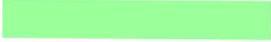


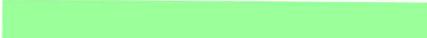


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 28 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes its business as the "Import, sale and installation of natural stone for residential and commercial construction." In order to employ the beneficiary in what it designates as a part-time "Construction Project Coordinator" position, 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, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

II. THE LAW

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human

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

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

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

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

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Construction Project Coordinator position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9021, Construction Managers from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner's prior counsel¹ submitted evidence that the beneficiary received a degree in Architectural Engineering from the Aristotelian University of Thessaloniki in Greece. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. master's degree in architecture.

Counsel also submitted a letter, dated March 30, 2013, from the petitioner's president, who states that the petitioner "imports exotic stones, marble, and granite, and fabricates and installs them" As to the duties of the proffered position, she stated:

In this position, [the beneficiary] will participate in the conceptual development of the installation project and oversee its organization, scheduling, and implementation. She

¹ It is noted that the instant appeal was filed by the petitioner. There is no indication in the record that the petitioner continues to be represented by the attorney that filed the Form I-129. We will hereinafter refer to the petitioner's prior counsel as "counsel."

will coordinate with architects, interior designers, contractors and homeowners, understanding complex architectural and building specifications, designs and their execution. [The beneficiary] will provide guidance in the stone's slab selections, help with each material's appropriate usage, and offer critical advice both artistically and technically. She will provide technical advice to resolve problems and update project needs regarding design and material selection according to client's specifications. Finally, [the beneficiary] will plan and coordinate field measurements, drawings and construction details, and fabrication and installation activities to ensure project progresses on schedule and within prescribed budget.

As to the educational requirement of the proffered position, the petitioner's president stated:

The duties of the proposed position are so specialized and complex that they could only be satisfactorily discharged by an individual who holds at least a bachelor's degree in Construction Management, Architecture, Engineering, or the equivalent thereof.

On July 3, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted (1) three letters from other companies in the construction industry; (2) eleven vacancy announcements; (3) an organizational chart of the petitioner's operations; (4) evidence pertinent to three other employees of the petitioner; (5) a description of the proffered position; and (6) counsel's own letter, dated September 24, 2013.

The petitioner's organizational chart indicates that the proffered position oversees the Scheduler, the Installers, and the Fabrication Manager, and that the Fabrication Manager oversees the Fabricators, the Warehouse Manager, and the CNC (Computer Numerical Control) Operators.

The companies that provided letters are [REDACTED] and [REDACTED]

[REDACTED] is an architecture, design, planning, and construction management firm. The letter is from [REDACTED] who states that his company has worked for 27 years on numerous projects with companies similar to the petitioner, and that they always use a construction coordinator/manager with a formal degree in construction management and related disciplines. He further stated: It is common practice in the industry to hire only knowledgeable individuals with University Degrees, for the position of Construction Coordinator/Manager.

[REDACTED] is a general contractor. Its letter states:

We have been working on numerous projects for companies similar to [the petitioner], and they all have used the services of Construction Coordinators/Managers, who have formal degree in Construction Management of a related discipline [sic]. It is a common practice in the industry to hire only individuals with university degree [sic] for the position of Construction Coordinator/Manager.

The letter from [redacted] states:

[redacted] provides custom stonework on commercial buildings and uses [the petitioner] as a fabricator.

[redacted] has been in the industry since 1924 and has routinely employed construction/coordinator manager [sic] for our projects. For such a position, we have always required that our candidates hold at least a Bachelor's degree in Construction Management, Architecture or a related discipline.

The three letters pertinent to other employees of the petitioner are from the petitioner's president. One letter pertains to [redacted] one pertains to [redacted] and the third pertains to [redacted]

The petitioner's president stated that [redacted] worked for the petitioner as a construction project manager from February 1999 until he died in December of 2010. He further stated that Mr. [redacted] had a bachelor's degree in construction project management.

The petitioner's president stated that [redacted] worked as a construction manager from October 2010 to November 2011, when he was fired. He further stated that Mr. [redacted] had a bachelor's degree in architecture.

The petitioner's president stated that [redacted] has worked for the petitioner since February 2011, is currently an Estimator Manager, and has also worked as a Construction Coordinator since November 2011. The petitioner's president stated that Ms. [redacted] has a degree in engineering from the [redacted]

The description of the proffered position states:

Job Description

Summary:

Budget Analysis, construction paperwork, contracts and takes offs approval: 25%

Strategic planning, construction operations design and data analysis: 20%

On site activities, architectural-aesthetic solutions and marble/stone selection: 35%

Detailed Architectural Drafting, 3d visualizations, interaction with architects, clients & business development: 20%

Duties:

