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

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

DATE: FEB 0 1 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael T. Kelly

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on September 20, 2011. On the Form I-129 visa petition, the petitioner describes itself as a hotels, water and theme parks business established in 1985, with 600 employees.[1] In order to employ the beneficiary in what it designates as a human resources staffing coordinator 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 on November 9, 2011, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted an appeal of the decision on November 30, 2011. On appeal, counsel for the petitioner states that the director's basis for denial of the petition on the specialty occupation issue was erroneous. In support of this position, counsel for the petitioner submitted a brief and additional information.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice denying the petition; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), defines the term "specialty occupation" as an occupation that requires:

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its

[1] The AAO notes that the information regarding the number of employees listed on the Form I-129 (600 employees) is inconsistent with the number of employees listed in petitioner's letter in response to the RFE and in the brief on appeal (approximately 800, or more, employees).

> 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 illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as

stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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.

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a human resources staffing coordinator to work on a part-time basis (25 hours per week) at a salary of $632.25 per week. In the Form I-129 Supplement H, at Section 1 on page 11, the petitioner described the proposed duties of the proffered position, as follows:

> Inform applicants of job openings & details; perform reference & background checks on applicants; interview applicants; review employm[ent] applications & job orders & select applicants[.]

In its undated draft and partially signed "Employment Agreement," submitted along with the petition, the petitioner provided the following description of the duties of the proffered position:

1. Coordinating staff requirements of each department to achieve profitability, customer satisfaction, and meet staffing goals.
2. Actively engage applicants during interviews to identify culture fit, strong customer service skills, English skills, and fitness for each department.
3. Direct involvement in international recruitment and placement.
4. Assist in compensation, benefits administration, and record keeping.
5. Maintain employee files.
6. Coordinate and facilitate employee administration and record-keeping.
7. Consult with international student agencies.
8. Verify identification for I-9 paperwork according to immigration laws.
9. Guide and assist managers, supervisors, and employees with conflict resolutions and issue resolution in response to workplace issues.
10. Assist with general HR duties.

In its cover letter, submitted along with the petition, counsel for the petitioner provided the following description of the proffered position:

- Coordinate staff requirements of each department to achieve profitability, customer satisfaction, and meet staffing goals (approximately 30% of the day)[;]
- Review employment applications and job orders to match applicants with job requirements, interview job applicants to match their qualifications with company's needs, record and evaluate applicant experience, education, training, and skills (approximately 30% of the day);
- Guide and assist managers, supervisors, and employees with conflict resolutions and issue resolution in response to workplace issues (approximately 20% of the day);
- Assist in compensation, benefits administration, and record keeping (approximately 5% of the day);
- Consult with international student agencies (approximately 5% of the day);
- Perform reference and background checks on applicants (approximately 5% of the day); [and]
- Assist with general HR duties (approximately 5% of the day).

In addition, counsel for the petitioner claims that "[t]he nature of the duties that the beneficiary would be performing is highly specialized and requires the attainment of a minimum bachelor's degree both for the company and for the industry in general. The beneficiary possesses a Master of Business Administration."

With the initial petition, the petitioner submitted a copy of the beneficiary's foreign academic credentials, as well as a credential evaluation from [redacted] dated August 12, 2011. The evaluation states that the beneficiary's foreign education is equivalent to a U.S. bachelor's degree in education and a U.S. master's degree in business administration (MBA).

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Human Resources, Training, and Labor Relations" – SOC (ONET/OES Code) 13-1078.00, at a Level IV wage.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on October 4, 2011. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On October 28, 2011, counsel for the petitioner responded to the RFE and submitted the petitioner's response letter and additional evidence. In the letter submitted in response to the RFE, dated October 18, 2011, the petitioner provided the following revised description of the duties of the proffered position:

