



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: APR 10 2014 OFFICE: CALIFORNIA SERVICE CENTER

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)

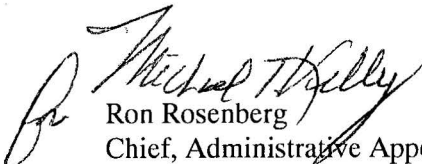
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center ("the 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 petitioner on the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), describes itself as a "Dental Lab." The petitioner states that it was established in 2002, and employs 12 persons in the United States. It seeks to employ the beneficiary in a position which it designates as its Training and Development Manager and to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition determining that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion (Form I-290B), the petitioner's brief, and previously submitted 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.<sup>1</sup> Accordingly, the appeal will be dismissed and the petition will remain denied.

## I. STANDARD OF REVIEW

In the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states 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.

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The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

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

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.

*Id.* at 375-76.

Again, the AAO conducts its review of service center decisions on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d at 145. In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, the AAO finds that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that the director's determination in this matter was correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the AAO finds that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the petitioner's claims are "more likely than not" or "probably" true.

## I. GENERAL OVERVIEW

Here we shall make some general observations about some aspects of this petition that are reflected in the record of proceeding.

As already noted, the petitioner stated that at the time of the petition's filing it employed a total of 12 persons in the dental laboratory where the beneficiary would work as the petitioner's Training and Development Manager. The record also reflects that the focus of the beneficiary's work would be petitioner's dental laboratory technicians.

We also observe that the record of proceeding contains no evidence that the proffered position would involve supervision, training, or responsibility of any kind with regard to training and development specialists. In fact, there is no evidence that the petitioner employed any persons as



a training and development specialist. (This is relevant since, as we shall see, supervision of such personnel is generally typical of positions within the Training and Development Managers occupational classification, although not categorically required, particularly among relatively small organizations like the petitioner.)

Next, we offer some observations with regard to Dental Laboratory Technicians, because whatever level of complexity, specialization, and/or uniqueness that the petitioner may claim for the proffered position is at least partly dependent upon the subject matter and occupational group upon which the training and development efforts would focus.

The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirement of the wide variety of occupations that it addresses.<sup>2</sup>

The Dental Laboratory Technicians occupational group is assigned its own SOC (O\*NET/OES) Code, which is 51-9081.00. The *Handbook* addresses this group in its chapter entitled "Dental and Ophthalmic Laboratory Technicians and Medical Appliance Technicians." That chapter includes the following information with regard to the duties comprising dental laboratory positions:

Dental and ophthalmic laboratory technicians and medical appliance technicians construct, fit, or repair devices that increase function in the lives of patients. These devices include dentures, eyeglasses, and prosthetics.

#### **Duties**

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Dental and ophthalmic laboratory technicians and medical appliance technicians typically do the following:

- Follow detailed work orders and prescriptions
- Decide which materials and tools will be needed
- Bend, form, and shape fabric or material
- Use hand or power tools to polish and shape the devices
- Adjust devices to allow for a more natural look or to improve function
- Inspect the final product for quality and accuracy
- Repair appliances that may be cracked or damaged

In small laboratories and offices, technicians may handle every phase of production. In larger ones, technicians may be responsible for only one phase of production, such as polishing, measuring, or testing.

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<sup>2</sup> All AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed on the Internet at <http://www.bls.gov/OCO/>.



**Dental laboratory technicians** use impressions, or molds, of a patient's teeth to create crowns, bridges, dentures, and other dental appliances. They work closely with dentists, but have limited contact with patients.

Dental laboratory technicians work with small hand tools, such as files and polishers. They work with many different materials to make prosthetic appliances, including wax, plastic, and porcelain. In some cases, technicians use computer programs to create appliances or to get impressions sent from a dentist's office.

Dental laboratory technicians can specialize in one of six areas: orthodontic appliances, crowns and bridges, complete dentures, partial dentures, implants, or ceramics. Technicians may have different job titles, depending on their specialty. For example, technicians who make porcelain and acrylic restorations, such as veneers and bridges, are called dental ceramists.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., <http://www.bls.gov/ooh/production/dental-and-ophthalmic-laboratory-technicians-and-medical-appliance-technicians.htm#tab-2> (last visited April 4, 2014).

