

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

DATE: **JAN 29 2015**

OFFICE: CALIFORNIA 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:

[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as an eight-employee "Import and wholesale of Home bedding products" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as a part-time "Business & Financial Advisor" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

## II. THE LAW

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

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

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

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

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

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See*

*Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

### III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Bilingual Business & Financial Advisors" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-3031, Financial Managers from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, the petitioner submitted evidence that the beneficiary received a bachelor's degree in business with a concentration in accounting from [REDACTED]. The petitioner also submitted, *inter alia*: (1) a description of the duties of various positions in the petitioner's operation, including what purport to be the duties of the proffered position; (2) the beneficiary's résumé; (3) a vacancy announcement for the proffered position with a description of its purported duties; (4) an undated, unattributed comparison of the proffered position and an executive coordinator position, with a description of the ostensible duties of the proffered position; and (5) letters, dated January 31, 2014 and March 31, 2014, from the petitioner's president.

The description of various positions in the petitioner's operation lists the following as the duties of the proffered position:

- Postings to General ledger, Record, document and monitor monthly accruals
- Do the financial report every month
- Prepare the PPT and letters for Meeting

- Contact with bank get new information about the business loan
- Analyze the financial report form the investor

[Verbatim.]

The beneficiary's résumé reiterates that duty description.

The vacancy announcement, which is signed by the petitioner's president, contains the following duty description:

- (1) Meeting with president for business evaluation by preparing a comprehensive record keeping system that produces thorough records on a day-to-day basis.
- (2) Achieve quarterly business plan and annual business plan based upon more detail discussion with current managers and conduct more market research and study and submit it to the President for further discussion and final resolution.
- (3) Cultivate strategic friendship with potential business investor or owners from both of Taiwan and China. Keep contact these business owners to drive future business cooperation include establishing joint ventures in other cities of USA, or in major cities of China, exporting more products, conduct business trips etc.
- (4) Prepare the firms RFP response protocols, including soliciting RFPs and writing proposals for new business, acting as primary company liaison to potential new customers.
- (5) Meet with CPA for more efficient financial control in projecting more efficient financial software such as ERP system and prepare cash flow statement, conduct financial ratio analysis, Measures of liquidity, Income statement and streamline our accounting system for the purpose to provide correct and update tax records to our accountant to file income tax return in order to reduce cost of accounting fee and also increase profit.

As to the educational requirement of the proffered position, that vacancy announcement states: "Req. Bachelor's degree in Accounting or Business Administration or Marketing of Finance." [sic]

The undated, unattributed comparison of the proffered position and an executive coordinator position contains the following description of the duties of the proffered position:

- Knowledge of accounting and financing is required for daily operations.
- Apply Essential knowledge of international Business/Economics in business plan and market research.
- Coordinates with professionals working in banking, shipping companies, car industry and many other different fields.
- Draft high-quality promotional materials and implement marketing campaigns.

- Be able to analyze and improve current business operation through obtaining data from direct observations, sales/market reports, employee feedbacks and manager feedbacks.
- High level negotiations skills with clients and investors is required.
- Effective writing skills and strong communication skills;
- Be able to establish analytical framework, building strategic development plans, conduct market research and customer surveys.
- Professional computer skills in Microsoft Office (Word, Excel and PowerPoint) is required for collecting and analyzing data.
- Develop and administer a business development bilingual website to attract new customers and investors.
- Build and maintain relationships with potential business investors overseas.

[Verbatim.]

As to the educational requirements of the proffered position, that document states: "Bachelor or Master Degree in Business/Finance/Accounting and related field is required."

In his January 31, 2014 letter, the petitioner's president stated that the proffered position requires "**a Bachelor's Degree** in Business Administration or Economics related fields such as Accounting."

