

(b)(6)



U.S. Citizenship  
and Immigration  
Services

[REDACTED]

DATE: FEB 21 2014 OFFICE: CALIFORNIA SERVICE CENTER 1 [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn. The petition will be remanded for entry of a new decision.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it is a "[f]inancial investment planning and advice services" business. The petitioner indicates that it was established in 2011 and employs 11 personnel in the United States. It seeks to employ the beneficiary as a financial management specialist from January 16, 2013, until January 6, 2016. Accordingly, the petitioner endeavors 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 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 response to the RFE; (4) the denial decision; and, (5) the Form I-290B, Notice of Appeal or Motion, and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.<sup>1</sup>

The director denied the petition, determining that the petitioner had not "demonstrated that the beneficiary has specialized in a specific field of study that is related to the proffered position." The director concluded that the petitioner had not established that "the beneficiary qualifies to perform the duties of a specialty occupation based upon education alone."

Upon review of the record, including the evidence submitted on appeal, the record shows that the beneficiary was issued a bachelor's of arts degree in business administration with an emphasis in management and organizational studies by [REDACTED], an accredited United States university. The Labor Condition Application (LCA) submitted in support of the petition, however, does not correspond with the duties and responsibilities of the proffered position. Moreover, the record does not include sufficient evidence demonstrating that the proffered position is a specialty occupation. For these reasons the petition is not approvable. Accordingly, the matter is remanded to provide the petitioner the opportunity to address these issues.

## **I. Facts and Procedural History**

On the Form I-129, the petitioner identified the proffered position as a "Financial Management Specialist." As observed above, the record shows that the beneficiary obtained a bachelor's degree in business administration with an emphasis in management and organizational studies from [REDACTED]. The required LCA indicates that the occupational classification for the position is "Financial Specialists, All Other," SOC

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

(ONET/OES) Code 13-2099, at a Level I (entry-level) wage.<sup>2</sup> The LCA was certified on December 20, 2012, for a validity period from January 7, 2013 to January 6, 2016, at the prevailing annual wage of \$39,624. The petitioner indicates on the Form I-129 and the LCA that it will pay the beneficiary \$40,000 per year.

The petitioner, in its January 11, 2013 letter in support of the petition, states that its investment team "evaluates investment opportunities and manages the operations of [its] growth capital fund focused on investments in information technology and energy technology businesses . . . ." The petitioner also indicated that the beneficiary in the proffered position of financial management specialist will help the company with financial management and analyses. The duties of the proffered position paraphrased as follows below and with bullet points added for clarity include:

- Support the financial analysis functions related to the company's investment portfolios;
- Analyze and evaluate investment projects, including monitoring project performance and timely preparing financial information for the Managing Partner to use in making investment decisions;
- Perform both quantitative and qualitative due diligence, assist the Managing Partner on portfolio construction, and undertake studies and research on information technology and energy technology businesses to integrate investment strategies;
- To the extent required, review the current status of the U.S. financial market and provide crucial forecasting to assist the petitioner in preparing future budgeting and in making investment and business development decisions;
- Investigate and report to the Managing Partner on the development of capital investment programs, such as stability, future trends in investment risks and economic influences;
- Monitor fundamental economic and corporate development through the analysis of information from various public resources;
- Research, collect, analyze and organize financial and business information of the investees for the purpose of assessing investment return and risks;
- Prepare written reports for the Managing Partner to be used for executive presentations and meetings, based on her findings.

The petitioner states that the proffered position "requires the skills and knowledge of the holder of a minimum of a Bachelor's degree in business administration, economics, finance or a closely related specialty."

Upon review, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE. The director requested additional evidence to establish the proffered

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<sup>2</sup> See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).



position as a specialty occupation including a more detailed description of the work to be performed. The director also advised that the record did not include evidence showing how the beneficiary's degree related to the proffered position. The director requested that the petitioner provide additional evidence to show that the beneficiary is qualified for the proffered position.