That same chapter of the *Handbook* includes the following information about the occupational entry requirements and the role and nature of training in this occupational context:

There are no specific educational requirements to become a dental or ophthalmic laboratory technician or medical appliance technician. Most technicians learn their skills on the job.

### **Education**

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Although there are no formal educational requirements to become a dental or ophthalmic laboratory technician or medical appliance technician, most technicians have at least a high school diploma. Some community colleges and technical or vocational schools have formal education programs, but such programs are not common. High school students interested in becoming dental or ophthalmic laboratory technicians or medical appliance technicians should take courses in science, mathematics, computer programming, and art.

### **Training**

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Most dental and ophthalmic laboratory technicians and medical appliance technicians learn through on-the-job training. They usually begin as helpers in a laboratory and learn more advanced skills as they gain experience. For example, dental laboratory technicians may begin by pouring plaster into an impression to make a model. As they become more experienced, they may progress to more complex tasks, such as making porcelain crowns and bridges. Because all laboratories are different, the length of training varies.

*Id.* at <http://www.bls.gov/ooh/production/dental-and-ophthalmic-laboratory-technicians-and-medical-appliance-technicians.htm#tab-4> (last visited Apr. 4, 2014).

We also find that the following segment of the *Handbook's* chapter is very significant for its indication that dental laboratory technicians may be adequately trained by persons who rise from the ranks of dental laboratory positions, without attaining a bachelor's degree:

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**Advancement**

In large laboratories, dental and ophthalmic laboratory technicians and medical appliance technicians may work their way up to a supervisory level and may train new technicians. Some may go on to own their own laboratory.

*Id.* at <http://www.bls.gov/ooh/production/dental-and-ophthalmic-laboratory-technicians-and-medical-appliance-technicians.htm#tab-4> (last visited Apr. 4, 2014).

## II. FACTUAL AND PROCEDURAL HISTORY

In the March 20, 2013 letter in support of the petition, the petitioner stated that it "supplies dentists with high quality dental crowns, bridges, dentures, and implants."<sup>3</sup> The petitioner identified the proposed occupation's DOT (Dictionary of Occupational Titles) code on the Form I-129 H-1B Data Collection Supplement, Part A, Question 5 as 189 "Miscellaneous Managers and Officials." See U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, "Form M-746, I-129 Dictionary of Occupational Titles (DOT) Codes," <http://www.uscis.gov/files/form/m-746.pdf> (accessed April 2, 2014).

The petitioner indicated that to "ensure its continued success, it decided to hire a training and development manager to oversee the training and knowledge and skills development of [its] employees." The petitioner claimed that the proffered position "is so complex and unique that it can be performed only by an individual with at least a bachelor's degree in a field related to dental technology." The petitioner listed the duties of the proffered position as follows:

1. Prepare training budget and monitor training costs. (10%)
2. Design, develop, plan, and organize training materials and programs for dental lab technicians. (20%)
3. Evaluate the effectiveness of training materials and programs. (10%)

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<sup>3</sup> The petitioner listed the North American Industry Classification System (NAICS) Code on the Form I-129 H-1B Data Collection Supplement, Part A, Question 6 as 339900. According to U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, this code does not exist. See <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed April 2, 2014). A review of the NAICS codes shows that the appropriate code for a dental laboratory is "339116 – Dental Laboratory," the U.S. industry comprised of establishments primarily engaged in manufacturing dentures, crowns, bridges, and orthodontic appliances customized for individual applications.



4. Seek out, review, and obtain lab training procedure manuals, guides, and instructional materials with appropriate material on dental lab techniques and technology. (10%)
5. Provide or arrange ongoing technical training and personal development programs for dental lab technicians. (20%)
6. Prepare and conduct orientation sessions and on-the-job training for new dental technicians. (20%)
7. Assess lab training needs through surveys, interviews, and consultation with the dental lab team and company management officials. (10%)

The petitioner reiterated that only an individual with a bachelor's degree or higher can perform the described duties successfully and that "[i]n order to train dental lab technicians, a bachelor's degree in dental technology is necessary."

