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



U.S. Citizenship
and Immigration
Services

DATE: FEB 19 2015 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:

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,

for Michael T. Kelley
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center 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.

On the Form I-129 visa petition, the petitioner describes itself as a motel established in [REDACTED]. The petitioner seeks to extend the employment of the beneficiary in the position of "business operations specialist" at a salary of \$45,000 per year.¹ The petitioner, therefore, 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, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (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; and (5) the Form I-290B and supporting documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Accordingly, the appeal will be dismissed, and the petition will be denied.

I. FACTUAL AND PROCEDURAL HISTORY

In the Form I-129 petition, the petitioner described itself as a motel. In a letter of support dated September 25, 2013, the petitioner explained that it had been doing business as [REDACTED] since [REDACTED], and that it is currently seeking to expand its business. The petitioner claimed that it required the continued services of the beneficiary as its business operations specialist, and as the Labor Condition Application (LCA) in support of the petition, the petitioner submitted an LCA that had been certified for use with a job prospect within the "Business Operations Specialist" occupational classification, SOC (O*NET/OES) Code 13-1199. The LCA specified a prevailing wage of \$44,387.00; and the O*NET provides the following, limited information about this occupational category:

**Details Report for:
13-1199.00 - Business Operations Specialists, All Other**

All business operations specialists not listed separately.

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Business Operations Specialist" occupational classification, SOC (O*NET/OES) Code 13-1199. The LCA claimed the petitioner would pay the prevailing wage of \$44,387.00.

"All Other" titles represent occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations. O*NET data is not available for this type of title. For more detailed occupations under this title, see below.

- 13-1199.01 Energy Auditors ***Bright Outlook** ***Green**
- 13-1199.02 Security Management Specialists*
- 13-1199.03 Customs Brokers*
- 13-1199.04 Business Continuity Planners*
- 13-1199.05 Sustainability Specialists*/*
- 13-1199.06 Online Merchants*

See Employment & Training Administration, U.S. Dept. of Labor, O*Net OnLine, Details for Business Operations Specialists, All Other, available at <http://www.onetonline.org/link/details/13-1199.00> (accessed Feb. 19, 2015). It is in this occupational context that the petitioner provided the following list of duties that it associated with the position:

- Common duties include maintaining equipment and store fixtures, overseeing customer service operations and maintaining store files. (Approximately 15% of work time);
- Maintain or exceed department quality standards for the processing of all incoming paperwork, data reconciliation, issue tracking and resolution, and service. (Approximately 15% of work time);
- Facilitate the new accounts set up process and monitor incoming transfers of assets. (Approximately 10% of work time);
- Proactively evaluate current procedures and processes and provide input for improvement as needed. (Approximately 10% of work time);
- Ensure compliance with all applicable regulatory procedures and guidelines. (Approximately 25% of work time);
- Interact with clients regarding the nature of the information processing or computation needs a business system program is to address. (Approximately 10% of work time);
- Handle back office operations like order inventory, track inventory, daily and monthly accounting and other similar duties. (Approximately 15% of work time);

The petitioner also submitted copies of the beneficiary's Form W-2, Wage and Tax Statement, for 2012, copies of recent paystubs, and a copy of the beneficiary's resume.

The director found the initial evidence insufficient to establish eligibility, and issued an RFE on January 2, 2014. The director requested additional evidence demonstrating that the proffered position was a specialty occupation, and also requested additional evidence demonstrating the academic qualifications of the beneficiary.

In a response received on March 26, 2014, counsel for the petitioner addressed the director's requests. Counsel restated the duties previously listed in the petitioner's letter of support, and asserted that a background in business was essential in order to perform these duties. Counsel claimed that the beneficiary held a Bachelor of Commerce degree and a Master's degree in Business Administration, and thus was well qualified to perform the duties of the proffered position.

In addition, counsel submitted the following documentary evidence in response to the RFE: (1) an employee chart for the petitioner's organization; (2) copies of the petitioner's Form 1120S, U.S. Income Tax Return for an S Corporation, for 2013; (3) copies of the beneficiary's foreign academic credentials and an evaluation of those credentials by Education Evaluation and Immigration Service.

