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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: AUG 19 2015

PETITION RECEIPT #:

IN RE: Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO**.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL BACKGROUND

In the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a property management firm, with eight employees, established in In order to employ the beneficiary in what it designates as a financial manager position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director denied the petition, finding that the evidence of record did not establish that the proffered position qualifies as a specialty occupation.[1] On appeal, the petitioner asserts that the Director's basis for denial was erroneous and contends that it satisfied all evidentiary requirements.

The record of proceeding contains: (1) the Form I-129 and supporting documentation; (2) the Director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the Director's letter denying the petition; (5) the Notice of Appeal or Motion (Form I-290B) and supporting documentation; (6) the Notice of Derogatory Information and Intent to Dismiss (NOID); and (7) the petitioner's response to the NOID and supporting documentation. We reviewed the record in its entirety before issuing our decision.[2]

For reasons that will be discussed below, we agree with the Director that the petitioner has not established eligibility for the benefit sought. Accordingly, the Director's decision will not be disturbed. The appeal will be dismissed.

II. SPECIALITY OCCUPATION

The primary issue is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation.

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[1]The director also found that the beneficiary did not maintain nonimmigrant status in the United States. On appeal, the petitioner asserts that the director erred in finding that the beneficiary had not maintained his nonimmigrant status. However, we have no jurisdiction over this matter, as issues surrounding the beneficiary's maintenance of nonimmigrant status are within the sole discretion of the director. Accordingly, we will not address this issue.

[2] We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

A. Legal Framework

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements of a specialty occupation.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 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.

B. The Petitioner and the Proffered Position[3]

In the letter submitted in support of the instant petition, the petitioner describes itself stating:

> We offer clients a complete management service. We specialize in maintaining homes so as to keep the property values high for our investors and owners who may wish to sell in the future. . . We can handle everything from selecting the most qualified tenants to evicting the most hardcore problem; from fixing a leaky faucet to remodeling a family room or rebuilding the entire house.
>
> We offer property owners a full suite of plans including paid in-person and complimentary e-consultations, residential leasing and property management services, as well as specialized document preparation services. Our services include Consultation Services, Creative Advertising & Marketing, Unlimited Property Showings to Potential Residents, In-House Application Screening, Credit Check with FICO Score, Rental History, Employment Verification, Detailed Owner Application Review, Lease Negotiation & Execution Services, First Month's Rent & Security Deposit Collection, Property Move-in Evaluation and Original Document Package.

The petitioner states that proffered position "can only be performed by a person with a strong background in managerial, financing or related areas" and that they require "a minimum of a bachelor's degree in one of the disciplines."

The petitioner further states that the "professional position of Financial Manager" will be required to perform the following duties:

- Produce financial reports,
- Direct investment activities,
- Develop strategies and plans for long-term financial goals of the organization
- Maintaining accounting functions by controlling accounts receivable and accounts payable.

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[3] In the NOID dated June 24, 2015, we notified the petitioner that we were unable to verify its corporate status. In response, the petitioner submitted evidence that is a fictitious name for which is a corporation in good standing in the state of California. The petitioner submitted evidence that this fictitious name has been duly registered with the proper authorities in its place of business, the Clerk-Recorder Office. The petitioner also submitted evidence of the Federal Employment Identification Number (FEIN) and copies of its tax and wage history, showing wages and taxes paid by to establish that it is a corporation in good standing.

- Direct and coordinate financial activities of workers in office.
- Responsible for planning and coordinating the activities of workers in office.
- Oversee the flow of cash or financial statements.
- Examine, evaluate, or process loan applications.
- Review collection reports to determine the status of collections and amount of outstanding balances.
- Maintain the general ledger and bookkeeping and data entry into QuickBooks.
- Maintain administrative office functions by efficiently maintaining record management.
- Reconciling and preparing year end statements.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B. The petitioner indicates that the proffered position corresponds to the occupational category "Financial Managers"-SOC (ONET/OES Code) 11-3031, at a Level I (entry level) wage.[4]

The Director issued an RFE, requesting additional information on the petitioner's business model and the duties of the proffered position. Specifically, the Director requested that the petitioner provide a more detailed description of the work to be performed by the beneficiary for the entire requested period of validity. In response, the petitioner reiterated the above listed job duties. The petitioner did not provide a more detailed description of the position, a breakdown of the percentage of time to be spent on each duty or information on the minimum level of education or training required to perform the specific duties.

C. Analysis

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . .

[4] In the Form I-129, the petitioner indicated that the proffered position is a part-time position, working 20 hours per week. However, in the LCA, the petitioner indicated that the proffered position is a full-time position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

We find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition.

The initial duties provided by the petitioner were generic in nature and did not reflect how such duties would be performed within the context of the petitioner's business. The description of the beneficiary's duties lacks the specificity and detail necessary to support the petitioner's assertion that the position is a specialty occupation. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary duties include "produce financial reports," "planning and coordinating the activities of workers in office," and "maintain administrative office functions by efficiently maintaining record management." The petitioner's statements – as so generally described – do not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such activities. In addition, the petitioner claims that the beneficiary will "oversee the flow of cash or financial statements," and will "develop strategies and plans for long-term financial goals of the organization." The statements do not provide any particular details regarding the demands, level of responsibilities and requirements necessary (such as knowledge of any specific skill or expertise in any specific method of accounting) for the performance of these duties. Despite the director's specific request for more detailed information on the duties of the proffered position, the petitioner did not submit such evidence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Further, we find that there are a number of inconsistencies in the record of proceeding that call into question the accuracy of the petitioner's statements with regard to the proffered position. For example, the petitioner states that in the proffered position, the beneficiary will "[d]irect and coordinate financial activities of workers in office" and be "responsible for planning and coordinating the activities of workers in office." However, according to the organizational chart, in addition to the owners and the beneficiary, the only other individuals the petitioner claims to employ are three "handymen" or "maintenance specialists." It is unclear how or why the beneficiary, in the position of financial manager, would be responsible for planning and coordinating the work of these individuals.

