

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

DATE: **MAR 06 2014** OFFICE: CALIFORNIA SERVICE CENTER [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,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a "TFT-LCD & Related Product Distribution/Modification" firm. In order to employ the beneficiary in what it designates as a supply chain manager position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

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

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

## II. THE LAW

To meet the petitioner's burden of proof with regard to the proffered position's classification as an H-1B specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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 Supply Chain Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-9199, Managers, All Other 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, counsel submitted evidence that the beneficiary received a bachelor's degree in supply chain management from [REDACTED]. Counsel also submitted a summary report pertinent to Supply Chain Managers taken from the O\*NET Internet site.

In a March 27, 2013 letter; that accompanied the visa petition, counsel provided the following description of the duties of the proffered position:

- Use quality metrics in the production process to ensure that raw materials meet customer specifications (20%);

- Monitors the productivity of workers and machines to ensure that the organization meets production schedules (20%);
- Oversees inventory control procedures in an organization to ensure that correct quantities are recorded in the inventory database (15%);
- Oversees the purchasing of raw materials to use in production (15%);
- Oversees the stocking and distributing of materials to the production departments that use the materials (15%); and,
- Finding the best shipping methods and scheduling shipments for on-time delivery of product (15%).

Counsel did not state that the proffered position requires any college degree or equivalent.

On April 17, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted the following: (1) a chart of the positions in the petitioner's organization and the names of the individuals who hold those positions; (2) an evaluation, dated May 23, 2013, of the proffered position; and (3) a rewritten description of the duties of the proffered position; and (4) counsel's own letter, dated June 19, 2013.

The May 23, 2013 evaluation of the proffered position was prepared by a professor emeritus of management and information systems in the [REDACTED] University. The evaluation reiterates the duty description provided by counsel and asserts that the performance of those duties requires a bachelor's degree in supply chain management.

The rewritten description of the duties of the proffered position adds no substantive duties to the description previously provided or any additional detail pertinent to the level of difficulty of performing those duties.

In his June 19, 2013 letter, counsel cited the evaluation and the content of O\*NET OnLine as evidence that the proffered position qualifies as a specialty occupation position.

The director denied the petition on July 2, 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). In that decision, the director analyzed the proffered position

as a position described in the "Top Executives" chapter of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel asserted that the director erred in analyzing the proffered position as a top executive position. Counsel stated that the evidence provided satisfactorily demonstrates that the proffered position is a specialty occupation position.

#### IV. ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the 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 claimed in the LCA that the proffered position corresponds to SOC code and title 11-9199, Managers, All Other from O\*NET, but that the proffered position is actually a supply chain manager position. Reference to the O\*NET Summary Report pertinent to Supply Chain Managers shows that the duties attributed to the proffered position are more specifically and accurately described in that report than at SOC 11-9199, Managers, All Other. The AAO finds that the proffered position is a Supply Chain Manager position, rather than a Managers, All Other position.<sup>1</sup> O\*NET places Supply Chain Managers in Job Zone Four. Counsel stated:

The Education and Training Code set for the position of Supply Chain Management by the Department of Labor (DOL) is job zone "4", requiring considerable preparation, which means a bachelor's is minimum requirement for entry into the position.

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<sup>1</sup> As will be discussed later in this decision, this factor precludes a finding that the LCA corresponds to the petition, and further precludes approval of this petition.

Counsel is correct that the designation of Job Zone Four indicates that a position requires considerable preparation. It does not, however, indicate that entry into such positions normally requires any bachelor's degree. As is stated in the summary report provided, a designation of Job Zone Four indicates that "Most of [the occupations in this category] require a four-year bachelor's degree, *but some do not.*" [Emphasis supplied.]<sup>2</sup>

The first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of supply chain manager positions require at least a bachelor's degree in accounting or a related field, it could be said that "most" supply chain manager positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position offered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

Further, even as to those occupations in Job Zone Four that may require a bachelor's degree for entry, O\*NET gives no indication that they require a degree in any specific specialty or the equivalent.<sup>3</sup> The inclusion of the supply chain manager positions in Job Zone Four is not indicative of their qualifying as specialty occupation positions by virtue of normally requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> The *Handbook* does not have a chapter entitled, "Supply Chain Managers." However, the *Handbook* describes the occupation of "Logisticians" as follows:

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<sup>2</sup> Citing the O\*NET Summary Report for Supply Chain Managers, counsel argued that almost 93% of employees in supply chain manager positions in the U.S. have bachelor's degrees or higher degrees. The AAO disagrees. The O\*NET Summary Report does not state that 93% of Supply Chain Managers in the U.S. have a minimum of a bachelor's degree. Rather, the 93% statistic from the O\*NET Summary Report refers only to the response of people to a single survey.