After reviewing the evidence, the director determined that the petitioner had not established that the proffered position was a specialty occupation, and denied the petition. On appeal, counsel asserts that the director's decision was erroneous, and submits a brief and additional evidence in support of this contention.

II. THE LAW

To meet its burden of proof in establishing the proffered position as a specialty occupation, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the position must also meet one of the following criteria:

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which

petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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. ANALYSIS

As a preliminary matter, we find that upon consideration of the totality of all of the petitioner's duty descriptions, including its assertions made in the initial filing, and counsel's assertions made in response to the director's RFE and on appeal, the evidence of record does not establish neither the depth, complexity, or level of specialization of the proposed duties of the proffered position, nor substantial aspects of the matters in which the petitioner says that the beneficiary will engage. Rather, the proposed duties of the proffered position, and the position itself, are described in relatively generalized and abstract terms that do not relate substantial details about either the position or its constituent duties.

Although the petitioner responded to the director's request for evidence, the descriptions of the proffered job focused generally on the title of Business Operations Specialist, and not on the actual requirements of the proffered job.

Further, we find that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work and associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty. These evidentiary deficiencies alone preclude us from sustaining the appeal and approving the petition.

That being said, we will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding, with the understanding that, for economy's sake, the above comments and findings are deemed to be incorporated into the analysis of each criterion that follows below. This endeavor will indicate additional reasons why the appeal must be dismissed and the petition must be denied for failure to establish the proffered position as a specialty occupation.

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

We turn first to the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which we routinely rely for the educational requirements of particular occupations. 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* does not contain an occupation with the specific title of Business Operations Specialist. Upon review of the described duties, we concur in part with the director, who found that the position encompasses duties of an administrative services manager.

We reviewed the information in the *Handbook* regarding the occupational category "Business Operations Specialists" and note that this occupation is one for which the *Handbook* does not provide any information. The *Handbook* addresses such occupations in the following discussion:

Data for Occupations Not Covered in Detail

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.² The *Handbook* continues by stating that approximately five percent of all employment

² The AAO note that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm labor contractors; audio-visual and multimedia collections

is not covered either in the detailed occupational profiles or in the summary data. The Business Operations Specialists occupational category is one of those occupations.

Accordingly, in certain instances, the *Handbook* is not helpful. When, as here, the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise more likely than not satisfies this or one of the other three criteria, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one objective, authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether a particular position qualifies as a specialty occupation.

Moreover, we note that our independent review of DOL's Occupational Information Network (O*NET OnLine) also does not establish that the proffered position of Business Operations Specialist (SOC 13-1199) satisfies the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A). O*NET OnLine provided no educational requirements for the proffered job. See <http://www.onetonline.org/link/summary/13-1199.00> (accessed February 4, 2015).

Noting that the job title listed by the petitioner is not in the *Handbook*, the director found the job description that most closely matched the position requirements listed in the petition to be that of an Administrative Service Manager. The *Handbook* describes this occupation in relevant part as follows:

Administrative services managers plan, direct, and coordinate supportive services of an organization. Their specific responsibilities vary by the type of organization and may include keeping records, distributing mail, and planning and maintaining facilities. In a small organization, they may direct all support services and may be called the business office manager. Large organizations may have several layers of administrative managers who specialize in different areas.

Duties

Administrative Services Managers typically do the following:

- Buy, store, and distribute supplies;
- Supervise clerical and administrative personnel;
- Set goals and deadlines for the department;
- Develop, manage, and monitor records;

specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

- Recommend changes to policies or procedures in order to improve operations, such as changing what supplies are kept or how to improve recordkeeping;
- Plan budgets for contracts, equipment, and supplies;
- Monitor the facility to ensure that it remains safe, secure, and well maintained;
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems;
- Ensure that facilities meet environmental, health, and security standards and comply with government regulations.

Administrative services managers plan, coordinate, and direct a broad range of services that allow organizations to operate efficiently. An organization may have several managers who oversee activities that meet the needs of multiple departments, such as mail, printing and copying, recordkeeping, security, building maintenance, and recycling.