The petitioner appended the requisite Labor Condition Application (LCA) to the petition, which indicates that the occupational classification for the position is "Training and Development Managers" SOC (ONET/OES) Code 11-3131, at a Level I (entry level) wage.

The initial record also included two advertisements for positions as: (1) a manager, training and development for [REDACTED] which specified minimum requirements of a bachelor's degree in training and development or a related degree and a minimum of six years of training and development experience; and (2) a manager of training and development for [REDACTED] a company focused on third-party services in distribution centers which specified as a bachelor's degree in business management, organizational behavior or a related field as the minimal educational requirement and noted that a master's degree is a plus. The AAO notes that these advertisements do not refer to a position in the petitioner's industry.

The initial record also included an evaluation of the beneficiary's work experience, the petitioner's corporate documents, and tax returns for 2012.

Upon review of the initial record, the director issued an RFE which requested, among other things, evidence that the proffered position qualifies for classification as a specialty occupation. The director outlined the specific evidence to be submitted.

In the RFE response, counsel for the petitioner submitted the same job description as previously provided. Counsel, however, revised the educational requirements necessary to perform the duties of the proffered position. Counsel claimed that the proffered position "requires a minimum education level of a bachelor's degree in business administration or management."

Counsel referenced the Department of Labor's *Occupational Outlook Handbook's* (Handbook) report on training and development managers in support of his assertion that the normal minimum requirement for entry into the proffered position is a baccalaureate or higher degree. Counsel also submitted an additional advertisement for a training and development manager, for [REDACTED] which specified as a bachelor's degree in human resources, business, training and



development or a related field as a minimum hiring requirement and also stated a preference for a master's degree.

The petitioner also included a June 30, 2013 letter prepared by [REDACTED], Professor of Management, Entrepreneurship, and General Business, [REDACTED] listed the duties of the position as initially described by the petitioner and opined: "[t]he responsibilities a Training and Development Manager performs involve knowledge of Management and, in particular Training" and "[a] Training and Development Manager must therefore have a background that provides instruction in the sophisticated theoretical information of this discipline and demonstrates the practical application of that information." [REDACTED] listed courses that assist in performing the described duties and claimed that "fulfillment of these responsibilities is predicated upon a Training and Development Manager's possession of the body of knowledge and technical skills that one acquires in an undergraduate program in business." [REDACTED] further claimed that the proffered position "requires the theoretical and practical application of a highly specialized body of knowledge in the field of Management" at a bachelor's degree level. [REDACTED] concluded by offering her opinion that the proffered position "is a specialty occupation, and the nature of the specific duties are so specialized and complex that the knowledge required to perform these duties is usually associated with a [sic] attainment of a minimum of a bachelor's degree in Management, or a related field."

Counsel asserted that the evidence submitted demonstrated that the proffered position successfully met three of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon review of the record, the director denied the petition, determining that the record did not establish that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner asserts that United States Citizenship and Immigration Services (USCIS) misinterpreted the *Handbook's* report on the educational requirements to perform the duties of a training and development manager. Counsel contends that the *Handbook's* statement "that employers typically require at a minimum a bachelor's degree in a very specific range – human resources, business administration, organizational development, or training and development – to be a training and development manager" is equivalent to requiring a bachelor's degree in one of these limited areas of study. Counsel avers that these areas of study, although differing by name, all share a similar course of study making them essentially one specific specialty.

Counsel asserts that the director improperly dismissed the job announcements submitted because: (1) the director did not specify the number of job announcements that would be probative in establishing that a degree requirement is common to the industry in parallel position among similar organizations; and (2) the director implied that the submission of any number of job announcements would not be probative because job announcements are "only solicitations

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<sup>4</sup> The record also included [REDACTED] July 11, 2013 letter which provides an evaluation of the beneficiary's work experience as well as re-states verbatim her June 30, 2013 opinion regarding the educational requirements for the proffered position.

for hire" and thus are not evidence of the particular employer's recruiting histories for the type of job advertised.

Counsel contends that USCIS erred when not considering the letter prepared by Dr. [REDACTED] describing the proffered position and opining that the proffered position is so complex and unique that it can only be performed by an individual with a bachelor's degree in Management.

