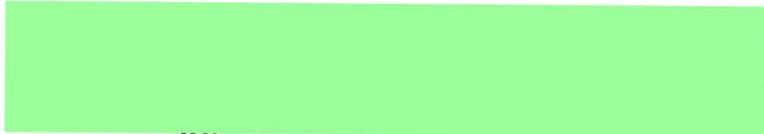


(b)(6)

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

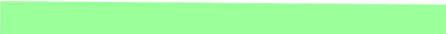


U.S. Citizenship
and Immigration
Services



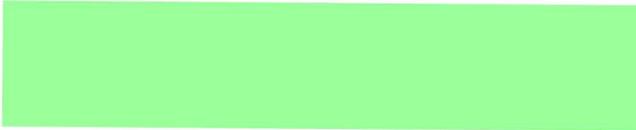
JUL 22 2013

DATE: OFFICE: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

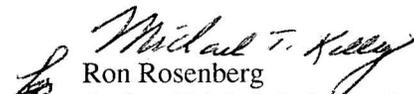


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

On the Form I-129 visa petition, the petitioner describes itself as a three-employee construction management company¹ established in 2006. In order to employ the beneficiary in what it designates as a budget/financial analyst position,² 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, concluding that the petitioner failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (1) the Form I-129 and supporting documentation; (2) the director's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's letter denying the petition; and (5) the Form I-290B and supporting documentation.

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

The AAO will now address its determination that the evidence in the record of proceeding fails to establish that the proffered position is a specialty occupation.

To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one that requires:

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

¹ The petitioner provided a North American Industry Classification System (NAICS) Code of 236210, "Industrial Building Construction." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "236210 Industrial Building Construction," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed Jul. 3, 2013).

² The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 13-2051 and the associated Occupational Classification of "Financial Analysts."

- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which requires [(2)] the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

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

In its March 29, 2012 letter of support, the petitioner claimed that the duties of the proffered position would include the following tasks:

- Developing, evaluating, and executing budgets;
- Estimating the company’s financial needs;
- Developing cost-benefit analyses to review and assess new investments;
- Consolidating the company’s budget in order to support the investment decisions of the petitioner’s senior management;
- Periodically monitoring the company’s budget, by reviewing reports and accounting records in order to determine whether funds are being spent in accordance with the recommendations of senior management;
- Compiling and analyzing accounting records and other financial data in order to determine whether the company’s financial resources are sufficient to implement investments;

- Analyzing the company's financial statements in order to determine the company's value by projecting its future earnings;
- Monitoring developments in the American and Brazilian construction industry in order to support the company's senior management in their investment decisions;
- Developing financial reports regarding the American and Brazilian financial markets; and
- Developing financial reports regarding general economic trends.

In its June 30, 2012 letter submitted in response to the director's RFE the petitioner submitted additional details regarding the duties of the proffered position, including the percentages of time to be spent performing each of the various duties.

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

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

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 it addresses.³ Counsel argues that the duties of the proffered position combine those of budget analysts and financial analysts, as those two occupations are described in the *Handbook*. The AAO agrees.⁴

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

⁴ When a petitioner seeks to employ a beneficiary in two distinct occupations, like here, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. If a petitioner does not file two separate petitions, and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore, and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation, such as the provision of a certified LCA for each occupation and payment of wages commensurate with the hours worked in each occupation. Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

The *Handbook's* discussion of the duties typically performed by budget analysts states, in pertinent part, the following:

Budget analysts help public and private institutions organize their finances. They prepare budget reports and monitor institutional spending.

Duties

Budget analysts typically do the following:

- Work with program and project managers to develop the organization's budget
- Review managers' budget proposals for completeness, accuracy, and compliance with laws and other regulations
- Combine all the program and department budgets together into a consolidated organizational budget and review all funding requests for merit
- Explain their recommendations for funding requests to others in the organization, legislators, and the public
- Help the chief operation officer, agency head, or other top managers analyze the proposed plan and find alternatives if the projected results are unsatisfactory
- Monitor organizational spending to ensure that it is within budget
- Inform program managers of the status and availability of funds
- Estimate future financial needs

Budget analysts advise various institutions—including governments, universities, and businesses—on how to organize their finances. They prepare annual and special reports and evaluate budget proposals. They analyze data to determine the costs and benefits of various programs and recommend funding levels based on their findings. Although elected officials (in government) or top executives (in a private company) usually make the final decision on an organization's budget, they rely on the work of budget analysts to prepare the information for that decision. For more information about elected officials and top executives, see the profiles on legislators and top executives.

Sometimes, budget analysts use cost-benefit analyses to review financial requests, assess program tradeoffs, and explore alternative funding methods. Budget analysts

also may examine past budgets and research economic and financial developments that affect the organization's income and expenditures. Budget analysts may recommend program spending cuts or redistributing extra funds.

Throughout the year, budget analysts oversee spending to ensure compliance with the budget and determine whether changes to funding levels are needed for certain programs. Analysts also evaluate programs to determine whether they are producing the desired results.

In addition to providing technical analysis, budget analysts must effectively communicate their recommendations to officials within the organization. For example, if there is a difference between the approved budget and actual spending, budget analysts may write a report explaining the variations and recommend changes to reconcile the differences.

Budget analysts working in government attend committee hearings to explain their recommendations to legislators. Occasionally, budget analysts may evaluate how well a program is doing, provide policy analysis, and draft budget-related legislation.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Budget Analysts," <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-2> (accessed Jul. 3, 2013).

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

A bachelor's degree is typically required, although some employers prefer candidates with a master's degree.

Education

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. For the federal government, a bachelor's degree in any field is enough for an entry-level budget analyst position. State and local governments have varying requirements but usually require a bachelor's degree in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

Id. at <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-4>.