Moreover, in the support letter, the petitioner also stated the following:

> Petitioner is in need of a Financial Manager to participate in several of the projects that we are performing or being asked to perform. These projects include the use of generally accepted application development practices in the design, documentation and implementation areas of this service. In addition, our firm prides itself at understanding the business needs and implications of utilizing information technology. Hence, knowledge or experience of business issues plays a vital role in our success.

The record of proceeding does not contain evidence regarding the petitioner's use of information technology for its business or "projects" the petitioner is performing or being asked to perform. Without further information, these duties appear to be inconsistent with the petitioner's business as a property management company and the beneficiary's proffered position as a financial manager.

Further, throughout the record of proceeding, the petitioner asserts that the nature of specific job duties of the proffered position is very complex and unique. However, the petitioner designated the proffered position in the LCA as a Level I, entry-level position. In accordance with the relevant DOL explanatory information on wage levels, a Level I position is indicative that, relative to other positions falling under the occupational category, the beneficiary is expected to only have a basic understanding of the occupation. The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position falling under this occupational category would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage.[5] For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."[6]

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[5] The issue here is that the petitioner's designation of this position as a Level I, entry-level position undermines its claim that the position is particularly complex, specialized, or unique compared to other positions *within the same occupation*. Nevertheless, it is important to note that a Level I wage-designation does not preclude a proffered position from classification as a specialty occupation. In certain occupations (doctors or lawyers, for example), an entry-level position would still require a minimum of a bachelor's degree in a specific specialty, or its equivalent, for entry. Similarly, however, a Level IV wage-designation would not reflect that an occupation qualifies as a specialty occupation if that higher-level position does not have an entry requirement of at least a bachelor's degree in a specific specialty or its equivalent. That is, a position's wage level designation may be a consideration but is not a substitute for a determination of whether a proffered position meets the requirements of section 214(i)(1) of the Act.

[6] For additional information regarding wage levels as defined by DOL, 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_

Therefore, the wage-level designated in the LCA does not support the petitioner's claim that the proffered position is complex or unique.

The petitioner also submitted a letter from an Associate Dean of Student Affairs in the School of Business at We reviewed the opinion letter in its entirety; however, the letter from is not persuasive in establishing the proffered position qualifies as a specialty occupation position.

Specifically, asserts that the proffered position requires a bachelor's degree in finance, business administration or a related area. However, the requirement of a bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to demonstrating that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Further, does not reference or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which he may have consulted in the course of evaluative process he may have followed. provides a brief, general description of the petitioner's business activities; however, he does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there no evidence that he has any in-depth knowledge of the petitioner's business operations gained through such means as visiting the petitioner's premises, observing the petitioner's employees, interviewing them about the nature of their work, or documenting the knowledge that they apply on the job.

Likewise, does not discuss the duties of the proffered position in any substantive detail. The tasks appear to be verbatim from the job description provided by the petitioner.

does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Moreover, he did not support his conclusions by providing copies or citations of any research material used. He has not provided sufficient facts that would support the assertion that the proffered position requires at least a bachelor's degree in a specific specialty (or its equivalent).

Importantly, there is also no indication that the petitioner advised that it characterized the proffered position as a low, entry-level financial manager position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). Without this information, the petitioner has not demonstrated that possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities.

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Because the record of proceeding in this case does not contain sufficient information regarding the specific job duties to be performed by the beneficiary in the context of the petitioner's business, the petitioner has not established the substantive nature of the work to be performed by the beneficiary nor has it established that a reasonable and credible offer of employment exists, which therefore precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The petitioner did not establish the substantive nature of the work to be performed by the beneficiary, which precludes a finding that the proffered position is in a specialty occupation.[7] We

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[7] We note that even if we were able to conclude that the proffered positon would be that of a financial manager, the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* does not support the assertion that the normal minimum entry requirement to become a financial manager is the obtainment of a baccalaureate degree in a specific specialty, or its equivalent. Specifically, the *Handbook* states that financial managers often need a degree in finance, accounting, economics, or business administration. However, as discussed, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Therefore, the *Handbook* does not establish that working as a financial manager normally requires at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation. Therefore it would not be considered a specialty occupation, absent additional evidence from the petitioner that it met one of the

note that it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

III. BENEFICIARY QUALIFICATIONS

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

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

IV. CONCLUSION AND ORDER

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.[8]

ORDER: The appeal is dismissed.

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criteria stated at 8 C.F.R. § 214.2(h)(4)(iii)(A). We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook*, which is available in printed form, may also be accessed on the Internet, at http://www.bls.gov/oco/. All of our references to the *Handbook* are to the 2014 – 2015 edition available online.

[8] Since the identified bases for denial are dispositive of the petitioner's appeal, we will not address other grounds of ineligibility we observe in the record of proceeding.