



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **NOV 13 2014** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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 itself as a convenience store with four employees, established in 2010. In order to employ the beneficiary in what it designates as a part-time "General 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).

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.<sup>1</sup>

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

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<sup>1</sup> A Form G-28 Notice of Entry of Appearance was submitted with the Form I-129 visa petition, indicating that the petitioner was then represented by counsel. The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position.

The Form I-290B appeal and the appeal brief, both of which were submitted on March 21, 2014, were both signed by the petitioner's president. The record contains no indication that counsel participated in the instant appeal. Further, in accordance with the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a) as well as the instructions to the Form I-290B, a "new [Form G-28] must be filed with an appeal filed with the Administrative Appeals Office." This regulation applies to all appeals filed on or after March 4, 2010. Thus, if the petitioner were represented by counsel on appeal, it would have been obliged to submit a new Form G-28. As no new Form G-28 was submitted on appeal, the petitioner will be treated as self-represented on appeal.

- (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 "General Manager" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-1011, Chief Executives 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 pharmacy from the [REDACTED] in India. The record contains no evaluation of the beneficiary's foreign degree in terms of its equivalence to any U.S. degree. Counsel also submitted a copy of the beneficiary's diploma from the [REDACTED] in Ohio awarding him a master's degree in business administration. The record contains no indication that the beneficiary's master's degree in business administration is in any specific concentration or specialization.

With the visa petition, counsel submitted (1) a description of the petitioner and the proffered position, and (2) an undated letter from the petitioner's president.

The description of the petitioner and the proffered position states, *inter alia*:

### **Job Description**

The general manager's responsibilities include administration and supervision, managing public relations, marketing, profitability and sales, service, reporting, capital requirements, and other duties as assigned by the organization.

The general manager will maintain a positive attitude that promotes the team work within the cooperation and a favorable image of the organization.

### **Administration and supervision:**

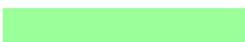
Administration and Supervision involves developing and communicating organization goals and results to personnel; selecting, supervising, and supporting the employee team; and upholding organization policies.

#### Develop and communicate organization goals and results to all personnel

- Develop and review budget and goals with staff within 60 days of fiscal year end.
- Hold quarterly meeting to review progress as compared to budget and staff.
- Hold regular employee one-to-one and team meetings.
- If hired, General Manager must have the ability to comprehend directives from business owners and to then translate them to staff so that everyone is on the same page.

#### Select, administrate, supervise, and support the employee team

- Create and maintain an atmosphere in which employees willingly produce at maximum capacity.
- Supervise maintenance of preferred staffing levels.
- Assign employee responsibilities and maintain job descriptions.
- Develop performance standards.
- Supervise ongoing employee training.
- Complete and administer a yearly merit review with all direct reports.
- Develop and maintain a salary administration program and pay competitive wages based on the performance.
- Plan for and provide opportunities for employee advancement and development.



- Continually build upon personal skills and knowledge.
- Handle new employee hire and orientation.
- If hired, delegate administrative tasks, such as accounting, paperwork and payroll, while giving the freedom to deal with other issues. In doing so, GM ensures administrative efficiency, proper procedure, implementation of policies and employee morale.

#### Uphold organization policies

- Enforce and uphold all organization policies.
- Ensure organization facilities and equipment meets all federal, state and OSHA regulations.
- Receive no OSHA, state, or federal citations.
- Ensure no customer is uninformed of safe product handling.
- Supervise maintenance and housekeeping of all organization facilities and equipment.

#### **Public Relations**

Public relation[s] involves building and maintaining positive relationships with organization members like clients, vendors, and other organizations and the business community.

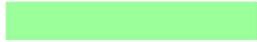
- Personally and officially represent organization by participating in the community events and charity functions.
- Develop member confidence in and understanding of the organization culture.
- Adhere to and promote all department and organization policy and decisions.
- Promote participation of member customers in the organization.
- Build a positive organization image.

#### **Marketing**

Marketing involves developing and directing marketing activities.

- Direct and manage various promotions.
- Prepare and review marketing plans with employees on a regular basis.
- Review individual department marketing plans annually.
- Review individual department sales and promotion programs annually.
- Plan marketing activities and review results and expectations with employees.

#### **Profitability and Sales:**



Profitability and sales involves [sic] establishing and achieving sales and profitability goals and increasing the organization's market share through regular sales efforts.

Establish and achieve profitability goals

- Supervise performance of purchasing functions to insure [sic] greatest value, while taking advantage of all discounts.
- Supervise pricing and inventory policies designed to price competitively and achieve desired gross margin.
- Establish profit expectations.
- Review financial statements, sales and activity reports, and other performance data to measure productivity and goal achievement and to determine areas needing cost reduction and program improvement.