Counsel contends further that USCIS erred when not explaining why the duties of the training and development manager do not require highly specialized knowledge associated with the attainment of a bachelor's degree in a specific specialty. Counsel avers that the director failed to address the nature, specialization, or complexity of the duties of a training and development manager as described by the petitioner. Counsel again asserts that the proffered position "is so specialized and complex, and unique that it absolutely requires the knowledge obtained in a bachelor's degree program in business administration or a related field."

Counsel reiterates his previous assertion that the petitioner has established that the proffered position successfully meets three of the four criteria under 8 C.F.R. § 214.2(h)(4)(iii)(A).

### III. LAW AND ANALYSIS

#### A. Documents Submitted as Expert Opinion

The AAO will first discuss why it accords no probative value to either the June 30, 2013 or July 11, 2013 letters prepared by Dr. [REDACTED] claiming the proffered position is a specialty occupation. Dr. [REDACTED] (1) describes the credentials she asserts qualify her to opine upon the nature of the proffered position; (2) provides the same description of duties as the petitioner initially submitted and submitted in response to the RFE; and (3) states her belief that the petitioner's training and development manager requires a bachelor's degree in business or management or a related field.

First, Dr. [REDACTED] submission does not discuss the duties of the proffered position in any substantive detail. To the contrary, she simply listed them in bullet-point fashion with little analysis. As a result, the extent to which Dr. [REDACTED] analyzed these duties prior to formulating her letters is not evident.

Further, there is no evidence in her letters and resume material or in any other documents in the record of proceeding that Dr. [REDACTED] is a recognized authority in the area in which here opines, namely, the educational requirements for serving as a Training and Development Manager.

Next, we note that the letters are not accompanied by and neither reference nor state any documentation and/or oral transmissions from the petitioner about the proffered position, other than the generalized statement of duties that Dr. [REDACTED] quotes. For instance, Dr. [REDACTED] does not indicate whether she visited the petitioner's business premises or communicated with anyone affiliated with the petitioner as to what the performance of the general list of duties she cited would actually involve. Nor does Dr. [REDACTED] articulate whatever familiarity she may have obtained



regarding the particular content of the work and work products that the petitioner would require of the beneficiary. In this regard, we also find that [REDACTED] does not address or reconcile her opinion with the fact that the petitioner itself – the entity likely most knowledgeable about its own needs - stated that the position required a degree in a different field than [REDACTED] specifies.

In short, while there is no standard formula or "bright line" rules for producing a persuasive opinion regarding the educational requirements of a particular position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of the particular position in question than [REDACTED] has done here. Reciting the petitioner's description and providing a pro forma conclusory statement of courses that the duties allegedly require does not include the necessary analysis indicating why the duties require such courses.

Nor does [REDACTED] reference and discuss any studies, surveys, industry publications, other authoritative publications, or other sources of empirical information which she may have consulted in the course of whatever evaluative process she may have followed.

In addition, [REDACTED] description of the position upon which she opines does not indicate that she considered, or was even aware of, the fact that the petitioner submitted an LCA that was certified for a Training and Development Manager position at a Level I wage-level for an entry-level position for an employee who has only a basic understanding of the occupation. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Moreover, it is not apparent that [REDACTED] is aware that a Level I wage-rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. *Id.* The AAO considers [REDACTED] omission of a discussion of the Level I entry-level wage level significant, in that it suggests an incomplete review of the position in question and a faulty factual basis for [REDACTED] ultimate conclusion as to the educational requirements of the position upon which she opines.

We find [REDACTED] letters lack a sufficient factual and analytical foundation for us to accord it any evidentiary weight. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Further, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of letters for consideration as expert opinions is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").



For these reasons, the accords no probative value to [REDACTED] etters towards establishing that the proffered position satisfies any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

### B. Specialty Occupation

The issue in this matter is whether the proffered position qualifies as 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 Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or

- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

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



To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, location of employment, proffered wage, et cetera. The petitioner provided an overly broad description of the proposed duties of the proffered position.

