACTED] stated that the petitioner specializes in marble and granite natural stone products and currently has three showrooms and warehouses. Regarding the beneficiary, [REDACTED] claimed that the petitioner wished to employ her in the position of Import and Account Executive on a part-time basis, and stated the following regarding the proposed position:

[The beneficiary] will be responsible for developing and maintaining relationships with our overseas suppliers and our major corporate accounts, developing and implementing sourcing strategies, assisting the Management setting up [the petitioner's] presence in the East Coast, and ensuring that the Company's import procedures are in compliance with legal and regulatory requirements. She will also conduct SWAT analysis in support of the Company's management in defining marketing strategies and improving business performance. She will report directly to the President of the Company.

More specifically, [the beneficiary's] duties will include the following:

1. Developing and maintaining business contacts and relationship with overseas suppliers in China on day-to-day basis to determine their needs and requirements;
2. Developing sourcing strategies and negotiating pricing with overseas suppliers;
3. Serving as the contact and interface on international trade issues on behalf of the Company with the customs house brokerage, banking institutions, and shipping companies;
4. Reviewing and monitoring financial and credit information of existing and new corporate accounts;
5. Assisting set up the Company's presence in the East Coast and developing new markets with architects and design firms in the East Coast;
6. Addressing questions, concerns and feedback to the Company's Management and preparing correspondence to our clients;
7. Examining various import documents to ensure compliance with federal and foreign regulations governing the shipment, receipt, and documentation of imported products;
8. Conducting research to maintain current knowledge of regulations applicable to import, export and international trade and up-to-day commodity information, involving extensive data gathering and detailed analysis of freight and logistics related rate and expenditure worldwide;
9. Conducting SWAT (Strength, Weakness, Advantages, and Threat) analysis in support of the company management in defining and developing marketing strategies and improving business performance;
10. Writing analytical reports to provide up-dated information for the management in order to provide better services to the Company's clients and determine competing prices; and
11. Conducting research and documenting on changes of customs tariffs and regulations of foreign countries to ensure all the import and export documents are in conformity to tariff and regulations.

Further, the petitioner stated that the candidate for the proffered position must have a bachelor's degree in business administration.

On July 17, 2012, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, the petitioner submitted: (1) a letter from [REDACTED] dated August 12, 2012; (2) a copy of the petitioner's "Job Opportunity Posting Notice" for the proffered position; (3) copies of a diploma, transcript, and Form 1099, Miscellaneous Income for [REDACTED], another employee it claims was employed in the proffered position; and (4) the petitioner's catalog.

In her August 12, 2012 letter, [REDACTED] restated the previously-submitted list of duties of the proffered position, but added the percentages of time the beneficiary would devote to each duty. The petitioner also addressed the duties in sections with comments pertaining to the nature of each of the duties as summarized in relevant part below:

1. Developing and maintaining business contacts and relationship with overseas suppliers in China on day-to-day basis to determine their needs and requirements; 10% of time
2. Developing sourcing strategies and negotiating pricing with overseas suppliers; 10% of time
3. Serving as the contact and interface on international trade issues on behalf of the Company with the customs house brokerage, banking institutions, and shipping companies; 10% of time

Regarding these three duties, [REDACTED] stated that the beneficiary would be required to apply her knowledge of business management, international trade process and procedure, international trade regulations, import and export law, and finance. She further stated that "only someone who has obtained a Bachelor's degree in Business Administration can satisfactorily fulfill the job duties of Import & Account Specialist."

The petitioner next addressed duties 4, 5, and 6 as follows:

4. Reviewing and monitoring financial and credit information of existing and new corporate accounts; 10%
5. Assisting set up the Company's presence in the East Coast and developing new markets with architects and design firms in the East Coast; 10%
6. Addressing questions, concerns and feedback to the Company's Management and preparing correspondence to our clients; 10%

The petitioner summarized these duties by stating that the beneficiary would be required to apply her knowledge of managerial accounting, financial management, and marketing research and management in performing these tasks.

