



U.S. Citizenship
and Immigration
Services

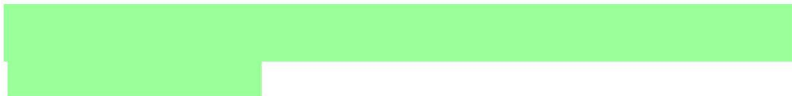
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DATE: **APR 17 2014**

Office: CALIFORNIA 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 (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 service center director denied the nonimmigrant visa petition. The petitioner submitted a motion to reopen and reconsider, and U.S. Citizenship and Immigration Services (USCIS) approved the motion and reopened the underlying petition. Subsequently, the director again denied the petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 12, 2012. On the Form I-129 petition, the petitioner describes itself as a provider of "recycling services and products for various manufacturers and recycling companies." In order to employ the beneficiary in a position to which it assigned the job title of "Financial Risk Analyst," the petitioner seeks to classify the beneficiary 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 initially denied the petition on March 7, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner submitted a motion to reopen and reconsider, and USCIS approved the motion and reopened the underlying petition. Subsequently, the director again denied the petition on June 12, 2013. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's notice denying the petition; (5) the petitioner's Form I-290B (Motion to Reopen and Reconsider) and supporting documentation; (6) the director's decision; and (7) the petitioner's Form I-290B (Notice of Appeal) and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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

I. THE LAW

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

Section 214(i)(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 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), 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.

II. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated on the Form I-129 petition that it seeks the beneficiary's services in a position that it designates as a "Financial Risk Analyst" to work on a full-time basis with an annual salary of \$48,110. The petitioner was established in 2002 and has 13 employees and a 2010 gross annual income of \$6,948,359.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Financial Analysts" - SOC (ONET/OES) Code 13-2051, at a Level I (entry-level) wage.

In a support letter dated March 28, 2012, the petitioner stated that the beneficiary will perform the following duties in the proffered position:

Percentage of time spent on duty	Description of Job Duty
50%	[The beneficiary] will analyze financial risk of materials

acquisition, storage, warehousing and recycling for all transactions in which [the petitioner] will be engaged. She will evaluate costs of equipment investment, shipment and maintenance costs, while assessing the overall likelihood of future sales of goods; she will also research and create financial forecasts to support each acquisition, and will support the company President in contract negotiations; she will research and develop cost analysis for all proposed vendor contracts, prepare and analyze potential risk for loss, produce marketability and other impediments which may arise in the product cycle. She will evaluate financial credit risk of both domestic and international vendors and customers and manage those risks. She will analyze the market risks of the whole economy and the industry, support the President, the Board of Directors through decision making ventures on investment, short/long term banking loans, etc. She will also analyze and control the liquidity risk of our company, manage cash flow and negotiate payment terms with our vendors and customers. [The beneficiary] will analyze and hedge the exchange rate risk of our company, relying on use of financial derivatives and other financial methodologies. She will provide technical and background support in corporate investment strategies, both domestically and internationally, and will be responsible for analyzing all risk/return scenarios. [The beneficiary] will also be responsible for monitoring operational risks within [the] company, by contributing leadership on better model development, software and work/production.

30%

[The beneficiary] will also coordinate all account audits, prepare financial reports and will maintain customer financial profiles with our database system. She will develop weekly and monthly financial reports of cash flow, sales and financial risk for submission to the company President and the Board of Directors. [The beneficiary] will also analyze, develop and maintain all ledger accounts and will direct budget and cost controls as instructed by the company President.

20%

[The beneficiary] will supervise the accounting staff and will analyze sales representative commissions and she will work on special financial projects as needed.

In the letter of support, the petitioner asserts that "[t]he position of Financial Risk Analyst is considered a specialty occupation requiring no less than a Bachelor's degree in Finance, Accounting, or a closely related field."

The petitioner further stated that the beneficiary is qualified to perform services in the proffered position by virtue of her education and experience. The petitioner provided a copy of the beneficiary's Master of Science in Finance and Risk Management, awarded by [REDACTED] in Chicago, Illinois, and a copy of the beneficiary's transcript.