In his March 31, 2014 letter, the petitioner's president provided the following additional description of the ostensible duties of the proffered position:

First year's proposed job duties:

- Meeting with president or vice president for business evaluation by preparing a comprehensive record keeping system that produces thorough records on a day-to-day basis. (20%)
- Achieve quarterly business plan and annual business plan based upon more detail discussion with current managers and conduct more market research and study and submit it to the President for further discussion and final resolution. (20%)
- Cultivate strategic friendship with potential business investor or owners from both of Taiwan and China. Keep contact these business owners to drive future business cooperation include establishing joint ventures in other cities of USA, or in major cities of China, exporting more products, conduct business trips etc. (15%)

- Prepare the firms RFP response protocols, including soliciting RFPs and writing proposals for new business, acting as primary company liaison to potential new customers. (20%)
- Will design online survey and send to our customers for marketing survey. This will require hands-on work in the field dealing face to face with prospects and existing customers. (10%)
- Meet with CPA for more efficient financial control in projecting more efficient financial software such as ERP system and prepare cash flow statement, conduct financial ratio analysis, Measures of liquidity, Income statement and streamline our accounting system for the purpose to provide correct and update tax records to our accountant to file income tax return in order to reduce cost of accounting fee and also increase profit. (15%)

**The second year's assignment**<sup>1</sup>

- Develop and administer a business development bilingual or trilingual online web site or database that includes new business opportunities, new customers, proposal tracking and follow up, analysis of competition and performance metrics etc. (20%)
- Supervise the development and implementation of on-going marketing plan or exporting plan which will leverage current general merchandise strengths and opportunities in the both North America market and Asian Market including Hong Kong, Taiwan and China (20%)
- Assess and evaluate the management of all of current importing and future exporting product objectives and identify potential problems and opportunities and make recommendations for appropriate course of action. (20%)
- Develop bilingual & comprehensive financial control systems for the periodic review of marginally profitable products, monitor performance of current company managers and future subsidiary manager and make recommendations for justifiable deletion of products. (10%)
- Collaborate with president or future subsidiary managers in other cities of USA to coordinate and supervise all activities necessary to the timely introduction of new products including preparatory market research, concepts

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<sup>1</sup> We note that the petitioner has stated here that the beneficiary will spend 110% of her time performing the second year's duties.

tests, product registration, clinical support program, financial analysis, etc. (10%)

- Collect all of potential business investors include individual and large size corporation in North America, conduct interviews and gather and compile their personal, business and financial data and documentation, prepare a summarized bilingual report and submit to top management for his further review and decision

(10%).

- Gather and translate Chinese and other Asian investors' personal profiles and business or finance documents to English for further review their qualifications and evaluation by our management. (10%)
- Prepare a business orally and written presentation for potential Chinese or other Asian corporate investors or small business owners (Note: 80% of successful business owners in China has interest to invest business in USA based upon our recent survey) (10%)

### **The Third year Proposed work assignment**

- Conduct evaluations of potential investors on preceding presentation (20%)
- Report to President R for final judgment of potential Chinese and Taiwan investor assignment (10%)
- May work with CPA or International financial analyst and develop bilingual financial model of our firm based on the 10-year Discounted Cash Flow (30%)
  - Use Argus software to prepare sophisticated cash flow models.
  - Calculate Gross Potential Revenue, Effective Revenue, and Net Operating Income (NOI).
  - Calculate Annual Debt Service (ADS) using total Loan Amount, Unpaid Balance, Current Interest Rate (Fixed or Floating Rate).
  - Calculate Cash Flow After Debt.

- May be required to recruit more bilingual sales representative, conduct orientation program and directing them promote our products in both of North America.(10%)
- May work with Investment Risk Analyst and conduct joint venture's investment analysis based on the financial models to produce forecasts for underwriting investment opportunities and reporting on the viability of potential acquisitions (10%)
- Underwrite and analyze certain joint venture business or subsidiary by using Net Operating Income and Capitalization Rate method to estimate properties values (20%)
  - Conduct financial analysis on the rental income and operating expenses for retail properties and multi-family properties
  - Calculate the Internal Rate of Return to determine the project viability
- Recommend new or innovative fashion business investment strategies to improve returns or better manage risk

[Verbatim.]