1. Consult with J-1 sponsors and international student agencies (approximately 30% of

the day):

a. Coordinate hiring of American and International staff;
b. Guide international employees and consult with their agencies throughout the entire visa and employment process;
c. Inform about basics of the Exchange Visitor Program and [v]isas involved and the rules applying to these programs;
d. Visa ineligibility and durations;
e. Visa acceptance and denial problems and what needs to be done;
f. Explaining to students the consequences of a staying beyond an authorized stay;
g. Defining DS2019 requirements early in the season to avoid departure issues;
h. Establishing travel and transportation arrangements from and to the bus / train stations and local businesses;
i. Guide employees through I-94, Social Security and other identification requirements for Homeland Security;
j. Offer information about health insurance coverage and advice for the duration of the international employees contract;
k. Explain the importance of everything they will go through before and after their arrival / departure;
l. Advise the international employees of the laws and rules of living in the USA and review cultural issues which could become problems;
m. Issue contracts, proof of employment forms or letters of recommendation;
n. Ensure they understand their job duties, terms and conditions of contract when they are hired;
o. Explain "clocking-in" and payroll processes;
p. Answer all questions and concerns that the applicants will have;
q. Support and encourage them by explaining everything before their arrival in the USA and assure them that the company will take care of them while they work for us;
r. Reassure parents and agencies about the well-being of our international employees;

2. Coordinate the staff requirements of each department to achieve profitability, customer satisfaction and meet staffing goals; motivate the managers, supervisors and employees in order to build a "CAN-DO" mentality and install loyalty to the company (approximately 20% of the day);

3. Review employment applications and job requisitions to match applicants with job requirements by analyzing their skills and abilities; interview job applicants to match their qualifications with company's needs; record, evaluate and study the applicants' potential, work preferences, experience, education, field of expertise and training; check their social background and assess their personalities in order to fill the positions with only the appropriate candidates (approximately 20% of the day);

4. Guide and assist managers, supervisors and employees with conflict resolution and other issues in response to work place problems (approximately 5% of the day);

5. Assist in compensation for new or old employees based on their performances and responsibilities; health, dental or other kind of benefits administration, record keeping and making sure that all this information will stay confidential (approximately 5% of the day);

6. Perform reference and background checks on applicants; making sure they understand their job duties, terms and conditions of contract once they are hired and agree to work for this company; explaining to the hourly and payroll process; provide assistance with employee conduct, company's benefits and opportunities, department transfers, non-discrimination and anti-harassment policies, internal complaint procedures, equal employment opportunities; answering all the questions and concerns that the applicants will have (approximately 10% of the day); [and]

7. Assist with general HR duties: recruiting and hiring, recording doctors' notes, even customers or managers compliments or complaints, handling leaves and vacations, policies implementing, training, retraining and development, taking care of tax refund forms, helping the international students understanding the process and filling out the forms needed (approximately 10% of the day).

On November 9, 2011, the director denied the petition. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel for the petitioner submitted an appeal of the denial of the H-1B petition.

On appeal, counsel for the petitioner asserts that it submitted sufficient evidence to demonstrate that the proffered position is a specialty occupation. Counsel also asserts that the "preponderance of the evidence" standard is applicable in this matter and claims that the director "impermissibly increased the applicable burden of proof and appears to have imposed on Petitioner a requirement that its supporting evidence and contentions eliminate all possible doubt about the contested issues."

With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

> Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

> The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.
>
> * * *
>
> Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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.
>
> Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), and, in doing so, it applies the preponderance-of-evidence standard as described above. As reflected in this decision, however, the AAO finds that the petitioner has not met its burden by a preponderance of the evidence.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Applying the preponderance of the evidence standard, the AAO agrees with the director and finds that the evidence of record fails to establish that the position as described is more likely than not a specialty occupation.

To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The petitioner stated that the beneficiary would be employed in a human resources staffing coordinator position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[2] As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Human Resources, Training, and Labor Relations." The director reviewed the petitioner's job description and found that, although the petitioner titled the proffered position as a "human resources staffing coordinator," the job duties are similar to those of a "human resources specialist" and the proffered position falls under the occupational category "Human Resources Specialists."

The AAO agrees with the director and reviewed the information in the *Handbook* regarding the occupational category "Human Resources Specialists." However, the AAO finds that the *Handbook* does not indicate that these positions comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The chapter of the *Handbook* entitled "How to Become a Human Resources Specialist" states the following about this occupational category:

> Most positions require that applicants have a bachelor's degree. However, the level of education and experience required to become a human resources specialist varies by position and employer.
>
> **Education and Work Experience**
>
> Most positions require a bachelor's degree. When hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field.
>
> Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

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[2] The *Handbook*, which is available in printed form, may also be accessed on the Internet at http://www.bls.gov/ooh/. The AAO's references to the *Handbook* are to the 2012-2013 edition available online.