The work of administrative services managers can make a difference in employees' productivity and satisfaction. For example, an administrative services manager might be responsible for making sure that the organization has the supplies and services it needs. In addition, an administrative services manager who is responsible for coordinating space allocation might take into account employee morale and available funds when determining the best way to arrange a given physical space.

Administrative services managers also ensure that the organization honors its contracts and follows government regulations and safety standards.

Administrative services managers may examine energy consumption patterns, technology usage, and office equipment. For example, managers may recommend buying new or different equipment or supplies in order to lower energy costs or improve indoor air quality.

Administrative services managers also plan for maintenance and the future replacement of equipment, such as computers. A timely replacement of equipment can help save money for the organization, because eventually the cost of upgrading and maintaining equipment becomes higher than the cost of buying new equipment.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Administrative Service Managers," <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-2> (last visited February 4, 2015).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into this field:

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, administrative services managers typically enter the occupation with a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

Id. at <http://www.bls.gov/ooh/management/administrative-services-managers.htm#tab-4>.

As indicated above, the *Handbook* acknowledges that workers enter this job category with a high school diploma or General Equivalency. The *Handbook* does not state that a bachelor's degree is needed for entry into this job category. Not only is a bachelor's degree not needed, but the further requirement for a degree in a specific specialty is not articulated by the *Handbook*.

Although the *Handbook* acknowledges that some candidates for this occupation enter the field with a bachelor's degree, it does not state that a degree in a specific specialty is required. Rather, it states that disciplines as disparate as business, engineering, and facilities management are helpful in preparing workers for entry into the field. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration, which is also the field in which the beneficiary holds his master's degree, is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as an administrative services manager does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not appear that the proffered position as described will satisfy the criterion outlined at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

On appeal, counsel contends that the director's characterization of the proffered position as an administrative services manager was erroneous. Counsel contends that, in the alternative, the proffered position is more akin to that of a "Top Executive" as described in the *Handbook*. We note, however, that the duties listed under that occupational category do not correspond to those duties listed by the petitioner for the proffered position. For example, duties associated with the proffered position, such as such as "maintaining equipment and store fixtures" and handling "back office operations like order inventory," are not typically duties that are performed by top executives.

We further note that the employee chart provided by the petitioner lists the petitioner's corporate officers. According to the chart, the petitioner is an eleven-employee operation and has a President and a Vice-President, who are undoubtedly at the "top" of the organization. The petitioner did not articulate the location of the proffered position within the corporate hierarchy of the company, thereby casting further doubt on the accuracy of the claim that the proffered position is akin to that of a top executive.

Nevertheless, even if we were to accept counsel's assertions and characterize the proffered position into the category of Top Executives, the *Handbook* does not state that a degree in a specific specialty is required for entry into that occupational category. Rather, the *Handbook* indicates that a degree in a variety of fields are generally held by candidates entering this occupation. Specifically, the *Handbook* states:

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.

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-4> (last visited February 4, 2015).

As noted previously, to establish that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. Even if the proffered position were established as being that of a top executive, as counsel contends on appeal, there is no indication that a degree in a specific specialty is required for entry into the occupation. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).

Regardless of title, the petitioner claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the substantive nature of the work had been established – which is not the case here – the present petition could not be approved for this additional reason. In the same vein, we are not persuaded by the Supporting Affidavit submitted on appeal from [REDACTED] MD, RPh, for it merely asserts – and in conclusory terms, at that – [REDACTED] view that the proffered position must be held by someone with "at least a bachelor's degree." [REDACTED] neither states a need for a degree in a specific specialty nor provides substantive, factual analysis to support his view.

As the evidence in the record of proceeding does not establish that at least a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the

particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such 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 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Although the petitioner provided printouts of three job advertisements for "Business Operations Specialists," we note that none of these have similar requirements nor are they in the hotel/motel industry.