- ✓ Schedule the project in logical steps within the budget and time required to meet deadlines; Track and report hours and expenses on a weekly basis.
- ✓ Confer with supervisory personnel, clients, contractors, or design professionals to discuss and resolve matters, such as work procedures, complaints, or construction problems.
- ✓ Negotiate revisions, changes and additions to contractual agreements with architects, consultants, clients, suppliers and subcontractors.
- ✓ Perform administrative activities such as maintaining information files and processing paperwork and preparation of contract documents and other required construction documents, including drawings and specifications.
- ✓ Review deliverables prepared by team before passing to client; Provide [sic] consultation and expert advice to management or other groups on technical, systems-, or process-related topics or recommend alterations in construction or specifications to clients.
- ✓ Develop and provide performance reports to architects, engineers, contractors, and sub-contractors; Responsible for project communication, including status reporting and risk management and value engineering regarding the design and implementation of the marble supporting framework.
- ✓ Prepare and submit budget estimates, progress reports or cost tracking reports; interpret and explain plans and contract terms to administrative staff, workers and clients, representing the company.
- ✓ Ensure that the goals and objectives of the project are accomplished within prescribed time frames and funding parameters both personally and through delegates; Plan, organize, or direct activities concerned with the construction or maintenance of marble constructions and supporting framework; Maintain records of all changes such as change orders and/or purchase orders and perform related due diligence.

- ✓ Take actions to deal with the results of delays or emergencies at construction site and inspect or review projects to monitor compliance with the company's safety and quality policies and investigate damage at constructions sites, to ensure that proper procedures are being carried out; inspect the progress of the work to ensure workmanship conforms to specifications, contract requirements and the construction schedule.
- ✓ Involved in strategic planning, resource and human resources allocation.
- ✓ Apply knowledge of design techniques, tools, and principles to review precision technical marble installation plans and high detailed drawings to support architecturally demanding projects and ensure responsible design in order to achieve on time quality results and ensure customer satisfaction.
- ✓ Prepare proposals as 3d visualizations to help business development and "add-on" sales opportunities as they relate to a specific project using drafting, modeling and rendering computer hardware and software used in the practice of interior design.
- ✓ Use computers and industry software to enter data and process information related to the company's operations, evaluate construction methods, outline critical activities, determine cost-effectiveness of the firm's construction activities, apply construction management cost control techniques, budget forecasting, sensitivity and scenario analysis to determine how changes in conditions on field, operations, and the clients' needs will affect the firm[']s cash inflows.
- ✓ Analyze past information regarding the company's projects of similar budget and complexity to evaluate performance, increase operational efficiency and identify the cause of delays' Check quantity take-off in demanding projects using a computer package.

That job description also states: [The petitioner] requires that [the person in the proffered position] hold at least a bachelor's degree in Construction Management, Architecture, Engineering, or a related discipline."

In her September 24, 2013 letter, counsel stated that only the three people for whom letters were provided have performed the duties of the proffered position for the petitioner. Counsel provided no basis for that statement and we observe that it is not supported by the evidence.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also stated that the knowledge required by the proffered position can only be acquired through the attainment of a bachelor's degree in Construction Management, Architecture, Engineering, or its equivalent.

The director denied the petition on December 23, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, the petitioner provided the résumé of its sales manager and a letter, dated February 20, 2014, from the petitioner's president. The petitioner's president did not indicate any relevance of the sales manager's résumé except to say that, in the proffered position, the beneficiary would "work alongside" the sales manager.

In her letter, the petitioner's president cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* for the proposition that:

It is increasingly important for construction managers to have a bachelor's degree in construction science, construction management, architecture, or engineering. As construction processes become more complex, employers are placing greater importance on specialized education.

As to the educational requirements of the proffered position in the instant case, the petitioner's president amended the petitioner's requirements stating that the proffered position "requires attainment of a bachelor's or higher degree in the specific specialty of Architecture or the related fields of Construction Management or Civil Engineering."

IV. SPECIALTY OCCUPATION ANALYSIS

As a preliminary matter, we observe that the petitioner has never asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. That is, in her March 30, 2013 letter, the petitioner's president stated that the proffered position requires at least a bachelor's degree in construction management, architecture, or engineering, or the equivalent. The description of the proffered position that was submitted in response to the RFE reiterated that requirement.

In the letter she submitted on appeal, the petitioner's president stated that the proffered position requires a minimum of a bachelor's degree in architecture, construction management, or *civil* engineering.

Both the petitioner's president's March 30, 2013 letter and the job description submitted in response to the RFE indicate that the educational requirement of the proffered position may be satisfied by an otherwise unspecified bachelor's degree in engineering.

The requirement of a bachelor's degree in engineering 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 to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of degrees with generalized titles, such as engineering,² 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). That a degree with such a generalized title is included in the array of degrees that would satisfy the educational requirement of the proffered position indicates that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner's president's March 30, 2013 letter and the job description submitted in response to the RFE both indicate that the educational requirement of the proffered position may be satisfied by an otherwise unspecified bachelor's degree in engineering. Both of those statements indicate that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not qualify as a specialty occupation position.

