



U.S. Citizenship
and Immigration
Services

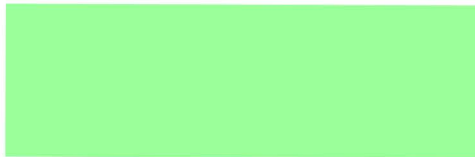
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DATE: **AUG 01 2014**

OFFICE: VERMONT SERVICE CENTER

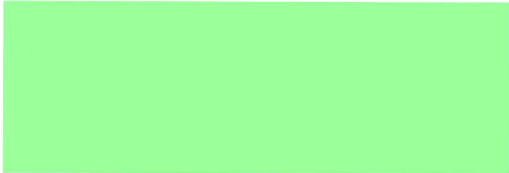
FILE: [REDACTED]

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,

Michael T. Kelly
for Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as an "IT, Rehab and Clinical Staffing" company established in 1996. In order to employ the beneficiary in what it designates as an IT recruiter position, the petitioner seeks 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, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

I. PROCEDURAL AND FACTUAL BACKGROUND

As required, the petitioner submitted a certified Labor Condition Application (LCA) to support the visa petition. That document specifies the proffered position's job title as IT Recruiter position, the corresponding Standard Occupational Classification (SOC) code as "13-1078," and the associated occupational classification as "Human Resources, Training, and Labor Relations." We note that no occupational code "13-1078" existed at the time of the LCA's certification or exists now, as we gleaned from review of the 2010 SOC codes using the SOC codes search engine at the Internet site <http://www.bls.gov/soc/home.htm#crosswalks>. We note also, however, that the LCA references the prevailing wage Human Resources Specialists for the associated work location and employment period.

The LCA further states that the proffered position is a Level I, entry-level, position.

In a letter of support dated March 8, 2013, the petitioner claimed that it is "an established, national staffing firm that has built its reputation on excellent service and integrity." It further stated that it focused its staffing services in four areas, namely: (1) information technology; (2) clinical research; (3) rehabilitation therapy; and (4) nursing.

Regarding the proffered position of IT recruiter, the petitioner claimed that the duties of the beneficiary in this position would be as follows:

[H]e will recruit IT professionals for positions within the information technology industries; source and interview applicants to identify and summarize relevant experience and hard and soft skills to assess applicant's suitability; follow up regularly with candidates and customers to maintain relationships to build knowledge of needs and opportunities; maintain familiarity with most effective recruiting tools appropriate to the industry to include: networking with active consultants, database searches, Internet searches, resume searches, other job boards, and organizations.

The petitioner claimed that the beneficiary would also perform the following duties:

- Sourcing of Candidates – Proactively seek IT research professionals from all available sources (Internet, advertising, databases, networking events and internet postings); Seek referrals from existing consultants and candidates; Maintain consistent contact with candidates regarding job openings; Seek out contact with subcontractors and other recruiting sources to fill hard to fill job orders.
- Interview, Selection and Evaluation of Candidates – Interview candidates through telephone interviews; Qualify candidates using available job description information, references, technical screens and test sources; Prepare and write candidate summary and revise/finalize resume for client submittal; Document and track screening activity in consultant database; Collect required documentation for client screening; Provide Candidate follow-up for client submittals and current market status.
- Coordination of Recruiting Activities with Account Management – Exchange information with Sales staff; Coordinate interviews with candidates; Pre-close candidates when setting up the interview with the client; Partner w/ Sales for upcoming job needs and any consulting or client issues; Provide sales leads from references, candidate screens, database, Internet, etc.
- Onboarding of Consultants – Make job offer to candidates; Provide start scenario for candidate; Negotiate terms if necessary and obtain agreement from candidate; Generate necessary paperwork prior to offer; Maintain monthly contact with each consultant who is working for [the petitioner].
- Consult and advise hiring managers on overall hiring process. Collaborate on job requisition details and creation, and advise on effective candidate assessment/interview techniques.
- Maintain knowledge of the information technology industries and related industries and market demographics.
- Work closely with a designated source on each position to maintain a professional workflow.

