



U.S. Citizenship  
and Immigration  
Services

(b)(6)



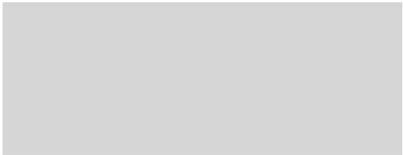
DATE: **JUN 02 2015**

PETITION RECEIPT #: 

IN RE: Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:



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

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

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as an eight-employee "Retail" firm established in [REDACTED]. In order to employ the beneficiary in what it designates as an "Operations Manager" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The Director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE). Thereafter, the petitioner responded to the Director's RFE. The Director denied the petition, finding that the petitioner did not establish that it would employ the beneficiary in a specialty occupation position. On appeal, the petitioner asserts that the Director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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 RFE; (3) the petitioner's response to the RFE; (4) the Director's denial letter; and (5) the Notice of Appeal or Motion (Form I-290B) and the petitioner's submissions on appeal. We reviewed the record in its entirety before issuing our decision.<sup>1</sup>

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.

## II. THE PROFFERED POSITION

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an Operations Manager position, and that it corresponds to Standard Occupational Classification (SOC) code and title 11-1021, General and Operations Managers, from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a wage Level I, entry-level, position.

The petitioner also submitted a letter, dated June 14, 2013, from [REDACTED] signing as the petitioner's president. Mr. [REDACTED] stated that the petitioner has two locations and reiterated that it has eight employees. He provided the following description of the duties of the proffered position:

<sup>1</sup> We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

- Oversee activities directly related to providing customer service.
- Direct and coordinate pricing, sales and distribution of products and services.
- Review financial statements and sales to determine areas that need cost reduction.
- Manage staff, prepare work schedules, and assign specific duties.
- Direct and coordinate finances and budget in order to increase efficiency and maximize investments.
- Establish and implement policies, goals, objectives and procedures.
- Determine staffing requirements and interview, hire and train new employees.
- Plan and direct activities such as sales promotions.
- Determine goods and services to be sold and set prices based on customer demand.
- Locate, select and procure merchandise for resale, representing management in purchase negotiations.

As to the educational requirement of the proffered position, [REDACTED] stated: "The person who will fill this position and will be responsible for said duties is required to have at least a Bachelor's degree in Business Administration, however, we would prefer a Master's degree."

In response to the RFE, the petitioner provided the following description of the duties of the proffered position:

Managing Daily Operations (50% of time). This portion of the job duties includes providing the management with information regarding market analysis of competitors and a forecast of sales and market conditions. [The beneficiary] will also be responsible for training the staff to perform selling techniques and procedures for current promotions to achieve maximum revenue. He will oversee and direct the pricing, sales and distribution of retail products and services as well as coordinate promotions and sales to increase sale of product. He will determine the goods and services to be sold and set prices based on the demand of clientele.

Revenue Management Policies (20% of time). As Operations Manager, [the beneficiary] will analyzes [sic] overall sales and seasonal fluctuations of the retail business. Additionally, he is responsible for formulating the company's policies, sales and discount policies and determining the market needs, volume potential, price and promotions. [The beneficiary] will be responsible for reviewing financial statements of the business to determine the need for cost adjustment to achieve the company's sales goals and maximize revenue. [The beneficiary] will maintain our company's Quickbooks Point of Sale System and perform a daily and monthly sales analysis. He will be responsible for providing sales data and payroll data of all employees to accountant.

Human Resources (10% of time). [The beneficiary] will resolve customer services issues and ensure the satisfaction of each customer. This involves training the staff to

ensure service procedures are always followed in accordance with company standards. Additionally, he is responsible for determining which areas need improvement and training the staff to ensure improvement occurs to the satisfaction of the customers.

Staffing (10% of time). [The beneficiary] will ensure that the employees are performing adequately to ensure revenue goals. This aspect of his position also involves identifying the need for new employees, interviewing, hiring and training new employees. He will be responsible for staff scheduling and assigning specific duties.

Product Quality (10% of time). [The beneficiary] will be responsible for ensuring that the physical condition of retail locations are in accordance with established quality control standards. Preventative maintenance must be performed under his supervision to ensure quality and cleanliness at all times. He will purchase products based on future sales forecasts and needs of customers to decrease waste and increase sales. He will set prices and monitor distribution to our two locations.

### III. SPECIALTY OCCUPATION

The issue is whether the petitioner has provided sufficient evidence to establish that, if the visa petition were approved, it would employ the beneficiary in a specialty occupation position.

#### A. Legal Framework

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 meet one of the following criteria:

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

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

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

degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

### B. Discussion

As a preliminary matter, we note that in his June 14, 2013 letter, [REDACTED] the petitioner's president asserted that the proffered position requires, "at least a Bachelor's Degree in Business Administration." The petitioner has never asserted a more specific educational requirement for the proffered 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. That the educational qualification of the proffered position may be satisfied by an otherwise unspecified bachelor's degree in business administration indicates that the proffered position is not a specialty occupation position. The Director's decision must therefore be affirmed and the petition denied on this basis alone. Nevertheless, we will continue our analysis of the specialty occupation issue.