The February 20, 2014 letter from the petitioner's president, submitted on appeal, amended the educational requirement of the proffered position to indicate that it requires a minimum of a bachelor's degree in architecture, construction management, or *civil* engineering.

On appeal, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, the associated job responsibilities, or the requirements of the proffered position. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS

² The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, besides a degree in electrical engineering, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to computer science or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The analysis of the specialty occupation issue in this matter will be undertaken pursuant to the educational requirement expressed, in the petitioner's president's March 30, 2013 letter, submitted with the visa petition, that is, that the proffered position requires a minimum of a bachelor's degree in construction management, architecture, or engineering, or its equivalent.

The petitioner indicated in the letter filed with the visa petition and with the job description submitted in response to the RFE that an otherwise unspecified bachelor's degree in engineering would be a sufficient educational preparation for the proffered position. This makes clear that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and is tantamount, therefore, to an admission that the proffered position does not qualify as a specialty occupation position. The visa petition must be denied for this reason alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn 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 we consider when determining these criteria include: whether the *Handbook* on which we routinely rely 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)). We recognize the *Handbook*, cited by the petitioner's president, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³ The *Handbook* describes the occupation of "Construction Managers" as follows:

What Construction Managers Do

Construction managers plan, coordinate, budget, and supervise construction projects from development to completion.

Duties

Construction managers typically do the following:

- Prepare cost estimates, budgets, and work timetables

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

- Interpret and explain contracts and technical information to other professionals
- Report work progress and budget matters to clients
- Collaborate with architects, engineers, and other construction specialists
- Select, schedule, and coordinate subcontractor activities
- Respond to work delays, emergencies, and other problems
- Comply with legal requirements, building and safety codes, and other regulations

Construction managers, often called *general contractors* or *project managers*, coordinate and supervise a wide variety of projects, including the building of all types of public, residential, commercial, and industrial structures, as well as roads, memorials, and bridges. Although most managers oversee construction projects from start to finish, some consult with developers and builders on construction related issues.

Construction managers oversee specialized contractors and other personnel. They schedule and coordinate all construction processes so that projects meet design specifications. They ensure that projects are completed on time and within budget. Some managers may be responsible for several projects at once—for example, the construction of multiple apartment buildings.

Construction managers work closely with other building specialists, such as architects, civil engineers, and a variety of trade workers, including stonemasons, electricians, and carpenters. Projects may require specialists in everything from structural steel and painting to landscaping, paving roads, and excavating sites. Depending on the project, construction managers may interact with lawyers and local government officials. For example, when working on city-owned property or municipal buildings, managers sometimes confer with city inspectors to ensure that all regulations are met.

For projects too large to be managed by one person, such as office buildings and industrial complexes, a top-level construction manager hires other construction managers to be in charge of different aspects of the project. For example, each construction manager would oversee a specific phase of the project, such as structural foundation, plumbing, or electrical work, and choose subcontractors to complete it. The top-level construction manager would then collaborate and coordinate with the other construction managers.

To maximize efficiency and productivity, construction managers often perform the tasks of a cost estimator. They use specialized cost-estimating and planning software

to allocate time and money in order to complete their projects. Many managers also use software to plan the best way to get materials to the building site.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Construction Managers," <http://www.bls.gov/ooh/management/construction-managers.htm#tab-2> (last visited Aug. 26, 2014).

The *Handbook* speaks of construction managers supervising the building of public, residential, commercial, and industrial structures, roads, memorials, and bridges. The record contains no indication that the petitioner engages in any such projects or any projects of similar complexity. In fact, the nature of the petitioner's construction projects is not described at all, except that they involve stone. The nature of the petitioner's business has not been described in such detail that we are able to determine whether the proffered position actually has a position for a construction manager. Further, whether or not the proffered position is a construction manager position, we are unable to determine the degree of complexity, specialization, or uniqueness inherent to the duties of the proffered position as they would be performed in the context of the petitioner's operations.

The petitioner indicates that it imports, sells, and installs stone for residential and commercial construction. The nature and complexity of its construction projects, however, is unclear. Whether the petitioner constructs stone dwellings or whether it merely installs granite and marble countertops is unstated. The petitioner has, therefore, failed to establish the substantive nature of the work to be performed.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Further, even if the proffered position were established as being that of a construction manager, a review of the *Handbook* does not indicate that, as a category, such a position qualifies as a specialty occupation in that the *Handbook* does not state a normal minimum requirement of a U.S. bachelor's or higher degree in a specific specialty or its equivalent for entry into the occupation. Although the *Handbook* states that larger firms increasingly prefer a bachelor's degree in a related subject, it makes explicit that some construction manager positions may be filled by people with a two-year degree and construction experience or, in some cases, with only a high school diploma.

V. CONCLUSION

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.

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.