- Conduct analysis and review of candidates to assess scientific/technical skills and expertise[.]
- Ensure regulatory as well as client specific compliance.
- Research and locate potential candidates for current and future positions, maintain and increase pipeline of candidates using databases, internet research, documentation and follow-up communication.
- Conduct constant, consistent analysis of IT industry to track current needs, industry trends; synthesize findings and present to senior management; work with senior management to formulate and execute recruitment strategies and policies to meet emerging market needs[.]
- Assist in the development of strategies and improvements to the hiring process. Recruiters must also understand and company policies and procedures, as well as any governmental guidelines and laws that must be followed prior to the hiring of job applicants.

The petitioner concluded by stating that a qualified applicant for the position must have a Bachelor's degree in business, communication, human resources, information systems or a related field. The petitioner claimed that the beneficiary was qualified for the proffered position due to his foreign academic credentials deemed equivalent to a master's degree in business administration from an accredited institution of higher education in the United States.

Counsel also submitted the following documentary evidence in support of the petition: (1) a copy of the beneficiary's foreign academic credentials and an evaluation of those credentials by [REDACTED] Evaluations and Consulting, equating the beneficiary's foreign academic degrees to a U.S. master's degree in Business Administration;¹ (2) a copy of the beneficiary's resume; (3) a copy of the petitioner's offer of employment letter to the beneficiary; (4) a copy of the employment agreement between the petitioner and the beneficiary; and (5) a copy of the beneficiary's passport.

¹ We note here counsel's request, in response to the RFE, that the [REDACTED] evaluation be withdrawn and replaced with the evaluation of the beneficiary's academic and professional credentials by [REDACTED] which concluded that the beneficiary's combination of academic achievement and professional experience equates to a bachelor's degree in business administration with a specialization in human resources, suggesting a correlation between the degree requirements and the duties of the proffered position. The combined evaluation of the beneficiary's education and work experience, however, is not acceptable. As the claimed equivalency was based in part on experience, there is no evidence that the evaluator has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and (D)(1). Consequently, no evidentiary weight will be afforded to either this evaluation's conclusion or its evaluation of the beneficiary's experience. Further, there is no provision, statutory or otherwise, for a petitioner to withdraw evidence once it has been submitted into the record. Therefore, there is the additional issue – unresolved by the petitioner – of the materially different conclusions reached by the two evaluations.

On April 17, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation as well as additional evidence of the beneficiary's qualifications. The director outlined the specific evidence to be submitted.

In a letter dated May 29, 2013, counsel responded to the director's request and submitted the following: (1) a letter from the petitioner dated May 20, 2013; (2) an evaluation of the beneficiary's academic and professional credentials by [REDACTED]; (3) copies of letters from the beneficiary's former employers; (4) resumes and pay records of other employees of the petitioner; (5) an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* pertaining to the occupation of Human Resources Specialists; (6) an excerpt from the O*NET Online; and (7) copies of job vacancy announcements for positions that the petitioner contends are similar to the proffered position.

In its May 20, 2013 letter, the petitioner provided more details regarding the duties associated with the proffered position, including the percentage of time the beneficiary would devote to each of these duties. Specifically, counsel stated:

- Sourcing of Candidates – Proactively seek IT research professionals from all available sources (Internet, advertising, databases, networking events and internet postings). Conduct constant, consistent analysis of IT industry to track current needs, industry trends; synthesize findings and present to senior management; work with senior management to formulate and execute recruitment strategies and policies to meet emerging market needs. Develop and execute recruiting plans. Network through industry contacts, association memberships, trade groups and employees. Seek referrals from existing consultants and candidates; Maintain consistent contact with candidates regarding job openings; Seek out contact with subcontractors and other recruiting sources to fill hard to fill job orders. (35%)
- Interview, Selection and Evaluation of Candidates – Determine applicant qualifications by interviewing applicants; analyzing responses; verifying references; comparing qualifications to job requirements. Interview candidates through telephone interviews; Qualify candidates using available job description information, references, technical screens and test sources; Prepare and write candidate summary and revise/finalize resume for client submittal; Document and track screening activity in consultant database; Collect required documentation for client screening; Provide Candidate follow-up for client submittals and current market status. Maintain knowledge of the information technology industries and related industries and market demographics. Analyze cutting-edge changes in technology and business needs/end user needs to assess changing skill-set required for the marketplace. (35%)