As a preliminary matter, it must be noted that the petitioner, its counsel, and [REDACTED] identified different educational requirements for the petitioner's proffered position. The petitioner initially stated that the proffered position "is so complex and unique that it can be performed only by an individual with at least a bachelor's degree in a field related to dental technology." In the RFE response, counsel asserted that the proffered position "requires a minimum education level of a bachelor's degree in business administration or management." In the opinion letter prepared by [REDACTED] listed the duties of the position and concluded that the nature of the specific duties is "so specialized and complex that the knowledge required to perform these duties is usually associated with a [*sic*] attainment of a minimum of a bachelor's degree in Management, or a related field." Neither the petitioner, counsel, nor [REDACTED] resolves these inconsistent statements.

Also, if we were to consider these assertions in the aggregate, that is, as the petitioner asserting all three types of educational credentials as acceptable educational minimums (that is, that the performance of the proffered position would require either a bachelor's degree in a dental-technology related specialty, a bachelor's degree in Management, or a bachelor's degree in Business Administration (or the equivalent)), then that acceptance of a degree in Business Administration as sufficient for the proffered position would be tantamount to an acknowledgement that the proffered position does not require a degree in a specific specialty.

As observed above, a petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates, supra.*

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>5</sup>

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<sup>5</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose



The AAO also finds that the fundamental difference between (a) the petitioner's initial assessment of the nature and performance requirements of its own proffered position and (b) Dr. [REDACTED] assessment of the position undermines the credibility of the petition, as the petition assessed the position as requiring a degree in a dental-technology related field, while the Dr. [REDACTED] opined that the requisite degree would be in Management. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Nor does [REDACTED] acknowledge, let alone address, why the petitioner-assessed requirement to perform the same duties of the position changed from a bachelor's degree in a field related to dental technology to a bachelor's degree in management. 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).

Of similar importance in determining the nature of the proffered position, the petitioner failed to provide a detailed description of the proposed duties of the proffered position. Although the petitioner's description of duties corresponds generally to the responsibilities outlined in the *Handbook*, for a Training and Development Manager and for a Training and Development Specialist, when discussing an occupational title, it is insufficient for the petitioner to simply repeat the generalized descriptions found in the *Handbook*.<sup>6</sup> Such generalized descriptions are necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. For example, as will be discussed below, the petitioner in this matter has asserted that the proffered position is a Training and Development Manager position but has also used portions of the *Handbook's* outline of duties in the chapter on Training and Development Specialists, a different occupational group, to describe the duties of the position. Accordingly, the petitioner has not offered a substantive, probative description of the actual duties of its

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

*Id.*

<sup>6</sup> The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirement of the wide variety of occupations that it addresses. All AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

proffered position. It has not provided substantial details about the actual work to be performed for this position.

Here we again quote the duty descriptions in the petitioner's March 20, 2013 letter of support. The letter listed them as follows:

1. Prepare training budget and monitor training costs. (10%)
2. Design, develop, plan, and organize training materials and programs for dental lab technicians. (20%)
3. Evaluate the effectiveness of training materials and programs. (10%)
4. Seek out, review, and obtain lab training procedure manuals, guides, and instructional materials with appropriate material on dental lab techniques and technology. (10%)
5. Provide or arrange ongoing technical training and personal development programs for dental lab technicians. (20%)
6. Prepare and conduct orientation sessions and on-the-job training for new dental technicians. (20%)
7. Assess lab training needs through surveys, interviews, and consultation with the dental lab team and company management officials. (10%)

We find that, while these descriptions present the proffered position in terms of distinct functions, those functions are not described with sufficient specificity to establish what the actual performance of those functions would involve in terms of substantive work and associated levels of education or education-equivalency in any specific specialty. In this regard, we note, for instance, that nowhere does the petitioner, a relatively small firm, delineate either the amount or elements of the budget or any budget intricacies with which the beneficiary would deal. Likewise, there is no indication of even the general level of training costs. Based upon this decision's previously referenced material in the *Handbook* on the work of Dental Laboratory Technicians and who may train them, without a more substantial description of the training that would be involved the AAO cannot determine that such training would be beyond the capabilities of an experienced dental laboratory technician who is well versed in the occupation, yet does not possess a bachelor's degree or the equivalent. We also note that the record of proceeding contains no evidence with regard to whatever substantive work and associated educational requirements would be involved with "Evaluat[ing] the effectiveness of training materials and programs." Further, the evidence of record does not establish substantive nature of whatever "programs" would engage the petitioner beyond training employees to function as a dental laboratory technician,