In a response dated April 25, 2013, the petitioner emphasized that it "is a venture capital firm that strategically manages the operations of [its] multi-million dollar Fund" and that its activities which are focused on helping U.S. start-ups expand into global markets are complex and specialized. The petitioner noted that the financial management specialist position is crucial to the company because this person works directly with the managing partner and senior financial associates and that the position "requires carrying out complex and specialized duties that affect [its] overall investment performance and contribute to multi-million dollar fund management." The petitioner emphasized that the position "is not a basic analyzing and researching role" but "is a key position responsible for identifying questionable financial conditions of the companies in which [the petitioner] invest[s]." The petitioner added that the individual in the financial management specialist position must "effectively communicate with [the petitioner's] Managing Partner and strategize with [the petitioner's] senior financial associates to perform detailed financial analysis on the companies in which [the petitioner] invest[s] and monitor those companies to gain better insights into the companies' prospects." The petitioner also provided a breakdown of the beneficiary's duties based on a 40-hour work week:

- **(20% or 8 hours/week)** Conduct research to develop internal strategies for the company's investment portfolios. Conduct quantitative and analytic research across information technology and energy technology sectors and support senior associates and the Managing Partner with their data needs.
  - The individual conducting research must operate at an advanced level in order to perform core investment analyses and to develop internal strategies. Specifically, the Financial Management Specialist must possess knowledge of financial and investment models, econometric and quantitative principles involved in strategic planning, resource allocation, and business systems to ensure that the financial portfolios for each target company is properly and strategically constructed. [The beneficiary] has completed Bachelor's level coursework in these specific areas.
- **(30% or 12 hours/week)** Research, collect, interpret, analyze, evaluate and organize financial and business information of potential target companies for the purpose of assessing investment return, risk and viability. Specifically, construct and maintain company financial models with several years of income, cash-flow and balance sheet forecasts for companies of interest.
  - In this regard, the Financial Management Specialist will utilize skills in conducting complex research, conceptual and quantitative analyses, which will derive effective reports containing essential financial information on the potential target companies for the purpose of determining investment return, risk and viability. To carry out these



responsibilities, the Financial Management Specialist must handle intensive data gathering and assessment of business financials and translate that information into a data-driven analytical report. This requires an educational background in such courses as Statistics, Accounting, Calculus, and Financial Management and Economics. [The beneficiary] has completed Bachelor's level coursework in these specific areas.

- **(20% or 8 hours/week)** Review and analyze the business management models of ventures of interest and measure their potential for success. In so doing, research reliable resources including public and confidential undisclosed data to compile information and present short- and long-term recommendations to the Managing Partner for analysis on companies of interest.
  - In this regard, the Financial Management Specialist will utilize skills in conducting complex research, conceptual and quantitative analyses, which will derive effective reports containing essential business systems, organizational and strategic management information on the potential target companies for the purpose of determining investment risk and viability. To carry out these responsibilities, the Financial Management Specialist must handle complex assessment and intensive data gathering in the area of organizational, operations, and financial management and translate that information into a data-driven analytical report. [The beneficiary] has completed Bachelor's level coursework in the necessary areas of Financial Management, Organizational Theory, Operations Research, Organizational Behavior, Strategic Management and Economics.
- **(15% or 6 hours/week)** Provide research and analytic support on cross-functional projects that identify, evaluate and analyze current investment trends. Utilize various sources of materials, including economic, trade and business journals to assist senior financial associates to compile data necessary for construction of investment portfolios.
  - The person in this role must work cross-functionally to understand [the petitioner's] capabilities and economic trends and translate that information into a differentiated investment strategy and sustainable business models. The Financial Management Specialist must understand the core concepts and principles involved in economics, operational research, financial management and business strategy analysis and strategic development in order to adequately carry out these job duties. [The beneficiary] has completed Bachelor's level coursework in the necessary areas of Financial Management, Operations Research, Business Information Systems and Statistics.