- Coordination of Recruiting Activities with Account Management – Conduct analysis and review of candidates to assess scientific/technical skills and expertise. Establishes recruiting requirements by studying organization plans and objectives; meeting with managers to discuss needs. Coordinate interviews with candidates; Pre-close candidates when setting up the interview with the client; Partner w/ Sales for upcoming job needs and any consulting or client issues; Provide sales leads from references, candidate screens, database, Internet, etc. Assist in the development of strategies and improvements to the hiring process. Recruiters must also understand and company policies and procedures, as well as any governmental guidelines and laws that must be followed prior to the hiring of job applicants. (15%)
- Onboarding of Consultants – Make job offer to candidates; Provide start scenario for candidate; Improves organization attractiveness by recommending new policies and practices; monitoring job offers and compensation practices; emphasizing benefits and perks. Negotiate terms if necessary and obtain agreement from candidate; Maintain monthly contact with each consultant who is working for [the petitioner]. Ensure regulatory as well as client specific compliance. (15%)

The director denied the petition on June 14, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a Human Resources Specialist position as described in the *Handbook*.

On appeal, counsel contends the denial was erroneous, and counsel submits additional evidence in support of this contention. Counsel submits, *inter alia*: (1) corporate information regarding the companies included in the job vacancy announcements; (2) new job vacancy announcements; (3) an affidavit by [REDACTED]; (4) a letter by [REDACTED], submitted for consideration as an expert opinion; (5) resumes, degrees/transcripts, and paystubs for other employees of the petitioner who (a) previously held the proffered position or (b) work in similar positions; and (6) a sampling of resumes, degrees/transcripts, and pay stubs for some of the petitioner's IT personnel.

II. THE LAW

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

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

III. ANALYSIS

As a preliminary matter, it must be noted that the petitioner's claimed job-entry requirement of at least a bachelor's degree in "business, communication, human resources, information systems," or a related field, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. Also, we note that the petitioner claims that the beneficiary is qualified to perform the duties of the proffered position by virtue of his foreign academic credentials, which the petitioner claims are equivalent to a U.S. master's degree in business administration.² As we shall

² We also note the petitioner's reliance on the combined academic and professional credentials evaluation submitted in response to the RFE, which equates the beneficiary's education and experience to attainment of a U.S. bachelor's degree in Human Resources. (We shall later address the evidentiary deficiencies of this document, which does not achieve the purpose for which it was submitted.)

now discuss, both of these aspects of the record undermine the petitioner's specialty occupation claim.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do 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.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in business, communications, human resources, information systems, or a related field. The issue here is that it is not readily apparent that these four fields of study are closely related or that any one field is directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, does not establish either (1) that the fields of business, communications, human resources, and information systems are (a) closely related fields or (2) that a degree in any one of these fields would equip the degree-holder with a bachelor's degree level of highly-specialized knowledge required to perform the position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent under the petitioner's own standards.

Also, absent evidence of a direct relationship between the acceptable academic majors and the particular attainments of specialized knowledge associated with them, on the one hand, and, on the other hand, the performance requirements reflected in the duties and responsibilities of the proffered position, it cannot be found that the proffered position requires at least a bachelor's degree or higher (or the equivalent) in any specific specialty.

Further, the petitioner's particular claim that a bachelor's degree in "business administration" is a

sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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

Thus, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position which is the subject of this petition, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

³ 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 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.