> Some positions, particularly human resources generalists, may require work experience. Candidates often gain experience as human resources assistants, in customer service positions, or in other related jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Human Resources Specialists, available on the Internet at http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-4 (last visited January 14, 2012).

The *Handbook* does not report that a bachelor's degree, let alone one in a specific specialty, is normally required for entry into the occupation. As stated above, this passage of the *Handbook* only reports that "[m]ost positions require a bachelor's degree," that "when hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field," and also that "the level of education and experience to become a human resources specialist varies by position and employer."

Also, the *Handbook* recognizes that degrees in different fields, i.e., human resources or business, are acceptable for entry into this field. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook*'s recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as human resources staffing coordinator does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO notes that in response to the RFE, counsel for the petitioner submitted a copy of the O*NET OnLine Summary Report for: 13-1071.00 – Human Resources Specialists, to suggest that the educational requirements indicate that the proffered position is a specialty occupation. On appeal, counsel for the petitioner states that "[t]he [*Dictionary of Occupational Titles' (DOT's)*]

listing for Personnel Managers[3] gives an (sic) [Specialized Vocational Preparation (SVP)] of 8 (over 4 years up to and including 10 years)."[4]

As previously discussed, the AAO concurs with the director in that the proffered position most closely resembles that of a human resources specialist. Nevertheless, since the O*NET OnLine Summary Reports for both human resources specialists and human resources managers assign the same SVP rating for each respective occupation, the AAO will now discuss O*NET's SVP rating of "7.0 to < 8.0." The AAO finds that an assignment of an SVP rating of 7.0 to < 8.0 is not indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT's* Appendix C, Components of the Definition Trailer, which addresses the SVP rating system.[5] The section reads:

> II. SPECIFIC VOCATIONAL PREPARATION (SVP)
>
> Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.
>
> This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.
>
> Specific vocational training includes training given in any of the following circumstances:
>
> a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);

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[3] *See Dictionary of Occupational Titles*, Personnel Managers, code 166.117-018. The DOT Crosswalk Search, available on the Internet at http://www.onetonline.org/crosswalk/DOT?s=personnel+managers&g=Go (last visited January 14, 2013), indicates that this occupation corresponds to the O*NET OnLine Summary Report for: 11-3121.00 – Human Resources Managers.

[4] *See* O*NET OnLine Summary Report for: 11-3121.00 – Human Resources Managers, available on the Internet at http://www.onetonline.org/link/summary/11-3121.00 (last visited January 14, 2013), indicating that this position has an "SVP Range of 7.0 to < 8.0."

[5] The Appendix's site is http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM (last visited January 14, 2013).

b. Apprenticeship training (for apprenticeable jobs only);
c. In-plant training (organized classroom study provided by an employer);

d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);

e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

Thus, an SVP rating of 8 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition 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 failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This first alternative prong calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

In its letter in response to the RFE, dated October 18, 2011, the petitioner stated that "[t]here are other companies in the same industry as ours that use similar standards of hiring their employees. We can mention a few of them: [redacted]" However, the record does not contain any corroborating evidence from any of these companies with respect to the petitioner's statement. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190).

Also, in response to the RFE, the petitioner and counsel submitted copies of five job vacancy announcements to support their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a hotels, water and theme parks business with 600 or more employees. Thus, the record is devoid of sufficient information regarding the five advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, job advertisements submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and another organization share the same general characteristics, information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements) may be considered. It is not sufficient for the petitioner to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190).

As previously mentioned, in support of their assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted copies of five job vacancy advertisements. Three of the advertisements provided do not establish that a bachelor's degree or the equivalent in a *specific specialty* is required by the advertising employers. Only two of the five advertisements indicate that a bachelor's degree in a specific specialty is a requirement for entry into those positions by the advertising employers. For instance, the advertisement for a "human resources generalist" with [redacted] states, "Bachelor's degree in Human Resources or related field," under the heading "Qualifications

and Experience." The other advertisement for a "Director - Field Staffing" for requires a "Bachelor's degree in Human Resources or related field." However, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty, or its equivalent, were required, the petitioner fails to establish that the submitted advertisements are relevant as the record does not indicate that the posted job advertisements are for parallel positions in similar organizations in the same industry.

