



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF M-U-, LLC

DATE: NOV. 6, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a “sales of materials for the printing and binding industries” firm, seeks to temporarily employ the Beneficiary as an “Import/Export/Sourcing Logistician” under the H-1B nonimmigrant classification. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(H)(i)(b), 8 U.S.C. § 1101(a)(15)(H)(i)(b). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. ISSUE

The issue before us is whether the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions.<sup>1</sup>

II. SPECIALTY OCCUPATION

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

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<sup>1</sup> We conduct appellate review on a *de novo* basis. *Matter of Simeio Solutions, LLC*, 26 I&N Dec. 542 (AAO 2015); *see also* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989).

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

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

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

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

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

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

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

#### B. The Proffered Position

The Petitioner claims in the Labor Condition Application submitted to support the visa petition that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 13-1081, Logisticians, from the Occupational Information Network (O\*NET).

In a letter dated July 14, 2014, submitted with the visa petition, the Petitioner stated:

[In the proffered position, the Beneficiary] will utilize his business administration experience to analyze and coordinate the import, export, and sourcing of goods and services. He will be responsible for the acquisition, distribution, internal allocation, delivery, and final disposal of resources. The [Beneficiary] will develop and implement project management tools such as plans, schedules, and accounting systems that will improve productivity and viability of the [Petitioner]. The [Beneficiary] will review operational records and reports to project sales and determine profitability as well as monitor customer preferences to determine the focus of sales efforts. He will improve and implement a system that tracks orders from the point of sale to shipment and delivery, minimizing possible delays and ensuring collection of payment. He will evaluate the financial aspects of product development, such as budgets, expenditures, research and development appropriations, and return-on-investment and profit-loss projections. The [Beneficiary] will improve and implement processes to document imports and exports in order to ensure the [Petitioner] is receiving the highest quality merchandise at the

lowest possible price, in the appropriate quantities. He will work with U.S. customs agents and suppliers to ensure the legal, cost-effective, and timely delivery of goods. He will also monitor imports and exports and determine the corrective action to be taken on any defective or unacceptable goods or services.

The Petitioner stated that the position requires, at a minimum, a bachelor's degree in "Business Administration, Economics, Marketing International Business [*sic*], or related field."

In response to the Director's RFE, issued September 9, 2014, the Petitioner provided, *inter alia*, vacancy announcements placed by other firms, a copy of its organizational chart, and a copy of the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* chapter pertinent to logisticians. With respect to the educational requirement for the proffered position, the Petitioner stated that a bachelor's degree in business administration is required.

### C. Analysis

Initially, we observe that the Petitioner asserts that a bachelor's degree in business administration, among other degrees, is sufficient for entry into the proffered position, without further requiring that the business administration degree be in any specific specialty within that wide field. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 (Comm'r 1988).

To prove 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. 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. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>2</sup>

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<sup>2</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

The courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F. Supp. 2d 172, 175-76 (D. Mass. 2000); *Shanti*, 36 F. Supp. 2d at 1164-66; *cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by

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Again, 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. Without more, this assertion alone indicates that the proffered position is not in fact a specialty occupation. The Director's decision must therefore be affirmed and the appeal dismissed on this basis alone.

In addition, the Petitioner has not submitted sufficient evidence establishing the substantive nature of the duties that the Beneficiary will perform.

The Petitioner stated that it has four full-time employees, and seven contractors. The Petitioner explained that its four employees "perform the executive, marketing, finance, and logistics operations of the company," while its contract employees "administer and complete the tasks within these departments." More relevant to the proffered position, the Petitioner stated that it contracts with a "support logistician and warehouse manager to assist [the Beneficiary] in completing logistics and recordkeeping tasks," as well as with an office assistant to provide "administration assistance" to the Beneficiary. The Petitioner clarifies on appeal that the support logistician and warehouse manager, [REDACTED], is located in Minnesota.

However, the Petitioner has not adequately described and distinguished between the duties performed by the Beneficiary and his assistants. For instance, the Petitioner has not specifically identified what tasks are performed by the support logistician and warehouse manager and the office manager. While the Petitioner asserts that these contract employees "complete non-qualifying tasks," the Petitioner has not defined or otherwise illuminated the exact nature of these "non-qualifying tasks." "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Nor has the Petitioner provided sufficient evidence demonstrating the nature and extent of these contractors' services to the Petitioner and Beneficiary. The Petitioner has not provided detailed information or documentation about these contractors, showing, for example, how many hours per week the support logistician and warehouse manager works, and the nature of the warehouse in Minnesota that she manages.<sup>3</sup> Moreover, the Petitioner has not provided any copies of contracts, fee agreements, or other similar documentation detailing the terms and conditions of these contractors' services.<sup>4</sup> While the Petitioner submitted eight emails sent by the Beneficiary to [REDACTED], these

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the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

<sup>3</sup> The Petitioner's office, where the Beneficiary will solely be working, is located in [REDACTED] Texas.