As to the educational requirements of the proffered position, the petitioner's president stated: "a *bachelor's degree in business administration or related fields is the **minimum requirement** for a business development related position, such as this position offered to the beneficiary.*"

On May 3, 2014, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, the petitioner submitted: (1) a document headed, "[The petitioner's] Business Profile & Business Plan"; (2) a letter, dated March 31, 2014, from the president of another company; and (3) a letter, dated May 29, 2014, from the petitioner's president.

The document headed, "[The Petitioner's] Business Profile & Business Plan" does not state who produced it or when. However, it indicates that the petitioner was established one and a half years prior to the production of the document. As the petitioner stated, on the visa petition, that it was established during 2012, that document was likely produced during 2013 or 2014. Further, a divider submitted with it refers to it as "Business profile and business plan prepared by the alien." That document contains statements pertinent to the petitioner's goals and its history. Graphs and charts in

that document contain assertions pertinent to the petitioner's past performance and future expectations.

The March 31, 2014 letter provided is from the president of [REDACTED] who states that his company is a general merchandise wholesaler and that it employs a "Bilingual Business Analyst," for which position his company requires "a **Master's Degree** in Business Administration or Economic related fields such as Finance."

In his May 29, 2014 letter, the petitioner's president provided this additional description of the duties of the proffered position:

First year's proposed job duties:

- Meeting with president or vice president for business evaluation by preparing a comprehensive record keeping system that produces thorough records on a day-to-day basis. (20%)
- Achieve quarterly business plan and annual business plan based upon more detail discussion with current managers and conduct more market research and study and submit it to the President for further discussion and final resolution. (20%)
- Cultivate strategic friendship with potential business investor or owners from both of Taiwan and China. Keep contact these business owners to drive future business cooperation include establishing joint ventures in other cities of USA, or in major cities of China, exporting more products, conduct business trips etc. (15%)
- Prepare the firms RFP response protocols, including soliciting RFPs and writing proposals for new business, acting as primary company liaison to potential new customers. (20%)
- Will design online survey and send to our customers for marketing survey. This will require hands-on work in the field dealing face to face with prospects and existing customers. (10%)
- Meet with CPA for more efficient financial control in projecting more efficient financial software such as ERP system and prepare cash flow statement, conduct financial ratio analysis, Measures of liquidity, Income statement and streamline our accounting system for the purpose to provide correct and update tax records to our accountant to file income tax return in order to reduce cost of accounting fee and also increase profit. (15%)

**The second year's assignment**<sup>2</sup>

- Develop and administer a business development bilingual or trilingual online web site or database that includes new business opportunities, new customers, proposal tracking and follow up, analysis of competition and performance metrics etc. (20%)
- Supervise the development and implementation of on-going marketing plan or exporting plan which will leverage current general merchandise strengths and opportunities in the both North America market and Asian Market including Hong Kong, Taiwan and China (20%)
- Assess and evaluate the management of all of current importing and future exporting product objectives and identify potential problems and opportunities and make recommendations for appropriate course of action. (20%)
- Develop bilingual & comprehensive financial control systems for the periodic review of marginally profitable products, monitor performance of current company managers and future subsidiary manager and make recommendations for justifiable deletion of products. (10%)
- Collaborate with president or future subsidiary managers in other cities of UA to coordinate and supervise all activities necessary to the timely introduction of new products including preparatory market research, concepts tests, product registration, clinical support program, financial analysis, etc. (10%)
- Collect all of potential business investors include individual and large size corporation in North America, conduct interviews and gather and compile their personal, business and financial data and documentation, prepare a summarized bilingual report and submit to top management for his further review and decision  
(10%).
- Gather and translate Chinese and other Asian investors' personal profiles and business or finance documents to English for further review their qualifications and evaluation by our management. (10%)
- Prepare a business orally and written presentation for potential Chinese or other Asian corporate investors or small business owners (Note: 80% of

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<sup>2</sup> Again, we note that the petitioner has stated here that the beneficiary will spend 110% of her time performing the second year's duties.

successful business owners in China has interest to invest business in USA based upon our recent survey) (10%)