- **(15% or 6 hours/week)** Apply knowledge of financial and business data and research business profiles to identify a list of emerging and compelling technology start-ups with breakthrough potential, which is always changing. Report findings to the Managing Partner on a regular basis for his use in analysis of new investment opportunities. Review all data on transformational technology companies and energy technology sectors, specifically heavy oil extraction, desalination, carbon fiber recycling, and identify potential factors to recommend strategic investment actions to the Managing Partner.
  - This is not a basic "search and choose" role. The Financial Management Specialist must be able to apply analytical, business and quantitative skills to conduct sophisticated analysis in the development of short- and long-term recommendations for the company's future investment targets and directions. This requires a person with an educational background in statistics and econometrics. [The beneficiary] has attained the Bachelor's-level background necessary to perform research, quantitative analysis and strategic analysis including professional level data gathering.

The petitioner reiterated: "[t]he position of Financial Management Specialist cannot be properly performed without bachelor's-level training in Business Administration, Finance, Economics or a related field." The petitioner added: "[t]he educational requirement of a minimum of a Bachelor's degree in this field and the complex job duties of the proffered position clearly mark the position as a 'specialty occupation.'"

The petitioner asserted that the position of financial management specialist meets three of the four standards for a specialty occupation. In support of its assertion, the petitioner referenced the Department of Labor's (DOL) *Occupational Outlook Handbook's (Handbook's)* chapter on financial analysts which reports that many financial analysts positions require a bachelor's degree in a related field, such as accounting, business administration, economics, finance, or statistics.

The petitioner claimed that a degree requirement is common to the industry in parallel positions among similar organizations and that the proffered position is so complex that it can be performed only by a professional individual with a degree. To support this claim, the petitioner referenced the opinion prepared by [REDACTED] Associate Professor of Finance at the [REDACTED], dated April 19, 2013, which was included in the response to the director's RFE. [REDACTED] noted that he had reviewed the description of job duties for the proffered position and that he had "become familiar with the role generally occupied by financial analysis professionals engaged in advanced due diligence and investment/acquisition opportunity analysis, trend analysis and research and underlying quantitative analytics and reporting for strategic investing." [REDACTED] provided an overview of the duties of the proffered position as well as an overview of the petitioner's business. [REDACTED] opined:

[T]he activities of the Financial Management Specialist are directly related to the core operating mission of the company, and are highly specialized and complex; in this sense they clearly require specialized training (such as would be provided



by university study of at least a bachelor's level in Business Administration, Economics, Finance or a closely related field) in order to be competently performed.

emphasized that "[g]eneralized knowledge of Business Administration, Economics or Finance, alone, is not sufficient for a Financial Management Specialist to successfully meet the functional position requirements." added:

Bachelor's-level training (or higher) in Business Administration, Economics, Finance, or a closely related field, enables a Financial Management Specialist to handle the intensive data gathering and assessment duties of the position, prepare core quantitative models and analytics, prioritize information, organize supporting documents, design effective presentations and reports, and ultimately to effectively provide in-depth data-driven analytics as performed to gain critical strategic intelligence that will be used to inform core investment opportunity identification, decision-making, and execution.

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Only a candidate with a suitable Business Administration, Economics, Finance, (or related) background would be properly qualified to handle the complex research, conceptual, analytical, quantitative and technical duties of the position and given these demands, it would be impractical to employ a Financial Management Specialist lacking a suitable educational background in Business Administration, Economics, Finance, or a closely related field for the subject position.

also indicated that this requirement is in line with industry standards "in that an active Financial Management Specialist with a firm such as [the petitioner] tasked with reporting directly to senior management, would be expected to possess at least a bachelor's degree." Dr. concluded that the job duties for the proffered position "necessitate that an individual be familiar with theoretical and academic concepts in business, finance, economics, computational methods, statistics, financial accounting and management, corporate finance, financial analysis, business strategy and related business, finance, quantitative and analytical techniques," concepts typically taught in bachelor's level classes in Business Administration, Economics, Finance, and related subjects. also found that the beneficiary's academic background in Business Administration related to the core investment analysis duties of the position and that the specific courses she had completed correlate with the core techniques and skills required for the position.