Moreover, as we shall now discuss, it also cannot be found that the proffered position is a specialty occupation because the evidence of record does not satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

To reach this conclusion, we first turn to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

We recognize the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

Based upon our review of the record of proceeding, the duty descriptions, and counsel's arguments advocating that the proffered position is a specialty occupation human resources specialist position, we will evaluate the proffered position as falling within the Human Resources Specialists occupational group. Technical recruiter positions are considered under SOC code and title 13-1071.00, Human Resources Specialists.

In any event, we reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Human Resources Specialists and Labor Relations Specialists," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of Human Resources Specialists:

What Human Resources Specialists and Labor Relations Specialists Do

Human resources specialists recruit, screen, interview, and place workers. They often handle other human resources work, such as those related to employee relations, payroll and benefits, and training. Labor relations specialists interpret and administer labor contracts regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices.

Duties

Human resources specialists typically do the following:

- Consult with employers to identify employment needs
- Interview applicants about their experience, education, and skills
- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions

⁴ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Labor relations specialists typically do the following:

- Advise management on contracts, worker grievances, and disciplinary procedures
- Lead meetings between management and labor
- Draft proposals and rules or regulations in order to help facilitate collective bargaining
- Interpret formal communications between management and labor
- Investigate validity of labor grievances
- Train management on labor relations

Human resources specialists are often trained in all human resources disciplines and perform tasks throughout all areas of the department. In addition to recruiting and placing workers, human resources specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are examples of types of human resources specialists:

Employment interviewers work in an employment office and interview potential applicants for job openings. They refer suitable candidates to employers for consideration.

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll, benefits, training, as well as the administration of human resources policies, procedures, and programs.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as ***personnel recruiters***, find, screen, and interview applicants for job openings in an organization. They search for applicants

by posting listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers.

Labor relations specialists work with a labor union and a company's management. In addition to leading meetings between the two groups, these specialists draft formal language as part of the collective bargaining process. They often address specific grievances a worker might have, and ensure that all labor and management solutions comply within the relevant collective bargaining agreement.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Human Resources Specialists and Labor Relations Specialists," <http://www.bls.gov/ooh/business-and-financial/human-resources-specialists-and-labor-relations-specialists.htm#tab-2> (last visited July 15, 2014).

The duties the petitioner's vice-president attributed to the proffered position are generally consistent with the duties of human resources specialists as described in the *Handbook*. When the director issued the decision of denial, the evidence of record supported her treatment of the proffered position as a human resources specialist position.

Because the vast majority of the duties of the proffered position appear to correspond to the duties of a human resources specialist, we will analyze the proffered position as a human resources specialist position. The *Handbook* states the following about the educational requirements of human resources specialist and labor relations specialist positions:

How to Become a Human Resources Specialist or Labor Relations Specialist

Applicants must usually have a bachelor's degree. However, the level of education and experience required to become a human resources specialist or labor relations specialist varies by position and employer.

Education

Applicants seeking positions as human resources specialists or labor relations specialists must usually have a bachelor's degree in human resources, business, or a related field.

Coursework should include business, professional writing, human resource management, and accounting.

Work Experience in a Related Occupation

Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

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

Licenses, Certifications, and Registrations

Many professional associations that specialize in human resources offer courses intended to enhance the skills of their members, and some offer certification programs.

Although certification is usually voluntary, some employers may prefer or require it. Human resources generalists, in particular, can benefit from certification because it shows knowledge and professional competence across all human resources areas. Some colleges and universities offer labor relations certificates to specialists who prefer greater specialization in mediation.

Important Qualities

Decision-making skills. Human resources specialists and labor relations specialists use decision-making skills when reviewing candidates' qualifications or when working to resolve labor disputes.

Detail oriented. Specialists must be detail oriented when evaluating applicants' qualifications, performing background checks, and maintaining records of an employee grievance.

Interpersonal skills. Interpersonal skills are essential for human resources specialists and labor relations specialists. When recruiting candidates and mediating between labor and management, specialists continually interact with new people and must be able to converse and connect with people from different backgrounds.

Listening skills. Listening skills are essential for human resources specialists and labor relations specialists. When interviewing job applicants, for example, they must pay careful attention to candidates' responses, understand the points they are making, and ask relevant followup questions.