**The Third year Proposed work assignment**

- Conduct evaluations of potential investors on preceding presentation (20%)
- Report to President R for final judgment of potential Chinese and Taiwan investor assignment (10%)
- May work with CPA or International financial analyst and develop bilingual financial model of our firm based on the 10-year Discounted Cash Flow (30%)
  - Use Argus software to prepare sophisticated cash flow models.
  - Calculate Gross Potential Revenue, Effective Revenue, and Net Operating Income (NOI).
  - Calculate Annual Debt Service (ADS) using total Loan Amount, Unpaid Balance, Current Interest Rate (Fixed or Floating Rate).
  - Calculate Cash Flow After Debt.
- May be required to recruit more bilingual sales representative, conduct orientation program and directing them promote our products in both of North America.(10%)
- May work with Investment Risk Analysis and conduct joint venture's investment analysis based on the financial models to produce forecasts for underwriting investment opportunities and reporting on the viability of potential acquisitions (10%)
- Underwrite and analyze certain joint venture business or subsidiary by using Net Operating Income and Capitalization Rate method to estimate properties values (20%)
  - Conduct financial analysis on the rental income and operating expenses for retail properties and multi-family properties
  - Calculate the Internal Rate of Return to determine the project viability

- Recommend new or innovative fashion business investment strategies to improve returns or better manage risk

[Verbatim.]

The petitioner's president cited the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* and several of our unpublished decisions for the proposition that the proffered position qualifies as a specialty occupation position.

The director denied the petition on June 9, 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, counsel submitted: (1) an unattributed, undated description of the petitioner and the proffered position on the petitioner's company letterhead; (2) an evaluation, dated July 16, 2014, of the proffered position; and (3) a brief.

The unattributed, undated description of the petitioner and the proffered position states the following duties that it attributes to the proffered position:

Analyze company's business systems to develop and devise methods and procedures to collect data, perform international costing analysis, pricing analysis, variance analysis, formulate competition and market trending analysis according to the business environment and economic development of consumer markets in US (20%)

Collect data and conduct qualitative and quantitative analysis in order to forecast and monitor business, marketing and sales trends. Then provide business communication to facilitate effective coordination between the company and the foreign (including local) county fashion accessory suppliers, vendors, distributors, and customers in US and Asia; and monitor and analyze company's business consumer information file to ensure efficient maintenance of company's sales channels and distribution channels meeting customer needs (20%).

Research and analyze industry publications, press releases, events, and announcements to profile existing & potential customers in order to enhance database marketing initiatives; and perform marketing campaign activities and ensure data integrity and consistence are achieved across all Sales and Marketing systems (20%).

Perform statistical analysis (including analysis of overseas custom data and conduct database simulations to analyze company's operation information; and prepare reports, business plans, and related contract terms to management defining elements

of problems and the interrelationship of the elements using simulated mathematical and statistical models (20%).

Participate in company's strategic meetings regarding business association and development with current & prospective business partners; and develop negotiating strategies and reports by studying the integration of new venture with company strategies, operations, examination of risks and potentials, and estimate partners' needs and goals (20%).

[Verbatim.]

That unattributed description of the petitioner and the proffered position further states that the proffered position requires an undergraduate degree in business administration, finance, marketing, or a related field and cites the *Handbook* as support for the proposition that the proffered position qualifies as a specialty occupation position.

The July 16, 2014 evaluation of the proffered position was performed by [REDACTED] PhD, an associate Dean at the [REDACTED] Dr. [REDACTED] stated that, in the proffered position, the beneficiary would perform the following duties:

- Meet with president to find out management and financial problems; perform business evaluation by preparing a comprehensive record keeping system that produces thorough records on a day-to-day basis;
- Interview current department managers and conduct on-site observations to find out management problems; prepare reports and advice based upon more detailed discussion and final resolution; cultivate strategic relationships with potential business investors or owners from both Taiwan and China; keep contact with these business owners to drive future business and establish joint ventures in other cities in the U.S. and China;
- Meet with company financial officers and analyze recent company sales records and financial data including revenue, expenditure, and employment reports;
- Recommend new marketing strategies and design online surveys; survey assistants hands-on work in the field and deal face to face with prospects and existing customers;
- Meet with CPA for more efficient financial control in projecting more efficient financial software such as ERP system; prepare cash flow statement; conduct financial ratio analysis and streamline accounting system to provide correct and updated tax records;
- Developing and administering a business development bilingual or trilingual online web site or database that includes new business opportunities, new customers, proposal tracking and follow up, analysis of competition and performance metrics.