The petitioner also provided an organizational chart that shows that the president supervises the beneficiary, who in turn supervises an accountant, a billing and customer service employee, and a bookkeeper. The chart indicates that the bookkeeper and the accountant have Bachelor's degrees and the billing and customer service employee has an associate's degree.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on September 20, 2012. In the RFE, the director asked the petitioner to provide additional evidence to establish that the proffered position qualifies as a specialty occupation. The notice included a request to provide a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the specific job duties, the percentage of time to be spent on each duty, the level of responsibility, hours per week of work, etc. The director outlined the evidence to be submitted.

The petitioner's attorney responded to the director's RFE and submitted a response letter and additional evidence.

In a letter in response to the RFE, dated November 26, 2012, the petitioner provided a more detailed job description of the day-to-day duties to be performed by the beneficiary in the proffered position, as follows:

Based on data provided by reports, or based on her independent research, conduct cash flow analysis and prediction, financial statement analysis of vendors, creditors and potential customers and to provide financial risk assessment, credit risk, liquidity risk assessment, currency exchange risk (for vendors and customers in China) and elsewhere. She must also conduct market risk analysis and control, relying on market data updated daily. She also liaises with bankers, financial analysts of partner companies, negotiating lending terms, credit lines, corporate liability and loans for [the petitioner], seeking optimal lending terms and interest rates, and, where appropriate, represent the company in re-financing. (50%)

Problems typically encountered in the financing arena include asset/liability miscalculation provided by a company hoping to engage [the petitioner]. In other words, failure to have adequate review of all financial transactions leaves [the petitioner] with responsibility for financing the short-term debt provided by suppliers. [The petitioner] ships hundreds [of] containers full of plastics scrap to China, and the terms of payment often cause a 90 [sic] delay in payment in the thousands of dollars per day in financial losses. The Financial Risk Analyst is

required to monitor and control the risk and potential problems by analyzing the Accounts Receivable and the Accounts Payable amounts, turnover, potential term changes, and maintain other financial restrictions, paying vendors, financing deals, while maintaining inventory control of assets purchased for transfer.

In any given month, our company purchases and ships four million pounds of used plastic, which we must finance, ship overseas and reconstitute through our partners in Asia. Products are then either sold to customers in China or are shipping back to the United States as recycled product for sale to customers here.

The Financial Risk Analyst must also conduct commodity risk analysis and continuous market pricing predictions, based on the movement of these commodities and others related, within the various world exchanges. (30%)

She must also provide the company President with new project and investment risk and return scenario analysis and suggestions, review and negotiate asset lease contracts, mortgages and all other financial affairs analysis and negotiations for suppliers in the United States and Asia, assessing customer financial reliability. Finally, the Financial Risk Analyst is required to supervise and direct the work of the Accounting department within [the petitioner]. She will report directly to the President and the Board of Directors. (20%).

The petitioner also provided (1) a letter, dated October 5, 2012, from [redacted] Assistant Professor of Finance, [redacted] (2) a letter dated, December 4, 2012, from [redacted] Ph.D., Associate Professor of Finance, [redacted] and (3) a letter, dated November 18, 2012, from the [redacted] President of [redacted]. The letters will be discussed in detail below.

In response to the RFE, the petitioner expanded the beneficiary's supervisory role by providing a new organizational chart that indicates that the beneficiary will supervise five positions rather than three positions as noted in the first organizational chart submitted by the petitioner. 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). The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8). When responding to an RFE, a petitioner cannot offer a new position to the beneficiary, or materially change a position's title, its level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record.

The director initially denied the petition on March 7, 2013, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation. The petitioner submitted

a motion to reopen and reconsider, and USCIS approved the motion and reopened the underlying petition. Subsequently, the director again denied the petition on June 12, 2013. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Counsel for the petitioner submits a timely appeal of the denial of the H-1B petition.

On appeal, counsel for the petitioner asserts that the "preponderance of the evidence" standard is relevant to this matter, and that the petitioner "met the standard beyond the preponderance standard."