Establish and achieve sales goals

- Establish sales goals and develop plans to achieve them.
- Maintain inventories at levels to assure service with a minimum of delivery delays, yet maintain inventory turn goals.

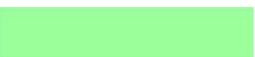
Increase market share through regular sales efforts

- Supervise sales staff and sales efforts.
- Review daily reports.
- Review sales results with staff regularly.
- Ensure employees have the knowledge and information needed to achieve market share growth.

**Service Vision:**

Service involves providing and promoting the service necessary to meet the organization's goals and needs.

- Ensure all customers receive courteous and efficient service from all employees.
- Handle claims and complaints promptly.
- Promote outstanding customer service.
- Encourage other employees and subordinates with various rewards and appreciation in response to top class service.
- Ensure to [sic] demonstrate ethical behavior to team and expect same from team.



**Reporting:**

Reporting involves keeping the board informed of the organization's status and activities, and assisting with board activities.

- Submit monthly reports, general information, and recommendations to top executives.
- Assist the business owners in formulating policies and provide all facts needed for board decision making.
- Make policy recommendations and carry out board policies.
- Arrange for board review of insurance, banking, auditing, and other board-approved relationships.
- Help plan the annual meeting and report to organization members.

**Capital Requirements:**

Capital requirements involve determining the organization's fixed asset needs and presenting a fixed asset budget to the board.

- Present annual budget to the board.
- Obtain authorized approval from top executives before purchasing any fixed assets.
- Obtain approval from the board of directors prior to the sale of any fixed assets.
- GM oversees and manages projects to ensure that they are completed in accordance with project deadlines and budgets. The schedule and plan projects, then assign responsibilities to managers, supervisors and employees. General Managers are kept aware of any problems that arise during projects to ensure that they are resolved.

That description of the petitioner and the proffered position does not state any educational requirement of the proffered position.

The petitioner's president's undated letter submitted with the petition states both that the petitioner has offered the beneficiary full-time employment and that the proffered position is part time. The record contains no explanation of this discrepancy. That letter also states that the proffered position requires a minimum of a bachelor's degree, but not that the requisite degree must be in any specific specialty or even in any range of subjects.

On December 20, 2013, the service center issued an RFE in this matter. The service center requested 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) a declaration, dated January 31, 2014, from the petitioner's president; (2) an additional description of the petitioner and the proffered position; and (3) another undated letter from the petitioner's president.

The January 31, 2014 declaration of the petitioner's president states that the petitioner has never previously hired anyone to work in the proffered position and that the petitioner is considering expanding by acquiring additional convenience stores and other business types.

The additional description of the petitioner and the proffered position does not state any educational requirement for the proffered position. It contains a duty description that is substantially similar to the duty description previously provided, except that it includes duties pertinent to acquiring additional businesses. Further, the petitioner's president's second undated letter states:

The most important job duty will be to make informed investment decisions by gathering and analyzing data before acquiring new business and adding in the existing business to give it a new direction.

We observe that the original duty description was limited to duties related to managing a convenience store. The RFE asked for more detail pertinent to those duties, which did not include acquiring and operating other businesses. The RFE was not an invitation to ascribe additional duties to the proffered position. After submitting the visa petition, 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, or the associated job responsibilities. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The additional duties attributed to the proffered position in response to the RFE will not be considered.

The director denied the petition on February 18, 2014, 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 submitted (1) four vacancy announcements, and (2) a brief signed by the petitioner's president.

In his brief, the petitioner's president reiterated that the most important duty of the proffered position is to make informed business decisions pertinent to acquiring new businesses. We reiterate that this duty, added to the duties of the proffered position in response to the RFE, will not be considered. The petitioner's president also cited the O\*NET Summary Report for Chief Executives for the proposition that the proffered position is included in Job Zone Five, and the Job Zone discussion in

Foreign Labor Certification Data Center's Online Wage Library (FLC OWL) for the proposition that it therefore requires a bachelor's degree.

#### IV. ANALYSIS

Initially, we note that the petitioner has never effectively alleged that the proffered position qualifies as a specialty occupation, because it has never alleged that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Specifically, the petitioner's president's first undated letter, submitted with the visa petition, states that the proffered position requires a minimum of a bachelor's degree, but not that the requisite degree must be in any specific specialty or even in any range of subjects. No other evidence submitted with the visa petition states a requirement of a bachelor's degree in a specific specialty for the proffered position. Further, none of the evidence submitted in response to the RFE contains any educational requirement, nor does the evidence submitted on appeal. The petitioner has never stated that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or identified, if it does, what that specific specialty is.