<sup>4</sup> According to the Petitioner's 2013 federal tax return, the Petitioner claimed only \$156,062 in other deductions, including only \$240 in "consulting" expenses and \$13,898 in "miscellaneous" expenses. The Petitioner's descriptions of its other deductions did not contain any other categories in which fees to the logistician and warehouse manager and office manager could reasonably have been included. The Petitioner claimed \$130,683 in salaries and wages, presumably for its employees. We also note that the Petitioner also claimed a total compensation of \$282,627 to two officers, one of whom is not listed on the Petitioner's organizational chart.

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emails are insufficient to establish the exact nature and level of logistics support [REDACTED] provides to the Beneficiary.

Furthermore, the Petitioner has described the proffered duties in broad, generalized terms that are insufficient to establish the actual tasks the Beneficiary will perform. For example, the Petitioner stated that the Beneficiary will spend 25% of his time on the duty of “[a]nalyze and coordinate the import, export, and sourcing of goods and services.” However, the Petitioner did not explain which of its employees or contractors perform the day-to-day operational tasks required to carry out the import, export, and purchase of materials that the Beneficiary would purportedly “[a]nalyze and coordinate.” We note that the Petitioner has previously employed the Beneficiary in the same position, but has not provided concrete examples of his work (other than the eight emails mentioned above).

Overall, without further information and evidence concerning the job duties of the Beneficiary and his claimed assistants, we cannot determine the substantive nature of the proffered position, and consequently, whether the proffered position qualifies as a specialty occupation.

Nevertheless, for the purpose of performing a comprehensive analysis of the proffered position, we will discuss the record of proceeding in relation to the four criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

*A baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular 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)(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.

As was noted above, the Petitioner claims in the LCA that the proffered position corresponds to a logistician position as described in O\*NET. We recognize the *Handbook*, cited by the Petitioner, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>5</sup> We reviewed the *Handbook* chapter entitled “Logisticians.” The *Handbook* states the following with regard to the requirements of logistician positions: “Logisticians may qualify for positions with an associate’s degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor’s degree. Many logisticians have a bachelor’s degree in business, industrial engineering, process engineering, or supply chain management.” U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Logisticians,” <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Oct. 19, 2015).

The *Handbook* states that entry into a particular logistician position may require only an associate’s degree. That companies increasingly *prefer* at least a bachelor’s degree does not indicate that a

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<sup>5</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 2014–15 edition available online.

bachelor's degree is a minimum *requirement* for entry. Further, the *Handbook* indicates that a bachelor's degree in business, without further specification, may suffice even for those logistician positions that may require a bachelor's degree. As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business or business administration is not a requirement of a bachelor's degree in a specific specialty or its equivalent. See *Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560.

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. 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.

Here, the O\*NET OnLine Summary Report for Logisticians, referenced by the Petitioner, is also insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. The O\*NET Summary Report does not state a requirement for a bachelor's degree *in a specific specialty* for this occupation. Rather, it assigns this occupation a "Job Zone Four" rating, which groups it among occupations for which "most . . . require a four-year bachelor's degree, but some do not." O\*NET OnLine Summary Report, "13-1081.00 – Logisticians," <http://www.onetonline.org/link/summary/13-1081.00> (last visited Oct. 19, 2015). Further, O\*NET OnLine does not indicate that four-year bachelor's degrees that may be required by Job Zone Four occupations must be *in a specific specialty* directly related to the occupation. Therefore, the O\*NET OnLine information is not probative of the proffered position being classified as a specialty occupation position.

The record lacks sufficient evidence from an authoritative source to support a finding that the particular position proffered here would normally have such a minimum, specialty degree requirement or its equivalent. The duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the Petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).<sup>6</sup>

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<sup>6</sup> On appeal, the Petitioner refers to the Director's statement that "USCIS recognizes that the position of a logistician is normally considered professional, and that most of these positions require prospective employees to hold at least a bachelor's degree in business administration or a closely related field."

The issue before us is not whether the proffered position is a "professional" position, but whether it qualifies for classification as a *specialty occupation* position. We observe, again, that 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 Assocs.*, 19 I&N Dec. at 560. 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

*The requirement of a baccalaureate or higher degree in a specific specialty,  
or its equivalent, is common to the industry in parallel  
positions among similar organizations*

Next, we will review the record regarding 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: (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 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the Petitioner has not established that its proffered position is one for which the *Handbook* (or other independent, authoritative source) reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, we incorporate by reference the previous discussion on the matter. Also, there are no submissions from the industry's professional association indicating that a specific degree is a minimum entry requirement for the occupation. Furthermore, the Petitioner did not submit any letters or affidavits from similar firms or individuals in the Petitioner's industry attesting that such firms "routinely employ and recruit only degreed individuals."

The Internet job postings submitted by the Petitioner do not establish that a degree requirement is common to the industry in parallel positions among similar organizations. First, we note that the Petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices.

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specialty, or its equivalent, and does not qualify a position as a specialty occupation position. To the extent that the Director's statement may be read as stating, or implying, that logistician positions are specialty occupation positions because they require a minimum of a bachelor's degree in business administration or a closely-related subject, we withdraw that portion of the decision.