The petitioner next addressed the remaining duties:

7. Examining various import documents to ensure compliance with federal and foreign regulations governing the shipment, receipt, and documentation of imported products; 10%
8. Conducting research to maintain current knowledge of regulations applicable to import, export and international trade and up-to-day commodity information, involving extensive data gathering and detailed analysis of freight and logistics related rate and expenditure worldwide; 10%
9. Conducting SWAT (Strength, Weakness, Advantages, and Threat) analysis in support of the company management in defining and developing marketing strategies and improving business performance. 10%
10. Writing analytical reports to provide up-dated information for the management in order to provide better services to the Company's clients and determine competing prices; and *[no time or percentage was included here]*
11. Conducting research and documenting on changes of customs tariffs and regulations of foreign countries to ensure all the import and export documents are in conformity to tariff and regulations. 10%

In summary, [REDACTED] stated on behalf of the petitioner that the beneficiary would be required to apply her knowledge of advanced marketing, logistics and transportation, legal environment and business, marketing research and marketing management, and applied business strategies, and again claimed that the performance of these duties required a bachelor's degree in business administration.

The AAO observes that there are no substantive differences between the description submitted in response to the RFE and the description previously provided in the April 26, 2012 letter aside from the addition of the percentage of time devoted to each duty and the comments regarding the knowledge required to perform such duties.

The director denied the petition on September 24, 2012, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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On appeal, the petitioner submitted a brief and a letter from [REDACTED], President of [REDACTED] in support of the contention that the proffered position in fact requires a degree in a specific field of study. The relationship, if any, between that company and the petitioner, is unclear. [REDACTED] also stated that his company is a retail store engaged in the sale of household appliances. This letter will be addressed in further detail later in this decision.

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

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

¹ 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.

Id.

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.

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

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

The petitioner claims the proffered position is that of "Import & Account Executive," and classified the proffered position as "Business Operations Specialists, All Others" under SOC 13-1199 on the certified LCA it submitted with the petition. As previously stated, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The director found that the proffered position, despite its title, is most akin to that of a marketing manager. According to the *Handbook*, the position of marketing manager is described as follows:

Advertising, promotions, and marketing managers plan programs to generate interest in a product or service. They work with art directors, sales agents, and financial staff members.

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Duties

Advertising, promotions, and marketing managers typically do the following:

Work with department heads or staff to discuss topics such as contracts, selection of advertising media, or products to be advertised

Gather and organize information to plan advertising campaigns

Plan the advertising, including which media to advertise in, such as radio, television, print, online, and billboards

Negotiate advertising contracts

Inspect layouts, which are sketches or plans for an advertisement

Initiate market research studies and analyze their findings

Develop pricing strategies for products to be marketed, balancing the goals of a firm with customer satisfaction

Meet with clients to provide marketing or technical advice

Direct the hiring of advertising, promotions, and marketing staff and oversee their daily activities

* * *

Marketing managers estimate the demand for products and services that an organization and its competitors offer. They identify potential markets for the organization's products.

Marketing managers also develop pricing strategies to help organizations maximize profits and market share while ensuring that the organizations' customers are satisfied. They work with sales, public relations, and product development staff.

For example, a marketing manager may monitor trends that indicate the need for new products and services. Then they oversee the development of that new product. For more information on sales or public relations, see the profiles on sales managers, public relations managers and specialists, and market research analysts.

<http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm#tab-2>
(last visited September 17, 2013).

Although the petitioner does not contest this classification on appeal, the AAO finds, contrary to the director's conclusions, that the proffered position is more akin to an operations manager as described in the *Handbook's* section pertaining to Top Executives. Specifically, the *Handbook* states as follows:

Top executives devise strategies and policies to ensure that an organization meets its goals. They plan, direct, and coordinate operational activities of companies and public or private-sector organizations.

Duties

Top executives typically do the following:

- Establish and carry out departmental or organizational goals, policies, and procedures
- Direct and oversee an organization's financial and budgetary activities
- Manage general activities related to making products and providing services
- Consult with other executives, staff, and board members about general operations
- Negotiate or approve contracts and agreements
- Appoint department heads and managers
- Analyze financial statements, sales reports, and other performance indicators
- Identify places to cut costs and to improve performance, policies, and programs

The responsibilities of top executives largely depend on an organization's size. For example, an owner or manager of a small organization, such as an independent retail store, often is responsible for purchasing, hiring, training, quality control, and day-to-day supervisory duties. In large organizations, on the other hand, top executives typically focus more on formulating policies and strategic planning, while general and operations managers direct day-to-day operations.