However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that also require dismissal of the appeal. We turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I) 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 U.S. Department of Labor's *Occupational Outlook Handbook (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 will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>2</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-1101, Chief Executives from O\*NET. We reviewed the chapter of the *Handbook* (2014-2015

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<sup>2</sup> 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.

edition) entitled "Top Executives," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of top executives:

### **What Top Executives Do**

Top executives devise strategies and policies to ensure that an organization meets its goals. They plan, direct, and coordinate operational activities of companies and 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, however, top executives typically focus more on formulating policies and strategic planning, while general and operations managers direct day-to-day operations.

The following are examples of types of top executives:

*Chief executive officers (CEOs)*, who are also known by titles such as *executive director*, *president*, and *vice president*, provide overall direction for companies and organizations. CEOs manage company operations, formulate policies, and ensure goals are met. They collaborate with and direct the work of other top executives and typically report to a board of directors.

Companies may also have chief officers who lead various departments or focus on specific areas of work:

- **Chief financial officers (CFOs)** are accountable for the accuracy of a company's or organization's financial reporting, especially among publicly traded companies. They direct the organization's financial goals, objectives, and budgets. For example, they may oversee the investment of funds and manage associated risks.
- **Chief information officers (CIOs)** are responsible for the overall technological direction of an organization, which includes managing information technology and computer systems. They organize and supervise information-technology-related workers, projects, and policies.
- **Chief operating officers (COOs)** oversee other executives who direct the activities of various departments, such as human resources and sales. They also carry out the organization's guidelines on a day-to-day basis.
- **Chief sustainability officers** oversee a corporation's environmental programs. For instance, they may manage programs and policies to ensure that the organization complies with environmental or other government regulations.

**Mayors**, along with **governors**, **city managers**, and **county administrators**, are chief executive officers of governments. They typically oversee budgets, programs, and the use of resources. Mayors and governors must be elected to office, whereas managers and administrators are typically appointed.

**School superintendents** and **college or university presidents** are chief executive officers of school districts and postsecondary schools. They manage issues such as student achievement, budgets and resources, general operations, and relations with government agencies and other stakeholders.

**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 work, and ensure that 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*, 2014-15 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited Nov. 12, 2014).

The duties attributed to the proffered position in the job description provided with the visa petition are consistent with the duties of Top Executives, and, more specifically, General and Operations Managers, as described in the *Handbook*. On the balance, we find that the proffered position is a

General and Operations Manager position as described in the Top Executives chapter of the *Handbook*.

In the appeal brief, as was noted above, the petitioner's president cited the O\*NET Summary Report for Chief Executives for the proposition that the proffered position is included in Job Zone Five, and the Job Zone discussion in Foreign Labor Certification Data Center's Online Wage Library (FLC OWL) for the proposition that it therefore qualifies as a specialty occupation position.

The O\*NET Summary Report for "Chief Executives" does, in fact, assign the occupational category a Job Zone Five rating. As to Job Zone Five, O\*NET states, "A bachelor's degree is the minimum formal education required for these occupations." It does not, however, state that such positions require a bachelor's degree *in a specific specialty*. The inclusion of the proffered position in Job Zone Five is insufficient, therefore, to demonstrate that the proffered position qualifies as a specialty occupation position.

The *Handbook* states the following with regard to the educational requirements of Top Executive positions, including General and Operations Manager positions:

### **How to Become a Top Executive**

Although education and training requirements 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. 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). College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration.

### **Work Experience in a Related Occupation**

Many top executives advance within their own firm, moving up from lower level managerial or supervisory positions. However, other companies may prefer to hire qualified candidates from outside their organization. Top executives that are promoted from lower level positions may be able to substitute experience for education to move up in the company. For example, in industries such as retail trade or transportation, workers without a college degree may work their way up to higher levels within the company to become executives or general managers.

Chief executives typically need extensive managerial experience. Executives are also expected to have experience in the organization's area of specialty. Most general and operations managers hired from outside an organization need lower level supervisory or management experience in a related field.

Some general managers advance to higher level managerial or executive positions. Company training programs, executive development programs, and certification can often benefit managers or executives hoping to advance. Chief executive officers often become a member of the board of directors.

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

Top executives may complete a certification program through the [REDACTED] to earn the Certified Manager (CM) credential. To become a CM, candidates must meet education and experience requirements and pass three exams.