Specifically, the first job posting is for a position with [REDACTED] an aerospace company. The petitioner also submits a vacancy announcement for a position with [REDACTED] a company engaged in the field of consumer packaged goods manufacturing and retail, as well as job opportunity for an undisclosed employer in the "accounting/financial/insurance" industry. It is evident that none of these advertisements are comparable to the position of business operations specialist in an eleven-employee-run motel. For example, it is evident that the petitioner's eleven-person motel is not engaged in the same industry as [REDACTED] which, according to its website, claims to be "the world's largest aerospace company and the leading manufacturer of commercial jetliners and military aircraft combined."³ The same conclusion can be drawn with regard to the other two postings, both of which are soliciting candidates in fields outside the small-motel industry in which the petitioner is engaged. Moreover, we note that all three postings simply state a requirement for a bachelor's level education, but none of the postings require the degree to be in a specific specialty. In fact, the posting by [REDACTED] requires "a bachelor's degree in any discipline."

The petitioner, therefore, has not submitted evidence to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

Consequently, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at

³ [REDACTED] (accessed February 4, 2015).

least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

Next, we find that the petitioner did 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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

As reflected in this decision's earlier comments and findings regarding the absence of evidence establishing the substantive nature and substantive knowledge requirements of the proffered position and its constituent duties, the record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform that position. Rather, the AAO finds, the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic administrative services manager duties,⁴ which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties comprise a position so complex or unique that the position can be performed only by an individual with a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it has not been shown that the particular position for which this petition was filed is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior

⁴ Again, we note that the *Handbook* does not define the duties of a Business Operations Specialist.

recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proposed position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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 the specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position 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").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of 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 a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The petitioner claims that the beneficiary is the first individual it has employed in the proffered position of business operations specialist, but asserts that because its first petition on behalf of the beneficiary was approved, this shows a pattern of hiring sufficient to meet the requirements under this prong. While counsel's argument that the petitioner's current employment of the beneficiary merits satisfies this criterion is acknowledged, we do not consider a single previous hire sufficient evidence of a past history of employing only persons with at least a bachelor's degree, or the equivalent, in a specific specialty to establish eligibility under 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

As the evidence of record has not demonstrated a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in the specialty.

As reflected in this decision's earlier comments and findings regarding the relatively abstract and generalized level at which the proposed duties and the position that they comprise are presented in this record of proceeding, the AAO finds that the petitioner has not presented the proposed duties in sufficiently specific and substantive details to establish any level of relative specialization and complexity as an aspect of their nature, and, therefore, there is no evidentiary basis for the AAO to find therein the requisite specialization and complexity to satisfy this criterion.⁵

Further, there is the countervailing weight of the wage-level of the LCA. Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner's designation of an LCA wage-level I is indicative of entry-level skills and responsibilities.

We note that Level I positions are those where the "work is closely monitored and reviewed for accuracy." Thus, the position when filled would provide practical experience in the position and would be closely supervised and monitored for accuracy by someone else. This undermines the petitioner's assertion that the position is so specialized or complex that it requires the attainment of a bachelor's degree.

Further, the AAO notes the low level of complexity that this Level I wage-level reflects when compared with the three still-higher LCA wage levels, none of which were designated on the LCA submitted to support this petition.

The *Prevailing Wage Determination Policy Guidance*⁶ issued by DOL states the following with regard to Level II wage rates:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

⁵ As earlier mentioned, the AAO incorporates into the present analysis, and into the analysis of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), this decision's earlier comments and findings with regard to the evidentiary deficiencies of the petitioner's statements and documentary submissions about the proposed duties.

⁶ Available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf (last visited February 5, 2015)

The above descriptive summary indicates that this wage-level is appropriate for only "moderately complex tasks that require limited judgment."

Further, we note the relatively low level of complexity that this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

By virtue of this submission the petitioner effectively attested that the proffered position requires "only a basic understanding of the occupation. Furthermore, it requires that the beneficiary exercise only "limited, if any" professional judgment, and his work must be closely monitored for accuracy. As clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position does not even involve "moderately complex," tasks or a "good understanding" of the occupation (the level of complexity noted for the next higher wage-level, Level II).

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

IV. PRIOR APPROVAL

It is noted that the beneficiary currently holds H-1B status. However, we are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, that approval would constitute material and gross error on the part of the director. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

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