Furthermore, as the advertising entities include diverse businesses such as a college, a human resources and staffing organization, a mid-sized shipbuilder, a manufacturing company, and what appears to be a marketing business, they cannot be found to be similar organizations to the petitioner in terms of the type of business. Thus, for the reasons discussed above, the petitioner's reliance on the job vacancy advertisements is misplaced. As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.[6]

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, 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).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of human resources staffing coordinator. Rather, the AAO finds, the duties as presented in the record are not developed with sufficient specificity and substantive

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[6] Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just five job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of human resources staffing coordinator at a hotels, water and theme parks business required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

detail to comprise a position that is more complex or unique than positions in the occupational category that can be performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

While some of the courses listed on the translated copy of the beneficiary's transcript for the master's degree in business administration from the in Romania may be beneficial in performing certain duties of a human resources staffing coordinator position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate (or higher) degree in a specific specialty, or its equivalent, are required to perform the duties of the particular position here proffered.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position of human resources staffing coordinator is so complex or unique relative to other human resources staffing coordinator positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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 the equivalent, for the position. Of course, the AAO will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, 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 petitioner 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 388. In other words, if a petitioner's stated degree-requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if 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* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term

"specialty occupation").

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

In the RFE response letter, dated October 18, 2011, the petitioner claims that "[t]his is the first time in many years that we have had to recruit for a position with these requirements." This statement implies that at some point in the past, the petitioner did recruit for such a position. Further, the petitioner claims that it employs three individuals in positions that are similar to the proffered position. The petitioner states that the "Director of Human Resources" has a "Bachelor in Education and 20+ years' experience"; the "Human Resources Generalist" has an "MBA and 8 years [of] experience"; and a third individual has a "Bachelor in Education and 15 years [of] experience." However, as the director noted in its notice of decision, the petitioner did not submit any documentation to corroborate these claims, such as these employees' payment records, job descriptions, and copies of their degrees and transcripts. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In its brief on appeal, counsel for the petitioner states that "[p]etitioner respectfully declines to request from its present employees (in different positions) copies of their diplomas as requested by the RFE and as mandated by the decision. Such a request on the part of the [p]etitioner would violate privacy rights and could be considered an actionable discriminatory work-related practice." Counsel's argument, which, by the way is not supported by any legal citations, is not persuasive and, in any case, does not relieve the petitioner of its burden to provide supporting documentary evidence.

Moreover, even if the petitioner had provided sufficient documentation to support its claims regarding the aforementioned employees' educational backgrounds and positions, their purported degrees (two have a bachelor's degree in education and one has an MBA) would not establish that the petitioner normally requires at least a bachelor's degree, or the equivalent, in *a specific*

specialty. Rather, contrary to the purpose for which it would have been intended, this information would serve to indicate that the petitioner accepts degrees in at least two different specialties for the position.

Finally, in contrast to what was implied in the petitioner's letter in response to the RFE, in the brief submitted on appeal, counsel for the petitioner contends that "[t]he offered position is a new position within the [p]etitioner's business necessitated by the company's fast growth and the popularity of their resorts. Accordingly, no past practice for the position of [h]uman [r]esources [s]taffing [c]oordinator could be documented." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Thus, the record is devoid of any documentary evidence regarding the petitioner's past employment practices to satisfy this criterion.

Upon review of the record, the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its 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).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that 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.

Upon review of the record of the proceeding, the AAO notes that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. The AAO acknowledges that the petitioner believes its proffered position involves specialized and complex duties. The AAO notes that the petitioner has not provided probative evidence to satisfy this criterion of the regulations. In the instant case, 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 their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

As the petitioner has not established that the duties of the position are 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, the AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

For the reasons related in the preceding discussion, 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.

Finally, the AAO notes that counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "'[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge.'"

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.[7] The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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

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[7] It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.