Although not mandatory, certification can show management competency and potential leadership skills. Certification can also help those seeking advancement or can give jobseekers a competitive edge.

### **Important Qualities**

**Communication skills.** Top executives must be able to communicate clearly and persuasively. They must effectively discuss issues and negotiate with others, direct subordinates, and explain their policies and decisions to those within and outside the organization.

**Decision-making skills.** Top executives need decision-making skills when setting policies and managing an organization. They must assess different options and choose the best course of action, often daily.

**Leadership skills.** Top executives must be able to lead an organization successfully by coordinating policies, people, and resources.

**Management skills.** Top executives must organize and direct the operations of an organization. For example, they must manage business plans, employees, and budgets.

**Problem-solving skills.** Top executives need problem-solving skills after identifying issues within an organization. They must be able to recognize shortcomings and effectively carry out solutions.

***Time-management skills.*** Top executives must be able to do many tasks at the same time, typically under their own direction, to ensure that their work gets done and that they meet their goals.

*Id.* at <http://www.bls.gov/ooh/management/top-executives.htm#tab-4> (last visited Nov. 12, 2014).

These statements from the *Handbook* do not indicate that a bachelor's degree or the equivalent, in a specific specialty, is normally required for entry into the occupational group within which the proffered position falls. Instead, the *Handbook* finds that these positions generally impose no specific degree requirement on individuals seeking employment. The statement that "many" top executives, which include general and operations managers, have college degrees is not synonymous with the "normal[] minimum requirement" standard imposed by this criterion. To the contrary, such a statement does not even necessarily indicate that a majority of top executives possess such a degree. While the *Handbook* indicates that top management positions may be filled by individuals with a broad range of degrees, its subsequent discussion of the training and education necessary for such employment clearly states that companies also hire executives based on lower-level experience within their own organizations or management experience with another business. Moreover, the *Handbook* does not state that those positions which do require a bachelor's degree or the equivalent require that the degree be in a specific specialty.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in the general and operations manager category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Further, we find 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 management, 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.

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, we find 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 for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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.

As was noted above, the petitioner did provide four vacancy announcements in support of the proposition that similar organizations in the petitioner's industry commonly require a minimum of a bachelor's degree in a specific specialty or its equivalent for positions parallel to the proffered position.

The organization that placed one of those vacancy announcements, however, states that it has 30 locations, and that the position announced is a district manager position. As such, it is not a position parallel to the proffered position and is not with an organization similar to the petitioner.

Three of the vacancy announcements provided state that a degree is "preferred," or "desirable." A preference is not, of course, a minimum requirement. As such, those vacancy announcements do not state a requirement of a college degree.

Further, two of the vacancy announcements provided indicate that a college degree is required or preferred for the position announced, but not that the degree required or preferred should be in any specific specialty, nor even in any listed range of subjects. They obviously do not contain a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

Further still, the other two vacancy announcements state that the "preferred" or "desirable" degree would be in "business" or a "business related field." 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. Those two vacancy announcements do not even state a preference for a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet further, one of those vacancy announcements states that "one or two years related experience and/or training" would be a suitable substitute for the otherwise requisite bachelor's degree. The petitioner has not demonstrated that one or two years of experience is equivalent to a bachelor's degree. For this additional reason, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even further, the petitioner identified the proffered position as a Level I position on the LCA, which is an entry-level position for an employee who has only basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Two of the vacancy announcements provided, however, require a considerable amount of very specific experience. As such, they do not appear to be Level I positions and do not appear to be positions parallel to the proffered position.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from four announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>3</sup>

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions that are (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner, and does not satisfy the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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<sup>3</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position 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.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I chief executive position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of such positions. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some top executive positions do not require such a degree.

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).

We 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 minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>4</sup>

In his January 31, 2014 declaration, the petitioner's president stated that the petitioner has never previously employed anyone in the proffered position.<sup>5</sup> Although the fact that a proffered position is

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<sup>4</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 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").

a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position. The petitioner has not satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we 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 the petitioner's budget and reviewing it with staff, holding quarterly meetings to review progress, creating an atmosphere in which employees willingly produce at maximum capacity, supervising maintenance of preferred staffing levels, etc. contain no indication of a nature so specialized and complex that they require knowledge usually associated with the attainment of 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 top executive positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

For the reasons discussed above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

## V. CONCLUSION

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 Ottende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed. The petition is denied.

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<sup>5</sup> It is noted that the petitioner's president claims that the petitioner has not hired a General Manager in the past but that the petitioner's president's sister-in-law has helped the business and did not get paid for the work performed.