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General and operations managers oversee operations that are too diverse and general to be classified into one area of management or administration. Responsibilities may include formulating policies, managing daily operations, and planning the use of materials and human resources. They make staff schedules, assign

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work, and ensure projects are completed. In some organizations, the tasks of chief executive officers may overlap with those of general and operations managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited September 17, 2013).

The description of duties provided for the proffered position appears most akin to this particular occupational category, and most specifically appears to encompass the generalized duties of an operations manager as described above. There is no specific claim in the record that the beneficiary will perform marketing duties; therefore, the AAO finds the director's conclusions regarding the nature of the proffered position to be misplaced. The director's findings to the contrary, however, are inconsequential, since the AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Regardless, the categorization of the proffered position in the category of Top Executives likewise does not establish that the position is a specialty occupation, since the *Handbook* does not state that a degree in a specific specialty is required for entry into this category. The *Handbook* states:

Although education and training vary widely by position and industry, many top executives have at least a bachelor's degree and a considerable amount of work experience.

Education

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a Master of Business Administration (MBA).

Top executives who are promoted from lower level managerial or supervisory positions within their own firm often can substitute experience for education. In industries such as retail trade or transportation, for example, people without a college degree may work their way up to higher levels within the company and become executives or general managers.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited September 17, 2013).

The *Handbook* indicates that while many top executives have at least a bachelor's degree, some are able to substitute experience for education. Moreover, the *Handbook* indicates that a bachelor's degree in business administration or a related field is often the minimum education needed for top executives.

As was observed above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent and is insufficient to show that a position qualifies as a specialty occupation position. The *Handbook* does not support the proposition that top executives, including operations manager positions, as a category, qualify as specialty occupation positions by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level I position on the submitted 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. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some top executive positions, which includes operations managers, do not require such a degree.

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

Finally, regarding the letter submitted by the petitioner on appeal, the AAO observes that [REDACTED] did not base his conclusion on any objective evidence, but relied, instead, on the position description provided by the petitioner and on his own subjective opinions based on his own experience. Additionally, the [REDACTED] states that he is the president of a retail store selling household appliances, whereas the petitioner is a distributor of natural stone products. Although he claims that his company "shares the same hiring policy" as the petitioner, there is no additional evidence to support this statement, nor does this claim qualify him to render an expert opinion on the needs and hiring practices of the petitioner. As such, [REDACTED] has not demonstrated an in-depth knowledge of the petitioner's business operations that would accord him insight into the requirements of the proffered position as it would be performed within the context of the petitioner's business operations.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable,

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the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Moreover, [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or management. Even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business administration is inadequate to establish that a 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). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, 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 at 147 (1st Cir. 2007).

Therefore, the AAO finds that the letter from [REDACTED] does not establish that the proffered position is a specialty occupation.

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

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

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

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. The petitioner did not submit evidence establishing that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that, there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The record contains a copy of the petitioner's job posting for the proffered position, which states that a bachelor's degree in business administration is required. As discussed in detail above, while the petitioner's requirement of this general-purpose bachelor's degree may be a legitimate prerequisite for the proffered position, the petitioner's requirement of this general-purpose degree does not establish requiring such a degree, without more, will not justify a finding that the position qualifies for classification as a specialty occupation.

The petitioner also claims that it previously employed another individual in the proffered position. The record contains a copy of the diploma and transcript for [REDACTED] demonstrating that he holds a Master's degree in Business Administration from [REDACTED] along with a copy of his Form 1099, Miscellaneous Income, for 2011. This form indicates that he earned \$10,000 in non-employee compensation, as evidenced by the entry in Box 7 of this form.

As correctly noted by the director, the Form 1099 establishes the payment of non-employee compensation to [REDACTED] thereby precluding a finding that this individual was previously *employed* by the petitioner in the proffered position. Nevertheless, even if he was a former employee of the petitioner in the position of Import & Account Specialist, the fact that he also possesses a general purpose degree in business administration would not permit the petitioner to satisfy this criterion.

While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner, therefore, has failed to satisfy the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as developing and maintaining business contacts, conducting research, and addressing questions and concerns of customers, contain no indication of a nature so specialized and complex that they require knowledge

usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of controller positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.² Therefore, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

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

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

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.

² The petitioner argues on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex. However, the duties as described lack sufficient specificity to distinguish the proffered position from other operations manager positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties.

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