The petitioner also provided copies of six job advertisements posted on the Internet by other investment and/or finance firms to establish that a degree requirement is common to the industry in parallel positions for similar organizations. The petitioner indicated that although it had not employed anyone in the financial management specialist position before, the associates who conducted their own research analyses previously and the company's economist, held bachelor's degrees in specific disciplines. The petitioner contended that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform the



duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. In support of this contention, the petitioner again referenced the opinion provided by [REDACTED] as well as the description of the duties of the proffered position. The petitioner also included press release printouts, news articles, and a description of its business to show the specialized and complex nature of its business operations, as distinguished from other financial analysis firms.

The petitioner again noted that the duties of the proffered position correspond to the duties of a financial analyst position as described in the *Handbook's* chapter on financial analysts. The petitioner asserted that as the *Handbook* identifies business administration as one of the fields required for many financial analysts position, the beneficiary's bachelor's degree is in the required specialty area related to the proffered position.

On appeal, counsel for the petitioner asserts that the petitioner has established the beneficiary's eligibility to perform a specialty occupation position by a preponderance of the evidence. Counsel contends that the director violated due process because the director did not: thoroughly review the evidence submitted; articulate the material doubt formed regarding specific evidence; and substantiate her reasons for this doubt in relation to the submitted evidence, all in accordance with the Adjudicator's Field Manual (AFM). Counsel notes that the director failed to acknowledge and consider the expert testimony submitted. Counsel avers that the director failed to articulate a specific and cogent reason the expert testimony was not credible and that such a failure was also a violation of due process.

## II. Law and Analysis

### A. Preliminary Findings and Standard of Proof

Preliminarily, the AAO finds that the petition cannot be approved as the supporting LCA for this petition does not correspond to the petition, in that the LCA was certified for a wage level below that which is compatible with the levels of responsibility, judgment, and independence the petitioner claimed for the proffered position through descriptions of its constituent duties.<sup>3</sup> This additional ground, although not addressed in the director's decision, precludes approval of the petition. Further, the proffered position does not qualify as a specialty occupation. As the record does not establish that a baccalaureate or higher degree in a specific discipline is necessary to perform the duties of the proffered position, the proffered position has not been established as a specialty occupation. Absent a determination that the proffered position is in fact a specialty occupation, there is no basis on which the director could have determined whether the beneficiary is qualified or unqualified to perform the duties of the claimed specialty occupation. U.S. Citizenship and Immigration Services (USCIS) is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien

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<sup>3</sup> The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this ground which precludes approval of the petition.

beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). The director's implicit determination that a financial management specialist position as here described is a specialty occupation is withdrawn.

In light of counsel's references to the requirement that USCIS apply the "preponderance of the evidence" standard, the AAO affirms that, in the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

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

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

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

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

*Id.*

Upon review of the present matter pursuant to the preponderance of evidence standard, the AAO finds that the evidence in the record of proceeding does not support counsel's contentions that the



evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, that the evidence of record does not establish that the supporting LCA for this petition "more likely than not" corresponds to the petition. Similarly, the evidence of record does not establish that the proffer of a specialty occupation position is "more likely than not" or "probably" true. In other words, as the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the submitted LCA corresponds to the petition and that the petitioner's claim that proffered position qualifies as a specialty occupation is "more likely than not" or "probably" true.