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-1021, General and Operations Managers, from O\*NET. The evidence indicates that the petitioner owns two convenience stores with prepared food, such as sandwiches and pizza, and that the beneficiary would be involved in managing one or both of those locations. The duties attributed to the proffered position are generally consistent with the proffered position being a combination food service manager/first-line supervisor of retail sales workers position.<sup>2</sup> The proffered position

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<sup>2</sup> See the *Handbook* description of the duties of food service managers at U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Food Service Managers," <http://www.bls.gov/ooh/management/food-service-managers.htm#tab-2> (last visited May 27, 2015) and the

appears to be as likely a combination food service manager/first-line supervisor of retail sales workers position as it is a general and operations manager position. However, we will continue our analysis based on the assumption, made *arguendo*, that the proffered position is a general and operations manager position, so as to reach the petitioner's assertions pertinent to such positions.<sup>3</sup>

To determine whether, based on that assumption, the proffered position would qualify as a specialty occupation position, we will first discuss the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), 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. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> The *Handbook* discusses the duties of general and operations manager positions in its Top Executives chapter.<sup>5</sup> The *Handbook* states the following about the educational requirements of top executive positions:

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

Although education and training requirements vary widely by position and industry, many top executives have at least a bachelor's degree and a considerable amount of work experience.

### **Education**

O\*NET description of the duties of first-line supervisors of retail sales workers at <http://www.onetonline.org/link/summary/41-1011.00> (last visited May 27, 2015).

<sup>3</sup> The *Handbook* discusses food service managers in a dedicated chapter, in which it indicates that such positions typically require only a high school education. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Food Service Managers," <http://www.bls.gov/ooh/management/food-service-managers.htm#tab-4> (last visited May 27, 2015). The *Handbook* does not contain such an in-depth discussion of first line supervisors of retail sales workers. However, O\*Net indicates that those positions also typically require only a high school education. See <http://www.onetonline.org/link/summary/41-1011.00>. (last visited May 27, 2015). Neither O\*NET nor the *Handbook* indicates that those positions require a minimum of a bachelor's degree in a specific specialty or its equivalent. If the proffered position were analyzed as a combination food service manager/first-line supervisor of retail sales workers position, that would not render it more likely to be found to qualify as a specialty occupation position.

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

<sup>5</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Top Executives," <http://www.bls.gov/ooh/management/top-executives.htm#tab-2> (last visited May 27, 2015).

Many top executives have a bachelor's or master's degree in business administration or in an area related to their field of work. Top executives in the public sector often have a degree in business administration, public administration, law, or the liberal arts. Top executives of large corporations often have a master of business administration (MBA). College presidents and school superintendents typically have a doctoral degree in the field in which they originally taught or in education administration.

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

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

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

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

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

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

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

### **Important Qualities**

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

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

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

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

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

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

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 May 27, 2015).

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

Accordingly, in certain instances, the *Handbook* is not determinative. When 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 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 objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The record of proceeding, however, does not contain sufficient persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion within the top executive category would establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of business operations, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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

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

The petitioner did provide several vacancy announcements issued by other companies for operations manager positions; however, none of the announcements state that the hiring companies require a bachelor's degree in a specific specialty. While one announcement states a requirement of a bachelor's degree in business, as we stated earlier, the requirement of a degree with a generalized title, such as business or business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

Thus, the evidence of record does not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to positions parallel positions with organizations that are in the petitioner's industry and otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the criterion of the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has not credibly demonstrated that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner has not demonstrated how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has not demonstrated how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a wage Level I general and operations manager, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of general and operations management. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the

*Handbook* suggests that some general and operations manager positions do not require such a degree.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

stated, in his June 14, 2013 letter, that the proffered position requires a minimum of a bachelor's degree in business administration. As was explained above, that is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and does not, therefore, indicate that the proffered position is a specialty occupation position.

Further, however, indicated in his April 7, 2014 letter, that he and his business partner, had been performing the petitioner's overall management duties. He also stated that he is the petitioner's General Manager and is the petitioner's Operations Manager. He stated that "lives in Illinois and it has become difficult for him to handle Operations Management from so far away in addition to his current job." He also stated while he himself does not have a bachelor's degree, has a bachelor's degree. A diploma in the record indicates that has a bachelor's degree in finance, rather than in business administration.

The petitioner has not demonstrated that has been employed by the petitioner in the proffered position or that he performed the duties of the proffered position. In any event, previously hiring only one employee with a bachelor's degree does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree in a specific specialty, or the equivalent, for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

For all of the reasons explained above, the petitioner has not established that it normally requires a minimum of a bachelor's degree in a specific specialty to perform the duties of the proffered position, and has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as overseeing customer service; directing and coordinating pricing, sales, and distribution of products and services; reviewing financial statements and sales to determine areas that need cost reduction; managing staff; preparing work schedules; assigning duties; directing and coordinating finances and budget; establishing and implementing policies, goals, objectives and procedures; determining staffing requirements; interviewing, hiring, and training new employees; planning and directing sales promotions; etc., contain insufficient indication of a nature so specialized and complex they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Overall, the evidence of record is inadequate to establish that the duties of the position are so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In other words, even if the proffered position were assumed to be a general and operations manager position, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of general and operations manager positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a wage Level I general and operations manager position, a position for a beginning-level employee with only a basic understanding of general and operations management. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to general and operations management, especially as the *Handbook* indicates that some top executive positions, which category includes general and operations manager positions, require no such degree.

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

The evidence of record does not establish that the petitioner 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.

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*NON-PRECEDENT DECISION*

#### IV. 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.