Also, while the petitioner states that the beneficiary would likely spend 10% of work time in "Seek[ing] out, review[ing], and obtain[ing] lab training procedure manuals, guides, and instructional materials with appropriate material on dental lab techniques and technology," the record contains no substantive information as to what performance of those duties would require. Further, given the nature and size of the petitioner's business and the relatively small number of people on its staff, it is not apparent how the beneficiary would be spending 20% of work time in "Provid[ing] or arrang[ing] ongoing technical training and personal development programs for



dental lab technicians." Additionally, the petitioner leaves undiscussed the substantive nature of whatever specialized knowledge beyond experience-based expertise on dental laboratory procedures and dental laboratory technology would be required to perform the "surveys, interviews, and consultation" function that the petitioner describes as the seventh function of the proffered position.

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

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The AAO affirms the director's determination that the petitioner has not established the proffered position is a specialty occupation. For this reason, the appeal will be dismissed and the petition denied.

Although the material deficiencies in the evidentiary record are decisive in this matter and conclusively require that the appeal be dismissed, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that would also require dismissal of the appeal. Assuming *arguendo* that the proffered duties as generally described by the petitioner in its initial letter and reiterated in response to the director's RFE and on appeal would in fact be the duties to be performed by the beneficiary, the AAO will further analyze them and the evidence of record.<sup>7</sup>

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<sup>7</sup> The petitioner's description of duties does not correspond to the *Handbook's* report on typical Training and Development Managers in one major respect, that is the petitioner does not claim and its organizational chart does not show that the proffered position is a supervisory position over a staff of training and development specialists. This suggests that the actual position may relate more closely to that of a Training and Development Specialist. For example, the petitioner indicates that the responsibilities of the position include: assessing lab training needs through surveys, interviews, and consultation with the dental lab team and company management officials; designing, developing, planning, and organizing training materials and programs for dental lab technicians; seeking out, reviewing, and obtaining lab training procedure manuals, guides, and instructional materials with appropriate material on dental lab techniques and technology; and evaluating the effectiveness of training materials and programs. The *Handbook's* report on Training and Development Specialists includes a description of the same responsibilities, some of which the petitioner has taken verbatim from this chapter in the *Handbook* absent the references to the nature of the petitioner's business.



To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to our analysis of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree, in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

As footnoted above, the AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. The *Handbook's* chapter on "Training and Development Managers" reports:

Training and development managers plan, direct, and coordinate programs to enhance the knowledge and skills of an organization's employees. They also oversee a staff of training and development specialists.

Training and development managers typically do the following:

- Assess employees' needs for training
- Align training with the organization's strategic goals
- Create a training budget and keep operations within budget
- Develop training programs that make the best use of available resources
- Update training programs to ensure that they are current
- Oversee the creation of online learning modules and other educational materials for employees
- Review training materials from a variety of vendors and select materials with appropriate content
- Teach training methods and skills to instructors and supervisors
- Evaluate the effectiveness of training programs and instructors

Executives increasingly realize that developing the skills of their organization's workforce is essential to staying competitive in business. Providing opportunity for development is a selling point for recruiting high-quality employees, and it helps in retaining employees who can contribute to business growth. Training and development managers work to align training and development with an organization's goals.

Training and development managers oversee training programs, staff, and budgets. They are responsible for organizing training programs, including

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However, as the *Handbook's* outline of the duties of a Training and Development Manager and of a Training and Development Specialist closely correspond, except in the supervisory aspect, and as the petitioner has attested on the LCA that the proffered position is a Training and Development Manager, which requires a significantly higher wage, as well as identifying the position on the Form I-129 by the DOT code of 189 "Miscellaneous Managers and Officials," rather than as an occupation in medical/dental technology, DOT code 078, the AAO will analyze the proffered position as a Training and Development Manager.

creating or selecting course content and materials. Often, training takes place in a classroom, computer laboratory, or training facility. Some training is in the form of a video, Web-based program, or self-guided instructional manual. Training may also be collaborative, which allows employees to informally connect with experts, mentors, and colleagues, often through social media or other online mediums. Regardless of how it is conducted, managers must ensure that training content, software, systems, and equipment are appropriate and meaningful.