We also withdraw the portions of the Director's decision stating that "[c]ompanies similar to [the Petitioner] in nature would normally contract out for the services of a logistician on an as-needed basis," and implying that a logistician position in a "large scale corporation" would normally qualify as a specialty occupation. The Director has not provided any reasoning or cited to any authoritative sources to support such statements.

Second, upon review of the advertisements, they do not provide sufficient information about the advertising organizations to establish that they are similar to the Petitioner. Without such evidence, these advertisements are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the Petitioner.<sup>7</sup> Moreover, the descriptions of responsibilities in the advertisements are generally perfunctory and do not provide sufficient information to determine the role the successful applicant will play in the advertising organization or the level of responsibility that will be required of the successful applicant.

Further still, while each of those vacancy announcements states a requirement of a bachelor's degree, each also indicates that a bachelor's degree in "business" or "business administration," with no additional specification, would be a sufficient educational qualification for the position announced. As explained above, 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. *Cf. Matter of Michael Hertz Assocs.*, 19 I&N Dec. at 560. As such, those vacancy announcements do not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and do not support a finding that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

As the documentation does not establish that the Petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions.

Therefore, the Petitioner has not established 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 (1) in the Petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the Petitioner. For the reasons discussed above, the Petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).<sup>8</sup>

*The particular position is so complex or unique that it can be performed only by  
an individual with a baccalaureate or higher degree in a  
specific specialty, or its equivalent*

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<sup>7</sup> Further, the companies that placed those announcements claim to be in industries such as construction, automobile parts, and "Wholesale Trade/Import-Export." There is insufficient evidence demonstrating that the advertising entities are similar to the Petitioner in terms of the type and level of services provided.

<sup>8</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the Petitioner has not established the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the Petitioner still would not have demonstrated what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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 did not credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor’s degree in a specific specialty.

We find that the evidence of record does not demonstrate that 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 sufficient 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.<sup>9</sup>

On appeal, the Petitioner states that the Director “mischaracterized the nature of the U.S. business,” and “failed to consider the role this U.S. company plays in supporting its two Mexican parent companies in the manufacture, sale, and distribution of printing, binding, and stationary products in Mexico and Central America.” The Petitioner further states: “These global supply chain and logistics activities create sufficient complexity in the offered position to qualify it as a specialty occupation.” The Petitioner also asserts that it requires a full-time logistician due to the volume of sales conducted by the parent companies, one of which reported total sales of USD \$3.7 million in 2014.

However, the Petitioner has not submitted sufficient evidence establishing 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 less than a bachelor’s degree (e.g., an associate’s degree) and degrees not in a specific specialty (e.g., business or business administration degrees). In this respect, the *Handbook* indicates that the manufacturing industry, which the Petitioner listed as its primary business activity on its 2013 federal tax returns, employs a large percentage (25%) of logistician positions. U.S. Dep’t of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., “Logisticians,” <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-3> (last visited Oct. 19, 2015). The Petitioner has not explained and documented how its global operations or the sales volume of its

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<sup>9</sup> We acknowledge the Petitioner’s submission of a chart listing the duties of the proffered position with a column titled, “How Bachelor’s Degree in Business Administration, International Business or Related Field Relates to the Required Job Duty.” However, as discussed earlier, 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 Assocs.*, 19 I&N Dec. 558.

parent company compares to other businesses in the manufacturing industry, or otherwise explained how these factors 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 did not 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).

*The employer normally requires a baccalaureate or higher degree in a specific specialty, or its equivalent, for the position*

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, we usually review the Petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.<sup>10</sup>

The record contains insufficient evidence that the Petitioner ever employed anyone in the proffered position prior to hiring the Beneficiary to fill it. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. We cannot conclude that the Petitioner has satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).<sup>11</sup>

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<sup>10</sup> 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 384. 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 the specific specialty as the minimum for entry into the occupation as required by the Act.

<sup>11</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See* *Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

*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 in a specific specialty, or its equivalent*

Finally, the Petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that 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 Petitioner claims that the nature of the specific duties of the position in the context of its business operations 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 a specific specialty, or its equivalent. We reviewed the Petitioner's statements regarding the proffered position and its business operations. However, relative specialization and complexity have not been sufficiently developed by the Petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least 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. The evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The Petitioner has not 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.

### III. CONCLUSION AND ORDER

The evidence of record is insufficient to establish that the proffered position qualifies as a specialty occupation.

We recognize that this is an extension petition. The Director's decision does not indicate whether the prior approval of the other H-1B petition was reviewed. If the previous petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the Director. We are not required to approve petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 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 Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

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. Temporary Alien Workers Seeking Classification Under the Immigration and Nationality Act, 55 Fed. Reg. 2,606, 2,612 (Jan. 26, 1990) (to be codified at 8 C.F.R. pt. 214). 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 *Tex. A&M Univ. v. Upchurch*, 99 F. App'x 556 (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. See *La. Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999).

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) (citing *Matter of Brantigan*, 11 I&N Dec. 493, 495 (BIA 1966)). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of M-U-, LLC*, ID# 14394 (AAO Nov. 6, 2015)