These findings do not indicate that a bachelor's degree in a specific specialty, or the equivalent, is normally required for entry into this occupation. Although the *Handbook* states that budget analysts are generally required to possess a bachelor's degree, it does not state that the degree must be in a *specific specialty*. Further, the *Handbook* reports that "[s]ometimes budget-related or finance-related work experience can be substituted for formal education," and the *Handbook* does not relate that, in such instances, the work experience must constitute any particular level of educational equivalency in any specific specialty. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require at least a bachelor's degree, or its equivalent, in a specific specialty that is directly related to the proposed position.

Furthermore, the *Handbook* states that for certain positions, a bachelor's degree in business administration would suffice. 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.

The *Handbook*, therefore, does not support a finding that the duties of the proffered position which corresponding with those of a budget analyst constitute those of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Having made that determination, the AAO turns next to the *Handbook's* discussion of the duties of a financial analyst.

The *Handbook's* discussion of the duties typically performed by financial analysts states, in pertinent part, the following:

Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments.

Duties

Financial analysts typically do the following:

- Recommend individual investments and collections of investments, which are known as portfolios
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting the company's future earnings

- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy side analysts and sell side analysts.

- Buy side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.
- Sell side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and are impartial, falling into neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is become more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

Portfolio managers supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio but also are expected to explain investment decisions and strategies in meetings with investors.

Fund managers work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

Ratings analysts evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

Risk analysts evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (accessed Jul. 3, 2013).

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

Financial analysts typically must have a bachelor's degree, but a master's degree is required for advanced positions.

Education

Many positions require a bachelor's degree in a related field, such as accounting, business administration, economics, finance, or statistics. Employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

Id. at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4>.

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.⁵ Section 214(i)(1)(b) of the Act (emphasis added).

⁵ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret

Here, although the *Handbook* indicates that a bachelor's or higher degree is typically required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields, the *Handbook* also recognizes a bachelor's degree in business administration as acceptable. Again, 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 bachelor's degree 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 a financial analyst 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.

The materials from DOL's Occupational Information Network (O*NET OnLine) do not establish that the proffered position qualifies as a specialty occupation under the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as O*NET OnLine's Job Zone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. The Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt submitted by counsel is of little evidentiary value to the issue presented on appeal.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category is sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

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

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

Nor do the four job-vacancy announcements submitted into the record satisfy the first alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). The record contains no documentary evidence demonstrating that these advertisements are from companies "similar" to the petitioner in size, scope, and scale of operations, business efforts, expenditures, or other fundamental dimensions. Nor does the petitioner submit any evidence regarding how representative these advertisements are of the industry's usual recruiting and hiring practices with regard to the positions advertised. Simply 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)).⁶

⁶ Furthermore, according to the *Handbook* there were approximately 62,100 individuals employed as budget analysts in 2010. *Handbook* at <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-6> (last accessed Jul. 3, 2013). There were 236,000 individuals employed as financial analysts. *Id.* at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-6>. Based on the size of these relevant study populations, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the four submitted vacancy announcement with regard to determining the common educational requirements for entry into parallel positions in similar organizations. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that these 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").

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in positions that are both (1) parallel to the proffered position and (2) located in organizations that are similar to the petitioner.

Next, the AAO finds that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

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

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position,⁷ let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform that position. Rather, the AAO finds, that the petitioner has not distinguished either the proposed duties, or the position that they comprise, from generic budget- and financial-analysis work, which, the *Handbook* indicates, does not necessarily require a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

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

As such, even if these four job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these four job-vacancy announcements which 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

⁷ For example, while counsel's argument on appeal that "[c]ertainly analyzing [the petitioner's] financial statements to determine the company's value through projecting its future earnings . . . would require sophisticated finance, numerical[,] and analytical skills" is noted, the *Handbook* indicates that this is a duty common to financial analyst positions. Counsel does not explain how such a common job duty establishes relative complexity or uniqueness as aspects of the proffered position. Given the *Handbook's* indication that financial analysts are not normally required to possess a bachelor's degree, or the equivalent, *in a specific specialty*, it is unclear how inclusion of such a routine financial-analysis job duty so elevates the proffered position as to require an individual with such a credential.

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

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

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

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

Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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

specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The record does not indicate that the petitioner has ever employed a budget/financial analyst.⁸ Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor's degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

Again, the duties of the position are similar to those outlined in the *Handbook* as normally performed by budget analysts and financial analysts, and the petitioner's description of those duties simply does not establish that they surpass or exceed the duties performed by budget analysts and financial analysts, whose duties do not require a bachelor's degree, or the equivalent, in a specific specialty, in terms of specialization and complexity. The petitioner has failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved 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.

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

Finally, it is noted that counsel refers to an unpublished decision from 1995 in which the AAO determined that the financial analyst proffered in that matter qualified for classification as a specialty occupation. However, counsel has furnished no evidence to establish that the facts of the

⁸ Also, in consonance with the above discussion regarding the petitioner's requirement to establish that the educational requirements asserted in the petition are actually generated by the particular requirements of the proffered position as its duties would be specifically performed within the context of the petitioner's organization, the AAO accords no probative weight to the fact that a certified public accountant (CPA) may have been enlisted to perform duties that would be included within the scope of the proffered position. It is the substantive nature of the position's duties, the substantive practical and theoretical applications that would have to be employed to perform them, and the correlation of these aspects, if any, with the asserted educational requirements that are determinative on the specialty occupation issue. The AAO finds that the information provided regarding the prior use of a CPA is not probative on these essential issues.

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instant petition are analogous to those in the unpublished decision. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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

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.