Speaking skills. All specialists need strong speaking skills to be effective at their job. They often give presentations and must be able to convey information about their organizations and jobs within them.

Id. at <http://www.bls.gov/ooh/business-and-financial/human-resources-specialists-and-labor-relations-specialists.htm#tab-4> (last visited July 15, 2014).

As was explained above, a requirement that may be satisfied by an otherwise unspecified degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* makes clear that the educational requirement of human resources specialist positions may be satisfied by an otherwise unspecified bachelor's degree in business. As such, the *Handbook* indicates that those positions do not normally require a minimum of a bachelor's degree in a specific specialty or its equivalent. It follows that the proffered position's inclusion within the Human Resources Specialists occupational group is not in itself sufficient to satisfy this criterion.

The petitioner's letter dated March 8, 2013 stated that a business degree was among the degrees that would qualify an applicant for the proffered position. The petitioner's May 20, 2013 further restricted the degree requirement by stating that the proffered position "requires a minimum of a bachelor's degree in business administration or related."

We observe, again, that an educational requirement that may be satisfied by an otherwise unspecified bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. 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 disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added).

We note that counsel refers to unpublished decisions in which we determined that the positions proffered in those cases qualified as a specialty occupation despite the fact that multiple fields of study were deemed acceptable for entry into the occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions, nor has counsel submitted copies of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding.

Nevertheless, even if this evidence had been submitted and even if it had been determined that the facts in those cases were analogous to those in this proceeding, those decisions are not binding on USCIS. While 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, if the previous nonimmigrant petitions were approved based on the substantially the same evidence as contained in the current record, it appears that those approvals would have been erroneous. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g. *Matter of*

Church Scientology International, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Further, the petitioner has designated the proffered position as a Level I position on the submitted LCA, a prevailing-wage rate that is appropriate 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. The classification of the position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some human resources specialist positions do not require such a degree. To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Finally, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

On appeal, counsel submits a letter from [REDACTED] Ph.D., Professor [REDACTED] at [REDACTED], for consideration as an expert opinion. We note, however, that Dr. [REDACTED] does not list the reference materials on which he relies as a basis for his conclusion. It appears that Dr. [REDACTED] did not base his opinion on any objective evidence, but instead restates the proffered position description as provided by the petitioner in its initial letter of support. We may, in our 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, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Dr. [REDACTED] claims that the duties of the position as presented to him are complex and specialized, and require an individual with a bachelor's degree in business, human resources, information systems, or a related field. As we have already noted, even if established by the evidence of record, which it is not, the requirement of a bachelor's degree in business or business administration is inadequate to establish that a position qualifies as a specialty occupation. 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. Again, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. 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 at 147. In the same vein, we also find that Dr. [REDACTED] opinion that the widely diverse range of degrees in "business, human resources, information systems, or a related field" materially undermines the petitioner's claim. (Here we refer the petitioner back to our earlier discussion of the range of acceptable degrees stated by the petitioner).

Therefore, we find that the letter from Dr. [REDACTED] is not probative evidence towards establishing the proffered position as a specialty occupation.

In response to the RFE, counsel submitted five vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Technical Recruiter for [REDACTED] an IT and management consulting firm, requiring a bachelor's degree in business, communications, or a related course of study and "more than 2 years sales, customer service or recruiting experience";
2. IT Recruiter for [REDACTED], requiring an unspecified bachelor's degree;
3. IT Recruiter for [REDACTED] an IT consulting and staffing company, requiring an unspecified bachelor's degree;
4. Senior Level IT Recruiter for [REDACTED] requiring a bachelor's degree in business, management information systems, or similar, and "5+ years of recruiting experience"; and
5. IT Recruiter for [REDACTED] a company specializing in the insurance industry, recruiting firm, requiring a bachelor's degree in business administration, human resources, or an equivalent business related degree.