- Supervise the development and implementation of on-going marketing plan strategies and export plans which will leverage current general merchandise strengths and opportunities in the both North America market and Asian Market including Hong Kong, Taiwan and China;
- Assess and evaluate the management of all of current importing and future exporting product objectives and identify potential problems and opportunities and make recommendations for appropriate course of action.
- Develop bilingual and comprehensive financial control systems for the periodic review of marginally profitable products, monitor performance of current company managers and future subsidiary manager and make recommendations for justifiable deletion of product;
- Collaborate with president or future subsidiary managers in other cities of USA to coordinate and supervise all activities necessary for the timely introduction of new products including preparatory market research, concepts tests, product registration, clinical support program, financial analysis;
- Collect potential business investors including individual and large size corporation in North America, conduct interviews and gather and compile their personal, business and financial data and documentation, and prepare a summarized bilingual report and submit to top management for his review and decision;
- Gather and translate Chinese and other Asian investors' personal profiles and business or finance documents to English for further review; prepare oral and written presentation or recommendation for how to contact potential Chinese or other Asian corporate investors or small business owners;
- Report to President for final judgment of potential Chinese and Taiwan investor assignment;
- Work with CPA or International financial analyst and develop bilingual financial model based on the Discounted Cash Flow;
- Use Argus software to prepare sophisticated cash-now models;
- Calculate Gross Potential Revenue, Effective Revenue, Net Operating Income (NOI), Annual Debt Service (ADS) using total Loan Amount, Unpaid Balance, Current Interest Rate (Fixed or Floating Rate), and Cash Flow After Debt;
- Recruit more bilingual sales representatives, conduct orientation program and direct them to promote products;
- Work with Investment Risk Analyst and conduct joint venture's investment analysis based on financial models to produce forecasts for underwriting investment opportunities; report on the viability of potential acquisitions; and
- Underwrite and analyze certain joint venture business or subsidiary by using Net Operating Income and Capitalization Rate method to estimate properties values.

In the appeal brief, counsel cited the *Handbook* and various unpublished AAO decisions as support for the propositions that the proffered position qualifies as a specialty occupation position and that the visa petition should be approved. Counsel reiterated the first eight duties listed in Mr.

evaluation, without commenting on why he omitted the other eleven duties. Counsel stated that the knowledge and skills requisite to the performance of those eight duties "are usually attainable through courses offered by a baccalaureate, or higher, degree program in Business Administration, Economics, Finance or [a] related field." Counsel concluded that the evidence provided demonstrates that the instant visa petition should be approved.

#### IV. ANALYSIS

We observe, first, that the petitioner's president, in his May 29 2014 letter, and counsel, in the appeal brief, both relied on unpublished AAO decisions as support for the approvability of the instant visa petition. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel is permitted, of course, to recount the reasoning of unpublished decisions, to assert that the reasoning is persuasive, and to urge that it be extended. The citation of an unpublished decision, however, is without precedential authority.

As an additional preliminary matter, we observe that the petitioner has repeatedly made clear that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. This was made clear in (1) the petitioner's vacancy announcement, (2) the undated, unattributed comparison of the proffered position and an executive coordinator, (3) the petitioner's president January 31, 2014, March 31, 2014, and May 29, 2014 letters, (4) the unattributed description of the petitioner and the proffered position submitted on appeal, and (5) counsel's appeal brief.