### **B. The Letter Submitted for Consideration as an Expert Opinion**

As noted above, [REDACTED] provided an opinion both on the issue of the proffered position constituting a specialty occupation and on the issue of the qualifications of the beneficiary to perform the duties of the position. The AAO has reviewed the letter and will briefly discuss why the opinion letter prepared by [REDACTED] does not constitute probative evidence of the proffered position satisfying any criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In his letter, dated April 19, 2013, [REDACTED]: (1) describes the credentials that he asserts qualify him to opine upon the nature of the proffered position; (2) paraphrases the duties proposed for the beneficiary; (3) claims that investment firms comparable to the petitioner generally require candidates for similar positions to possess at least a bachelor's-level background in Business Administration, Economics, Finance, or a closely related field; (4) claims the petitioner is an active, substantial and growing company; and (5) states his belief that the performance of the duties he lists requires at least a bachelor's degree in business administration, economics, finance, or a closely related field.

First, [REDACTED] submission does not discuss the duties of the proffered position in any substantive detail. To the contrary, although [REDACTED] paraphrased the petitioner's description of duties, he provided little analysis of the duties. That is [REDACTED] noted his belief that the duties required a bachelor's-level degree in business administration, economics, finance, or a related field and that the petitioner "has a fully justified business rationale to hire a fully qualified, professional-level Financial Management Specialist"; however, the degree to which [REDACTED] analyzed these duties prior to formulating his letter is not evident. Although Dr. [REDACTED] indicated that the proffered position required familiarity with theoretical and academic concepts in a number of areas, including business, finance, economics, computational methods, statistics, financial accounting and management, corporate finance, financial analysis, business strategy and related business, finance, quantitative and analytical techniques, he failed to detail why the courses were relevant and how the individual in the proffered position would be required to implement the knowledge gained in those classes to the position at hand.

Next the letter is not accompanied by, and does not expressly state the full content of, whatever documentation and/or oral transmissions upon which it may have been based. For instance, Dr.



█ does not indicate whether he visited the petitioner's business premises or communicated with anyone affiliated with the petitioner as to what the performance of the general list of duties cited by the professor would actually require. Nor does █ letter articulate whatever familiarity he may have obtained regarding the particular content of the work products that the petitioner would require of the beneficiary. In short, while there is no standard formula or "bright line" rule for producing a persuasive opinion regarding the educational requirements of a particular position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of the particular position in question than █ has done here.

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

Furthermore, █ description of the position upon which he opines does not indicate that he considered, or was even aware of, the fact that the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for an entry-level position relative to others within its occupation which, as noted *infra*, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. In any event, █ nowhere discusses this aspect of the proffered position. The AAO considers this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for █ ultimate conclusion as to the educational requirements of the position upon which he opines.

### C. The LCA Does Not Correspond to the Petition

As noted earlier, the LCA submitted by the petitioner in support of the instant position was certified for use with a job prospect within the "Financial Analyst" occupational classification, SOC (O\*NET/OES) Code 13-2099, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels. However, as will now be discussed, the petitioner asserts that the proffered position is a "key position" in which the incumbent would "work directly with [the petitioner's] Managing Partner and senior financial associates and requires carrying out complex and specialized duties that affect [the petitioner's] overall investment performance and contribute to multi-million dollar fund management." This claim materially conflicts with the wage level designated in the LCA that the petitioner submitted with the petition.

The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]."). According to section 212(n)(1) of the Act, an employer must attest that it will pay a holder of an H-1B visa the higher of the prevailing wage in the "area of employment" or the amount paid to other employees with similar experience and qualifications who are performing the same services. See *Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010).

The LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as "Financial Specialists, All Other," SOC (O\*NET/OES) Code 13-2099.00, at a Level I (entry level) wage. The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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

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

The petitioner's assertions regarding the proposed duties' level of complexity and specialization, as well as the level of independent judgment and responsibility and the occupational understanding required to perform them, are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry level position. The LCA's wage level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. This wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proffered position's demands and level of responsibilities. 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. 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).

Aside from the adverse impact of the LCA wage-level against the overall credibility of the petition, the fact that the LCA does not correspond to the instant petition precludes approval of the petition. The DOL has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of



the information entered in the LCA. With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

*Certification* means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, "[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA."