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

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

* * *

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

III. ANALYSIS

The AAO reviewed the record of proceeding in its entirety. To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

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

The AAO recognizes the DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹ As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Financial Analysts."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Financial Analysts," including the sections regarding the typical duties and requirements for this occupational category.² However, the *Handbook* does not support a conclusion that this occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Financial Analyst" states the following about this occupational category:

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2014-2015 edition available online.

² For additional information regarding the occupational category "Financial Analysts," *see* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Financial Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last visited April 16, 2014).

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

Education

Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering. For advanced positions, 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.

Licenses, Certifications, and Registrations

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job. Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.

Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.

Computer skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.

Decision making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.

Detail oriented. Financial analysts must pay attention to details when reviewing possible investments, as small issues may have large implications for the health of an investment.

Math skills. Financial analysts use mathematical skills when estimating the value of financial securities.

To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Financial Analysts," available on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited April 16, 2014).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Although the *Handbook* states that most financial analysts typically need a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be *in a specific specialty*.³ Rather, the narrative of the *Handbook* reports that "[a] number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering."

Thus, for the reasons discussed above, the *Handbook* does not support a claim that "Financial Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty

³ For instance, the first definition of "most" in *Webster's New College Dictionary* 731. (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of financial analyst positions require at least a bachelor's degree, it could be said that "most" financial analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted a letter, dated October 5, 2012, from [REDACTED] Assistant Professor of Finance at [REDACTED]. Professor [REDACTED] stated that "the position of Financial Risk Analyst is a specialty position" and requires the "attainment of a minimum of a Bachelor's Degree in Finance, Accounting, or a related field." In addition, the petitioner also submitted a letter, dated December 4, 2012, from [REDACTED] Ph.D., Associate Professor of Finance at [REDACTED]. Dr. [REDACTED] also stated that "the position of Financial Risk Analyst is a specialty position" and requires the "attainment of a minimum of a Bachelor's Degree in Finance, Accounting, or a related field." The AAO reviewed the letters in their entirety. However, as discussed below, the letters from Professor [REDACTED] and Dr. [REDACTED] are not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Professor [REDACTED] submitted his curriculum vitae, along with a letter from the Chair of the Finance Department at [REDACTED] confirming the professor's employment at the university. Similarly, Dr. [REDACTED] submitted her curriculum vitae. Professor [REDACTED] and Dr. White both did not provide any further supporting documentation to establish their credentials as recognized authorities on the relevant educational requirements for the proffered position.

The AAO observes that Professor Bhaskar and Dr. White state in their letters that their respective "evaluation relies upon copies of documents provided by [the beneficiary] and represented by her to be authentic and true copies of those documents." There is no mention of what specific documents each evaluator reviewed. Upon review of both opinion letters, there is no indication that the authors possess any knowledge of the petitioner's proffered position and its business operations beyond the information provided by the beneficiary. Both authors do not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise.

Moreover, upon review of both letters, Professor [REDACTED] and Dr. White did not indicate that they visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Furthermore, in reviewing both letters, there is no indication that the petitioner and counsel advised Professor Bhaskar and Dr. White that the petitioner characterized the proffered position as a low, entry-level financial risk analyst, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. It appears that Professor Bhaskar and Dr. White would have found this information relevant for their opinion letters. Moreover, without this information, the petitioner

has not demonstrated that Professor [REDACTED] and Dr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the job duties and responsibilities. Professor [REDACTED] and Dr. [REDACTED] have not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. Also, Professor [REDACTED] and Dr. [REDACTED] do not provide a sufficiently substantive and analytical basis for their opinions.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the opinion letters rendered by Professor [REDACTED] and Dr. [REDACTED] are not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by both authors lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. There is an inadequate factual foundation established to support the opinions and the AAO finds that the opinions are not in accord with other information in the record. Therefore, the AAO finds that the letters from Professor [REDACTED] and Dr. [REDACTED] do not establish that the proffered position is a specialty occupation. As such, neither authors' findings nor their ultimate conclusions are worthy of any deference, and the opinion letters are not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letters into each of the bases in this decision for dismissing the appeal.

On appeal, counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012) and asserts that "the [F]ederal appeals [c]ourt held that reading additional requirements into the description is improper, noting that 'Defendant (USCIS)'s implicit premise that the title of a field of study controls ignores the realities of the statutory language involved and the obvious intent behind them. The knowledge and not the title of the degree is what is important.'"