Further, the July 16, 2014 evaluation of the proffered position made clear that, pursuant to the duty description he provided, an otherwise unspecified bachelor's degree in business administration would be a sufficient educational preparation for the position.

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

The petitioner has consistently made clear that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational preparation for the proffered position, which is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a specialty occupation position. The appeal must be dismissed and the visa petition denied for this reason alone. Nevertheless, we will continue our analysis of the specialty occupation issue.

The petitioner has submitted multiple descriptions of the duties of the proffered position. Some of those descriptions are inconsistent with each other.

The beneficiary's description of various positions in the petitioner's operation, which was submitted with the visa petition, indicates that, in the proffered position, the beneficiary would post to the general ledger; and record, document, and monitor monthly accruals. The beneficiary's résumé indicates that, in the proffered position, he has performed those duties in the past. Those are duties typical of a bookkeeping clerk. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Bookkeeping, Accounting, and Auditing Clerks," <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (last visited Jan. 28, 2015). The petitioner's vacancy announcement, also submitted with the visa petition, contains no such bookkeeping duties.

The undated, unattributed comparison of the proffered position and an executive coordinator position, which was also submitted with the visa petition, states that the beneficiary would draft promotional materials. That duty is related to marketing, promotions, and advertising, rather than financial management. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Advertising, Promotions, and Marketing Managers," <http://www.bls.gov/ooh/management/advertising-promotions-and-marketing-managers.htm> (last visited Jan. 28, 2015; see also U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Managers," <http://www.bls.gov/ooh/management/financial-managers.htm#tab-2> (last visited Jan. 28, 2015). That comparison also indicates that, in the proffered position, the beneficiary would develop and administer a website. Those are duties of a web developer. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Web Developers," <http://www.bls.gov/ooh/computer-and-information-technology/web-developers.htm#tab-2> (last visited Jan. 28, 2015). In any event, those duties are absent from the other duty descriptions provided.

The March 31, 2014 letter from the petitioner's president states that, in the proffered position, the beneficiary would "prepar[e] a comprehensive record keeping system that produces thorough records on a day-to-day basis." That appears to be a duty of a bookkeeping clerk or an accountant, rather than a financial advisor or manager. In any event, it is not included in the other duty descriptions initially provided with the visa petition. That letter also states that the beneficiary would "design [an] online survey and send [it] to [the petitioner's] customers." That duty appears to relate more closely to survey researcher positions than to financial advisor or manager positions but, in any event, is not included in the other duty descriptions.

The evidence submitted in response to the RFE and on appeal contains additional duty descriptions that are similarly disparate and mutually contradictory. Although the RFE requested additional detail pertinent to the duties the beneficiary would perform if the visa petition were approved, it did not imply that conflicts in the evidence provided would not be considered in rendering a decision.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record with independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* At 591-592.

Further, the RFE did not indicate that the petitioner was free to add or subtract duties as necessary to make the proffered position qualify as a specialty occupation position. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 ('Reg. Comm'r 1978).

In the instant case, the conflicts between the various conflicting duty descriptions that purport to pertain to the proffered position have not been reconciled. As such, the petitioner has failed to establish the substantive nature of the work to be performed by the beneficiary.

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

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

#### V. ADDITIONAL BASES

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

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

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

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

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

[Italics added]

The LCA submitted with the visa petition is certified for a position that corresponds to SOC code and title 11-3031, Financial Managers. Some of the duty descriptions provided, however, indicate that, if the visa petition were approved, the beneficiary would perform duties of, for example, a bookkeeping clerk, an advertising or marketing professional, a web developer, or a survey researcher. Although those duties are not included in all of the duty descriptions provided, their inclusion in some of the duty descriptions and their exclusion from others, and the failure to reconcile those contradictory duty descriptions, prevents us from determining the substantive nature of the duties of the proffered position. That the substantive nature of those duties has not been established prevents us from determining whether the LCA submitted corresponds to the proffered position, because whether the proffered position is a financial manager position, as it is represented to be on the LCA, is unclear. The petition must be denied for this additional reason.

## VI. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

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

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition

proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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