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining 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 (emphasis added):

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.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. As reflected in this decision's earlier discussion of the conflict between the assertions of record regarding the proffered position, on the one hand, and, on the other, the position's characterization inherent in the LCA's Level I wage-rate designation, the petitioner has failed to submit an LCA that corresponds to the claimed duties of the proffered position. Specifically, it has failed to submit an LCA whose wage-level corresponds to the level of work and responsibilities that the petitioner claims for the proffered position. Thus, the conflict between the petition and the LCA in and of itself precludes approval of this petition, independently from and regardless of the merits of the petition. In



addition, as previously noted, the conflict between the LCA and the petition also adversely affect the merits of the petition, because the conflict materially undermines the credibility of the petitioner's statements with regard to the nature and level of work that the beneficiary will perform.

#### **D. Specialty Occupation**

The record in this matter does not establish that a baccalaureate or higher degree in a specific discipline is necessary to perform the duties of the proffered position. To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

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

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

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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.



For the record, the *Handbook*, does not establish that the proffered position is a specialty occupation.<sup>4</sup> As noted above, the petitioner identifies the duties of the proffered position as aligning most closely with that of a financial analyst as described in the *Handbook's* chapter on the duties of a financial analyst. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last visited Feb. 14, 2014). We turn first 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 the normal minimum requirement for entry into the particular position. 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.

Regarding the education and training for financial analysts, the *Handbook* states:

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.

See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited Feb. 14, 2014).

In this matter the petitioner stated that the proffered position "requires the skills and knowledge of the holder of a minimum of a Bachelor's degree in business administration, economics, finance or a closely related specialty" three of the five academic disciplines mentioned in the *Handbook*. However, to satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must demonstrate that a baccalaureate or higher degree *in a specific discipline* is normally the minimum requirement for entry into the particular position. Thus, the proffered position must require 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).

Here, although the *Handbook* indicates that most financial analyst positions require a bachelor's degree, it also indicates that degrees in various fields are acceptable for entry into the occupation. In general, provided the specialties are closely related, e.g., chemistry and

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<sup>4</sup> All of the AAO's references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.



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.<sup>5</sup> Section 214(i)(1)(B) of the Act (emphasis added).

The *Handbook* indicates that a disparate group of disciplines, varying from a generalized business administration degree to a degree in engineering, are acceptable for employment as a financial analyst. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a financial analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the particular position proffered here as being a specialty occupation.

As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue. In this matter, the petitioner provided the opinion of [REDACTED] in support of its assertion that a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. Although the AAO has discussed why it finds the opinion letter not probative in this matter, we will briefly discuss [REDACTED] conclusions.

[REDACTED] finds that the position of financial management specialist may be performed by an individual who has completed a bachelor's-level degree in one of several fields, including business administration. Accordingly, [REDACTED] confirmed the petitioner's financial

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<sup>5</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

management specialist position may be performed by an individual with a bachelor's degree in a generalized field, such as business administration. As observed above, 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.

As observed earlier, [REDACTED] indicated that the proffered position required familiarity with theoretical and academic concepts in a number of areas, including business, finance, economics, computational methods, statistics, financial accounting and management, corporate finance, financial analysis, business strategy and related business, finance, quantitative and analytical techniques. He also recognized that these concepts are taught in bachelor's-level classes in several disciplines including business administration, economics, finance, and related subjects. He did not specify that the knowledge required to perform the duties of the position requires a precise and specific course of study; but rather that study of these concepts are taught in various disciplines. [REDACTED] opinion corresponds generally to the *Handbook's* report on the educational requirements for many financial analyst positions; however, his opinion, like the report in the *Handbook*, does not establish that the proffered position is a specialty occupation. The petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a requirement for at least a bachelor's degree in a specific specialty or its equivalent. The fact that a person may be employed in a financial analyst position is not in itself sufficient to establish the position as one that qualifies as a specialty occupation.

The petitioner has failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102). As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner does not submit letters from its industry's professional association or letters or affidavits from other firms or individuals in the industry for consideration.