Training and development managers typically supervise a staff of training and development specialists, such as instructional designers, program developers, and instructors. Managers teach training methods to specialists who, in turn, instruct the organization's employees—both new and experienced. Managers direct the daily activities of specialists and evaluate their effectiveness. Although most managers primarily oversee specialists and training and development program operations, some—particularly those in smaller companies—also may direct training courses.

To enhance employees' skills and an organization's overall quality of work, training and development managers often confer with managers of each department to identify its training needs. They may work with top executives and financial officers to identify and match training priorities with overall business goals. They also prepare training budgets and ensure that expenses stay within budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Training and Development Managers," <http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-2> (last visited Apr. 2, 2014).

Regarding the education and training of a Training and Development Managers, the *Handbook* reports:

Candidates need a combination of education and related work experience to become a training and development manager.

Although managers need a bachelor's degree for many positions, some jobs require a master's degree. Managers can have a variety of educational backgrounds, but they often have a bachelor's degree in human resources, business administration, or a related field.

Some employers prefer or require that managers have a master's degree, usually with a concentration in training and development, human resources management, organizational development, or business administration.

Training and development managers also may benefit from studying instructional design, behavioral psychology, or educational psychology. In addition, as



technology continues to play a larger role in training and development, a growing number of organizations seek candidates who have a background in information technology or computer science.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Training and Development Managers," <http://www.bls.gov/ooh/management/training-and-development-managers.htm#tab-4> (last visited Apr. 2, 2014).<sup>8</sup>

Here although the *Handbook* reports that Training and Development Managers need a bachelor's degree, the *Handbook* recognizes that a variety of educational backgrounds are suitable for entry into the position. Thus, while Training and Development Managers often have bachelor's degrees in human resources, business administration, or a related field, there is no minimum requirement for a degree in a specific discipline to enter into the occupation. In that regard, we emphasize that 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 standard, minimum entry requirement for this occupation.

USCIS has consistently stated that, 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 139, 147 (1st Cir. 2007).

We note counsel's reference on appeal to the *Handbook* as stating "that employers typically require at a minimum a bachelor's degree in a very specific range – human resources, business administration, organizational development, or training and development – to be a training and development manager" and his conclusion that these areas of study, although differing by name, all share a similar course of study making them essentially one specific specialty. However, absent evidence of a direct relationship between the claimed degrees required and the duties of the position, it cannot be found that such a range of degrees in such distinctly different fields indicates the need for a degree in a specific specialty. Counsel does not offer evidence or analysis to the contrary. Without documentary evidence to support the claim, the assertions of

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<sup>8</sup> For informational purposes only, we observe that the *Handbook's* chapter on Training and Development Specialists indicates this occupation generally needs a bachelor's degree. The *Handbook* reports however, that specialists can come from a variety of education backgrounds, noting that many have a bachelor's degree in training and development, human resources, education, or instructional design and that others may have a degree in business or the social sciences, such as educational or organizational psychology. The *Handbook's* chapter on specialists also notes, like in its chapter on training and development managers, that "as technology continues to play a larger role in training and development, a growing number of organizations seek candidates who have a background in information technology or computer science." As there is no minimum educational requirement for a bachelor's degree in a specific discipline to enter into the occupation, a particular position's inclusion within the Training and Development Specialists occupational class is not in itself sufficient to establish the position as one that requires at least a bachelor's degree in a specific specialty, or the equivalent.

counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Here, the petitioner, who bears the burden of proof in this proceeding, provides inconsistent educational requirements to perform the duties of the proffered position, while also claiming that a bachelor's degree in business administration is suitable as a minimum requirement for entry into the occupation. This acknowledgment does not support the conclusion that the proffered position is a specialty occupation and, in fact, supports the opposite conclusion. As such, even if the substantive nature of the work had been established, which it has not, the instant petition could not be approved for this additional reason.

When the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, to satisfy this first alternative criterion at 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 qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. The petitioner has not provided such additional probative evidence establishing that a degree in a specific discipline is required.

As the evidence in the record of proceeding does not establish 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 this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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.