<sup>3</sup> See the O\*NET Help Center, at [www.online.onetcenter.org/help/online/zones](http://www.online.onetcenter.org/help/online/zones), for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree.

<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

## What Logisticians Do

Logisticians analyze and coordinate an organization's supply chain—the system that moves a product from supplier to consumer. They manage the entire life cycle of a product, which includes how a product is acquired, distributed, allocated, and delivered.

## Duties

Logisticians typically do the following:

- Direct the allocation of materials, supplies, and finished products
- Develop business relationships with suppliers and customers
- Work to understand customers' needs and how to meet them
- Design strategies to minimize the cost or time required to move goods
- Review the success of logistical functions and identify areas for improvement
- Propose improvements to management and customers

Logisticians oversee activities that include purchasing, transportation, inventory, and warehousing. They may direct the movement of a range of goods, people, or supplies, from common consumer goods to military supplies and personnel.

Logisticians use sophisticated software systems to plan and track the movement of goods. They operate software programs tailored specifically to manage logistical functions, such as procurement, inventory management, and other supply chain planning and management systems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-2> (last visited Feb. 12, 2014).

The duties of the proffered position as described by counsel might be analyzed as including duties of various occupations, such as purchasing manager, industrial production manager, and material recording clerk. However, the AAO observes that the *Handbook* states, "Logisticians oversee activities that include purchasing, transportation, inventory, and warehousing." The duties counsel attributes to the proffered position are consistent with the duties of logisticians as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a logistician position as described in the *Handbook*.<sup>5</sup>

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<sup>5</sup> The AAO disagrees with the director's characterization of the proffered position as a Top Executive position as that occupational category is described in the *Handbook*.

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

### **How to Become a Logistician**

Although an associate's degree may be sufficient for some logistician jobs, a bachelor's degree is typically required for most positions. Work experience in a related field is helpful for jobseekers.

### **Education**

Logisticians may qualify for positions with an associate's degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, industrial engineering, process engineering, or supply chain management.

Bachelor's degree programs often include coursework in operations and database management, decisionmaking, and system dynamics. In addition, most programs offer courses that train students on software and technologies commonly used by logisticians, such as radio-frequency identification (RFID).

### **Licenses, Certifications, and Registrations**

Logisticians can obtain certification through the American Society of Transportation and Logistics (ASTL) or the International Society of Logistics (SOLE). The certification offered by each of these organizations typically requires a combination of education, experience, and passing an exam. Although not required, certification can demonstrate professional competence and a broad knowledge of logistics.

### **Other Experience**

Prospective logisticians can benefit from previous work experience in a field related to logistics or business. Because military operations require a large amount of logistics, some logisticians gain work experience while serving in the military. Some firms allow applicants to substitute several years of work experience for a degree.

### **Important Qualities**

**Communication skills.** Logisticians need strong communication skills in order to collaborate with colleagues and do business with suppliers and customers.

**Critical-thinking skills.** Logisticians must develop, adjust, and successfully carry out logistical plans, and they often must find ways to cut costs and improve efficiency.

**Organizational skills.** Logisticians must be able to perform several tasks at one time, keep detailed records, and simultaneously manage several projects in a fast-paced environment.

**Problem-solving skills.** Logisticians must handle unforeseen issues, such as delivery problems, and adjust plans as needed to resolve the issues.

*Id.* at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Feb. 12, 2014).

The *Handbook* makes clear that logistician positions do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. First, it states that some logistician positions are available to people with only an associate's degree. Second, it states that, even among those logistician positions that may require a bachelor's degree, an otherwise undifferentiated degree in business may suffice.

A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The petitioner did submit the May 23, 2013 evaluation described above, in which the evaluator stated that the performance of the duties described by counsel requires a bachelor's degree in supply chain management. The evaluator did not reconcile his statement with the information in the *Handbook*, which indicates that logistician duties can be performed by people with a variety of degrees, including associate's degrees and degrees that are not in any specific specialty. The evaluator provided no basis for distinguishing the proffered position as requiring a minimum of a bachelor's degree in a specific specialty or its equivalent, notwithstanding that the *Handbook* indicates that some logistician positions may not.

Further, the evaluation submitted in response to the RFE does not list any reference materials on which the evaluator relied as a basis for his conclusion pertinent to the educational requirements of the proffered position. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment.

Additionally, the record contains no indication that the evaluator has any familiarity with the petitioner's operations. As such, he has not been shown to have a sufficient basis for asserting that any particular level of education is required to perform, within the context of those operations, the duties attributed to the proffered position.