On appeal, counsel also submitted an affidavit by [REDACTED] vice-president of [REDACTED], an IT consulting company with 95 employees. The affiant claims that its IT recruiters perform the same duties, and that it requires its IT recruiters to possess at least a bachelor's degree in human resources, information technology, or a related field.

Each of the 5 vacancy announcements state that the positions they announce require a bachelor's degree, but they do not specify that the degree must, or even should, be in any specific specialty. Therefore, they are not evidence that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, there is no information regarding the industry in which [REDACTED] is engaged, and limited information as well regarding [REDACTED] business operations (though the title of the company suggests it is engaged in similar business operation to those of the petitioner). Nevertheless, although brief descriptions of the business operations of the remaining three companies was included in the postings, we are unable to determine that these companies are similar in size and scope to that of the petitioner, an IT, rehab, and clinical staffing company with 152 employees and a gross annual income of \$17.6 million.

On appeal, counsel addresses this issue and provides additional corporate information for [REDACTED] and [REDACTED], and submits two new vacancy announcements by [REDACTED] an [REDACTED] an information technology and services company. Counsel contends that all postings submitted prior to adjudication and on appeal demonstrate a routine degree requirement for similar positions, and contends that the postings consequently have established that a standard degree requirement for similar positions exists within the petitioner's industry. Counsel further submits evidence demonstrating that [REDACTED] requires "a college degree, preferably in

Information Technology or Business Administration" along with 2-3 years recruiting experience for the position of IT recruiter, and that [REDACTED] requires a "Bachelor's Degree (preferred) in Business, Administration, Marketing, HR, Engineering or related field" for the position of technical recruiter.

We note that the [REDACTED] posting indicates that it does not necessarily require any bachelor's degree. It states that a degree is merely "preferred." Moreover, the postings by [REDACTED] and [REDACTED] do not specify any specific degree requirement, and merely request that the candidate have a bachelor's degree. Finally, the remaining postings by [REDACTED] list numerous, disparate fields in which a degree would be acceptable. Therefore, even if it can be demonstrated that some of the organizations that placed the vacancy announcements operate in the petitioner's industry, none of these postings establish a common degree requirement among parallel positions.⁵ Similarly, the affidavit by [REDACTED] also lists numerous, disparate fields in which a degree would be acceptable and, for the reasons just discussed, is not persuasive evidence that a common degree requirement exists within the industry for parallel positions.

Finally, we note that some of the positions may not even be parallel to the proffered position. We note that the [REDACTED] affidavit, when describing its IT recruiter positions, uses the exact duties presented by the petitioner in its overview of the proffered position, thereby raising doubt on the validity of the claims contained therein. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Moreover, the posting by [REDACTED] is for the position of "Senior Level IT Recruiter," and it requires at least five years of experience in addition to the general degree requirement. Since the petitioner has classified the proffered position as a Level I, entry-level position on the LCA, it is unlikely that this position is parallel to the proffered position, since such positions are generally for employees who have only a basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate such a hiring and recruiting practice as common in the industry for other Level I human resources specialist positions, entry-level positions requiring only a basic understanding of the duties of human resources specialist positions, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent – which is not the case – of course, the content of those

⁵ Further, none have been shown to be otherwise similar to the petitioner in that they have not been shown to share the same general characteristics, such as the particular scope of operations and the level of revenue and staffing (to list just a few elements that may be considered).

advertisements do not demonstrate how representative those advertisements are of recruiting and hiring practices in the industry for such positions.⁶

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions in organizations that are within the petitioner's industry and that are otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied 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 duties included in the duty descriptions provided, such as interviewing candidates through telephone interviews and assisting in the development of strategies and improvements to the hiring process have not been demonstrated to be so complex or unique that they can only be performed by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition was certified for a Level I position, that is, a position for an employee who has only a basic understanding of the position. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that typical human resources specialist positions do not necessarily require such a degree.