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" 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 (or its equivalent)," unless the petitioner establishes how each field is directly related to

the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).⁴

Further, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.⁵ The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Counsel further refers to an unpublished decision in which the AAO determined that the position of financial analyst proffered in that matter qualified as a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. 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.

In addition, on appeal counsel references the DOL's Education & Training Code of "5-Bachelor's degree" for the occupation of Financial Analysts (as listed on the Foreign Labor Certification Data Center Online Wage Library) to establish that the proffered position qualifies as a specialty occupation. However, contrary to the assertions of counsel, an Education & Training Code of "5-Bachelor's degree" does not establish that the proffered position qualifies as a specialty occupation. Rather, the explanatory section entitled "Education and Training Codes for Professional Occupations" states the following regarding an Education & Training Code of "5-Bachelor's degree":

Five: Bachelor's Degree

⁴ While the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret 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. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

⁵ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.

Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.⁶

The Education & Training Code of "5-Bachelor's degree," for O*NET occupation 13-2051.00 – Financial Analysts, does not indicate that the bachelor's degree must be in a specific specialty directly related to the occupation. Therefore, the Education and Training Code information is not probative of the proffered position being a specialty occupation. As such, it cannot be concluded that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty or its equivalent.

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

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D. N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter.

In support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted (1) a letter, dated October 5, 2012, from [REDACTED] Assistant Professor of Finance at [REDACTED] (2) a letter dated, December 4, 2012, from [REDACTED] Ph.D., Associate Professor

⁶ The section entitled "Education and Training Codes for Professional Occupations," can be accessed on the Internet at <http://www.flcdatacenter.com/TrainingCodes.aspx> (last visited April 16, 2014).

of Finance at [REDACTED]; and (3) a letter dated, November 18, 2012, from [REDACTED] President of [REDACTED]. The letters will be discussed below.

In the letters, both Professor [REDACTED] and Dr. [REDACTED] begin their respective letters by stating that "[t]his letter will demonstrate that companies routinely only recruit and employ individuals for the position of Financial Risk Analyst with a bachelor's degree in Finance, Accounting, or a related field. . . ," however the letters do not further discuss and provide factual information regarding their assertion "that companies routinely only recruit and employ individuals for the position of Financial Risk Analyst with a bachelor's degree. . . ."

In addition, based upon a complete review of Professor [REDACTED] letter and Dr. [REDACTED] letter, the AAO notes that although Professor [REDACTED] and Dr. [REDACTED] may be a recognized authorities on various topics, they have failed to provide sufficient information regarding the basis of their claimed expertise on this particular issue. That is, they have not established their expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how Professor [REDACTED] education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* of companies engaged in recycling services and products for various manufacturers and recycling companies (as designated by the petitioner in the Form I-129) or similar organizations, for parallel positions. Both authors' opinion letters do not cite specific instances in which their past opinions have been accepted or recognized as authoritative *on this particular issue*. There is no indication that the authors have published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that they are an authority 'on those specific requirements.

Also, it appears that both authors did not base their opinions on any objective evidence, but instead restate the proffered position description as provided by the beneficiary. As previously noted, the AAO may, in its discretion, use as an 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). Therefore, the AAO finds that the letters from Professor [REDACTED] and Dr. [REDACTED] do not establish that the degree requirement is common to the petitioner's industry in parallel positions among organizations similar to the petitioner.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner also submitted a letter, dated November 18, 2012, from [REDACTED] President of [REDACTED].