For instance, using quality metrics in the production process to ensure that raw materials meet customer specifications cannot be shown to require a minimum of a bachelor's degree in a specific

specialty or its equivalent without reference to the specific measurements required and why they would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, monitoring the productivity of workers and machines to ensure that the petitioner's business meets production schedules cannot be demonstrated to require a minimum of a bachelor's degree in a specific specialty or its equivalent absent reference to the intellectual rigor demanded by that duty in the context of the petitioner's operations. Monitoring productivity may or may not be require a minimum of a bachelor's degree in a specific specialty or its equivalent. The evaluator has no apparent basis for a determination that, in the context of the petitioner's business operations, monitoring productivity would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Likewise, overseeing inventory control procedures, purchasing raw materials, and stocking and distribution of those materials, absent reference to the factors that may render those duties more demanding than the duties of other logistician positions, have not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Lastly, determining the most appropriate shipping method for particular shipments, absent factors rendering that duty unusually challenging, do not appear to require a minimum of a bachelor's degree in a specific specialty or its equivalent.

For all of the above reasons, the AAO accords very little probative weight to the evaluation of the proffered position. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS 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).

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of materials, acquisition and shipping, productivity, and inventory control, 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, counsel's arguments with regard to the North America Free Trade Agreement (NAFTA) and 8 C.F.R. § 214.6 are not persuasive. The entry of Canadian and Mexican nationals pursuant to NAFTA is governed by section 214(e) of the Act and 8 C.F.R. § 214.6, and those provisions are not relevant here.

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)(I).

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 (1) to the petitioner's industry; and (2) for positions in that industry that are both: (a) parallel to the proffered position; and (b) located in organizations that are similar to the petitioner.

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

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

In the May 23, 2013 evaluation described above the evaluator stated that a requirement of a degree in supply chain management is a common standard for parallel positions among similar organizations. However, as was stated above, the evaluator evinced no familiarity with the petitioner's operations. As such, he has not demonstrated that he can determine what positions are parallel to the proffered position. Further, the evaluator cited no authority for his conclusions. For both reasons, the evaluation provided is accorded little evidentiary weight for the proposition that a requirement of a minimum of a bachelor's degree in supply chain management or its equivalent is common to positions parallel to the proffered position in the petitioner's industry, and that are located in organizations similar to the petitioner.

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

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or

perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

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. Although the petitioner has demonstrated that degrees in supply chain management exist, and that the beneficiary has one, the petitioner did not demonstrate that the proffered position in the instant case is so complex or unique that such a degree or the equivalent would be indispensable. While 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. While the evaluation submitted by the petitioner is acknowledged, as discussed above it has been accorded little evidentiary weight.

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 associate's degrees and bachelor's 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 record contains no evidence that the petitioner has ever previously hired anyone to fill the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).<sup>6</sup>

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<sup>6</sup> 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

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, the evaluation provided asserts that the duties of the proffered position "are complex and specialized such that only someone with a Bachelor of Science in Supply Chain Management can perform the job requirements of the position. However, for reasons explained in detail above, that evaluation has been accorded very little evidentiary weight.

Furthermore, relative specialization and complexity have not been sufficiently developed as aspects of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of logistician positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Moreover, the *Handbook* does not indicate that a bachelor's degree in a specific specialty, or the equivalent, is a standard, minimum requirement to perform the duties of typical logistician positions (to the contrary, it indicates precisely the opposite), and the evidence of record does not indicate any factors that would elevate the duties proposed for the beneficiary above those discussed in the *Handbook*.

For the reasons discussed above, 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.

#### V. ADDITIONAL BASIS FOR DENIAL

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

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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").

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

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

[Emphasis supplied.]

The LCA provided with the instant visa petition is certified for a position with SOC code and title 11-9199 Managers, All Other. However, the job duties attributed to the proffered position make clear that the proffered position corresponds to the SOC code and title 11-9199.04, Supply Chain Managers, as counsel stated. The record contains no explanation for the petitioner's submission of an LCA certified for a position falling under the occupational category of "Managers, All Other" rather than under the occupational category of "Supply Chain Managers."

The *Prevailing Wage Determination Policy Guidance*<sup>7</sup> published by DOL specifies that when determining the proper occupational classification, a determination should be made by "consider[ing] the particulars of the employer's job offer and compar[ing] the full description to the tasks, knowledge, and work activities generally associated with an SOC occupation to insure the most relevant occupational code has been selected." In this case, the petitioner has not provided any documentation to substantiate its apparently erroneous claim that the position's primary and essential tasks, knowledge, and work activities are those generally associated with the occupational category of "Managers, All Other," rather than "Supply Chain Managers," as depicted by O\*Net. As such, it has not established that this LCA actually corresponds to this petition, and the petition must be denied on this basis alone. Thus, even if it were determined that the petitioner had overcome all of the director's grounds for denying this petition (which it has not), the petition could still not be approved.

## VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D.

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<sup>7</sup> Available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (last visited Feb. 19, 2013).

Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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

**ORDER:** The appeal is dismissed.