⁶ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁷

In response to the RFE, the petitioner, through counsel, submitted the resumes and pay stubs for three employees it contends previously held the position of IT recruiter. The resumes of [REDACTED] demonstrate they hold degrees in business management, international business, and computer science, respectively. The resumes provided make clear that the petitioner has not previously required a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. Notably, while the resumes of [REDACTED] suggest that they hold various business degrees, the resume of Pooja Bajaj suggests that that he has a bachelor's degree in a completely disparate field, computer science, yet is still qualified to hold the proffered position.

It must be noted that no documentary evidence was submitted to establish (1) that these individuals actually attained their claimed degrees, and (2) that they actually held the same position as the beneficiary. The petitioner submits pay stubs demonstrating their employment; however, no additional evidence was submitted. Going on record without supporting documentary evidence is

⁷ While a petitioner may believe or otherwise assert that a proffered position requires a 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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a 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").

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)).

Regardless, had their academic credentials and employment as IT recruiters been established, the petitioner failed to show that these individuals held a degree in a specific specialty directly related to the proffered position. Specifically, Mr. [REDACTED] degree is in computer science, which has not been shown to be a subject directly related to the proffered position.

Further, the petitioner was established in 1996 and states that it currently has 152 employees. In response to the RFE, counsel claimed that it was an "overbearing request" to comply with the evidence requested under this criterion, despite the fact that the petitioner may in fact have employed large numbers of persons in the proffered position since it commenced operations. How many IT recruiters the petitioner has employed since its establishment is unknown, but it seems that a staffing firm such as the petitioner, with a current staff of 152, likely employs more than three people in recruiting positions and has likely employed others in the past. Absent additional evidence on that point, the degrees held by three of the petitioner's claimed IT recruiters, even if they were all a minimum of a bachelor's degree in a specific specialty directly related to the proffered position, or its equivalent, could not show that the petitioner "normally" requires a minimum of a bachelor's degree in a specific specialty or its equivalent for such positions.

Finally, we note that, despite the petitioner's claims regarding the other individuals employed in the position of IT recruiter, the record contains no evidence, such as the petitioner's vacancy announcement, indicating the actual job requirements for the positions for which these individuals were hired.

On appeal, counsel submits additional evidence in response to this criterion, such as academic credentials supporting the claimed degrees as well as new evidence pertaining to other claimed employees not previously disclosed. This evidence, however, will not be considered.

The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* We again note that, instead of providing this additional evidence in response to the director's specific

request, counsel instead claimed the request was "overbearing" and that "it is not possible to comply with this request." Under the circumstances, we need not and do not consider the sufficiency of the evidence submitted for the first time on appeal.

For the reasons explained above, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and it has not satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Although counsel provided the evaluation of Dr. [REDACTED] on appeal in support of the contention that nature of the duties of the proffered position are specialized and complex, the evaluation states that the proffered position could only be performed by someone with a "Bachelor's Degree in Business, Human Resources, Information Systems or related field." As was explained in detail above, that does not denote a requirement of a minimum of a bachelor's degree in a specific specialty, or its equivalent.

Further still, as was noted above, the petitioner filed the instant visa petition for a Level I position, a position for a beginning level employee with only a basic understanding of the occupation. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to the position, especially as the *Handbook* indicates that some human resources positions require no such degree. To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that he will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.

Relative specialization and complexity have not been sufficiently developed by the petitioner as aspects of the duties of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of human resources specialist positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

IV. BEYOND THE DECISION OF THE DIRECTOR

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification. . . .

[Italics added]

The LCA stated that the proffered position is described at SOC code 13-1078. As was pointed out above, that SOC code refers to Human Resources, Training, and Labor Relations Specialists, All Other. Technical recruiter positions are not included in that SOC code, as they are included in SOC code and title 13-1071.00, Human Resources Specialists. In order to correspond to the instant visa petition, the LCA would necessarily be for a 13-1071.00, Human Resources Specialists position.

The LCA is for a position in SOC 13-1078. The visa petition is for a position in SOC 13-1071. Therefore, the LCA submitted does not correspond to the visa petition, and the petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial

decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

V. CONCLUSION AND ORDER

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative 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, 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.