As stated earlier, 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 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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. On appeal, counsel asserts that the director failed to identify a specific required number of job announcements to establish this criterion and also that the director implied that any number of job announcements would not be probative.



With regard to job announcements, we observe that, as with any evidence submitted under this criterion, it is the petitioner's burden to establish that whatever advertisements it may submit represent an industry standard for a parallel position within a similar organization as the petitioner.<sup>9</sup>

In this specific matter, however, a review of the three job postings submitted confirms the *Handbook's* report that a diverse number of degrees, including degrees of general application, are acceptable for employment as a training and development manager. Two of the job announcements submitted listed a diverse number of degrees, including business management, organizational behavior, human resources, and business. Only one advertisement indicated that only a bachelor's degree in training and development or a related field would be acceptable. Thus, the advertisements do not provide a basis for concluding that there is an industry standard for bachelor's degrees in a specific specialty in order to perform the duties of a training and development manager occupation. In addition, we agree with the director's conclusion that the job postings submitted do not include sufficient information regarding the duties of the advertised position to establish that the listings are parallel to the petitioner's described position or that the companies are similar to the petitioner's dental laboratory business. Consequently, regardless of the number of job announcements submitted, job announcements that do not include sufficient information to establish that the advertisers are similar companies in the same industry and that the positions offered are parallel to the position in question are insufficient. 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.

Further, we find that the job advertisements fail to satisfy an essential element for qualifying for consideration under this criterion, namely, the requirement that the evidence relate to a position in the petitioner's own industry. None of the advertisements are for positions at a dental laboratory.

The petitioner also failed to 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."

The evidence of record does not refute the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for a training and development manager, including degrees not in a specific specialty. Specifically, even though the petitioner claims that the proffered position's duties are so complex and unique that a bachelor's degree in a specific specialty is required, the

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<sup>9</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As is discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, which it has not, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Paying a wage rate that is only appropriate for a low-level entry position relative to others within the occupation, is inconsistent with the relative complexity and uniqueness required to satisfy this criterion. Not only does the proffered wage rate indicate that the individual in the proffered position will only have a basic understanding of the occupation, but this wage rate also indicates: that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. *Id.* Again, 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*, at 591-92.

Moreover, the petitioner failed to demonstrate how the proffered position is so complex or unique as to require a person with at least a bachelor's degree, or the equivalent, in a specific specialty. While a few diverse courses in business and management may be beneficial in performing certain duties of the proffered position, the evidence of record petitioner has failed to demonstrate that the position would require a person that possesses a full degree in any particular specialty. We refer the petitioner to this decision's earlier comments and findings with regard to the proffered position and its constituent duties. As there reflected, the evidence of record simply does not develop the proffered position as one distinguishable from other position's in the occupation that can be performed by persons without a bachelor's or higher degree in a specific specialty. The position is presented in terms that are too generalized to establish relative complexity or uniqueness as attributes of the proffered position.

Further, the AAO again acknowledges that a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, however 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 record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than a training and development manager position that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner does not claim and the record does not establish the petitioner's prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty. Accordingly, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).



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

Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal recruiting and hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of its position's 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 assessing the actual duties of the position as described in the proffered position, we here also incorporate our earlier comments and findings about the relatively abstract nature of the proposed duties as presented in this record of proceeding. As there reflected and as evident in the duty descriptions themselves, the record does not include probative evidence that the nature of the duties of the proffered position is more specialized and complex than the nature of the duties of other positions with the pertinent occupational group whose performance does not require the knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty or the equivalent. Accordingly, the appeal must be dismissed and the petition must be denied.

In addition, we also note that the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.<sup>10</sup> As discussed above, the Level I wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. *Id.*

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others

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<sup>10</sup> *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

The *Prevailing Wage Determination Policy Guidance* issued by DOL states the following with regard to Level I wage rates:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

The *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

*Id.*

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.



The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker . . . .

*Id.*

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

*Id.*

By virtue of the petitioner's LCA submission at the lowest possible wage-level, the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment."

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

The current record does not establish that the petitioner has satisfied the statutory requirement for a specialty occupation found at section 214(i)(1) of the Act and further has failed to satisfy any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A).

#### IV. CONCLUSION

The petition must be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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