Mr. [REDACTED] stated that he wrote the "letter to detail the crucial role of the position of Financial Risk Analyst within our financial department and in the industry in general." Mr. [REDACTED] also stated that his company "has been in the recycling industry for more than 50 years, and we only hire financial risk analysts who have at least an undergraduate degree, usually in finance or related field." Further, Mr. [REDACTED] stated that "[o]ver the past 6 years, we have worked closely with [the petitioner], a fellow recycling company dedicated to the marketing of

plastic scrap in the global marketplace," and also explained that "[o]ur companies share much of the same structure and our business transactions are quite similar." Mr. [REDACTED] explained that "[i]t is common among our industry to utilize professionals in our field, who analyze financial risk of vendors as well as customers, by reviewing financial reports, conducting financial statements analysis such as liquidity ratios, leverage ratios, profitability ratios, efficiency ratios and so on." In addition, Mr. [REDACTED] asserted that "the risk analyst must develop and present results on Net Present Value/Net Present Value of Growth Opportunity of the project, whether it meets our Internal Rate of Return, under risk and return scenarios. These are the duties of an individual holding a Financial Risk Analyst position in our field," and that it is "typical to require a bachelor's degree in finance or a related field."

In reviewing the letter, the AAO notes that Mr. [REDACTED] stated that it is "typical" to require a bachelor's degree in finance or a related field but he did not state that it is "required." In addition, Mr. [REDACTED] did not describe the evidence he reviewed in order to write his opinion letter. In addition, Mr. [REDACTED] stated that the petitioner and [REDACTED] "share much of the same structure," but Mr. Mendelson failed to provide any evidence to corroborate that claim. Moreover, Mr. [REDACTED] did not provide evidence regarding the size of his company, the gross annual profits, the organizational structure to indicate where the position of Financial Risk Analyst falls within his company's structure and if the position has subordinates, as a few examples, to determine if in fact [REDACTED] is a company that is similar to the petitioner. Also, while Mr. [REDACTED] stated that his company "only hire[s] financial risk analysts who have at least an undergraduate degree, usually in finance or related field," Mr. [REDACTED] did not provide evidence that it employs a Financial Risk Analyst, the job duties for that position to determine if it is similar to the job duties of the proffered position, nor any documentary evidence of the individuals his company has hired in the past, their job duties, and copies of their educational credentials. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

As discussed above, 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). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letters as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letters into each of the bases in this decision for dismissing the appeal.

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Therefore, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the proffered position's duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level based upon the occupational classification "Financial Analysts" at a Level I (entry) wage.⁷ This wage-level designation is appropriate for positions for which the petitioner expects the beneficiary to only have a basic understanding of the occupation.⁸ That is, in accordance with the relevant DOL explanatory information on wage

⁷ Wage levels should be determined only after selecting the most relevant Occupational Information Network (O*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁸ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

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.

levels, this wage rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment, that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."⁹ Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

The evidence of record does not establish that this position is significantly different from other market research analyst positions such that it refutes the *Handbook's* information that there are various acceptable degrees for these positions including a general-purpose degree such as business administration, for entry into the occupation. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than other positions in the pertinent occupation that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

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

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

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

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the

⁹ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in 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.

On appeal, counsel noted that the organization chart indicates that "all subordinate workers hold Bachelors[]" degrees in finance or in a related field."¹⁰ However, the organization chart listing positions that are subordinate to the proffered position is not sufficient documentary evidence to demonstrate that the petitioner has a history of requiring the degree or degree equivalency in its

¹⁰ The AAO notes that the second organizational chart, submitted in response to the RFE, indicates that one of the bookkeepers holds an associate degree and that one of the accountants holds a Bachelor of Science degree in Intelligence Studies.

prior recruiting and hiring for the *proffered position*. Moreover, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

Upon review of the record, the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Therefore, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The AAO notes that the petitioner and counsel submitted a letter from Professor [REDACTED] and a letter from Dr. [REDACTED] that both state that the "nature of the specific duties are so specialized and complex that the knowledge required to perform these duties requires the attainment of a minimum of a Bachelor's Degree in Finance, Accounting, or a related field." The AAO incorporates by reference into this criterion its previous discussion as to why the opinion letters are not probative evidence.

Upon review of the entire record of the proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. There is insufficient evidence to establish that the nature of the duties of the proffered position is so specialized and complex that it requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, or its equivalent. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the occupational category of "Financial Analysts" and hence one not likely distinguishable by relatively specialized and complex duties. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the duties of the proffered position is so

specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Applying the preponderance of the evidence standard, and for the reasons related in the preceding discussion, the AAO finds that the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

A 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 has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

VI. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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