As stated earlier, the petitioner submitted six job announcements posted on the Internet for various positions in support of its claim that the proffered position is a specialty occupation. The advertisements submitted were for:

- (1) an investment portfolio analyst for a bank which required a bachelor's degree in business, finance, or economics, with an MBA or CFA preferred, and at least three years experience in investment consulting, manager due diligence or portfolio management;
- (2) a portfolio specialist for an investment group which required a bachelor's degree, a CFA or advanced degree, and seven to ten years of investment-related research/specialist experience;
- (3) an investment analyst for an investment group which required a bachelor's degree and preferred an MBA and some progress toward a CFA certification;
- (4) a model portfolio solutions, researcher for an asset management firm which required a BA/BS in a quantitative, finance or economics discipline, and listed a MBA/MS and/or CFA as desirable;
- (5) an AVP Portfolio Analysis for [REDACTED] which required a bachelor's degree and preferred a master's degree in finance, economics, mathematics, statistics, or similar quantitative field, and required "5+ years of experience in consumer loan portfolio forecasting and analysis; and
- (6) a portfolio investment analyst-high yield for an investment firm which required a business, finance, quantitative finance, accounting, economics or scientific degree with a minimum of two years of related fixed-income experience and which preferred an MBA, MS in finance or CFA designation.

These advertisements confirm the *Handbook's* discussion of the variety of educational paths available to perform the duties associated with a financial analyst position, including a general degree or a general degree in business. The advertisements fail to establish that a financial analyst position is a specialty occupation. Moreover, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. In addition, most of the advertisements seek experienced individuals whereas the proffered position is an entry level position for an employee who has only a basic understanding of the occupation, as indicated on the LCA where the petitioner designated the proffered position as a Level I position. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

It must also be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations

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

As observed above, although [REDACTED] provided his background in assessing the role generally occupied by financial analysis professionals engaged in advanced due diligence and investment/acquisition opportunity analysis, trend analysis and research and underlying quantitative analytics and reporting for strategic investing, he acknowledged that a bachelor's degree in the generalized field of business administration is sufficient to perform the duties of the proffered position. Thus, the record, including [REDACTED] opinion, does not establish that the duties of the proffered position require a degree with a precise course of study that results in a specialized discipline in order to perform them. Accordingly, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The petitioner in this matter fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of financial management specialist. For example, the petitioner indicates that the beneficiary will operate at an advanced level, conduct complex research, conceptual and quantitative analyses, handle complex assessment and intensive data for analytical reports, and provide research and analytical support. However, the petitioner also indicates that the beneficiary will compile information to support senior associates and the managing partner with their data needs. As noted above, the petitioner's claim that the beneficiary will operate at an advanced level is undermined by the Level I classification of the proffered position. A review of the beneficiary's Level I salary strongly suggests that the proffered position is actually a support role in a very complex business. If the proffered position is a higher-level position it would be classified, at the very least, as a Level III or IV position, requiring a significantly higher prevailing wage. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

The evidence of record does not establish that this position is significantly different from other financial analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of 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 financial analyst positions or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of financial analyst is so complex or unique relative to other financial analyst positions 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).

Turning to the third criterion, the AAO notes that the petitioner has indicated that it has not previously employed anyone to perform the duties of the proffered position. The petitioner indicated that previously the business and financial management data analyses and research were conducted by the financial and business associates themselves. The petitioner indicated further that one of the two individuals who had previously conducted her own research held a bachelor's of science degree in science, technology, and society with concentrations in management, science, and engineering and earth systems. The petitioner explained that this individual needed the support of someone with a full business administration and/or financial background and that is why it created the position of financial management specialist. The petitioner indicated further that the position with duties and responsibilities most similar in scope to the financial management specialist position is its "Economist (Associate)" position. The petitioner revealed that the individual holding the economist position held a bachelor's degree in economics. The petitioner also noted that two other positions are similar to the proffered position but are specialized in their own way and that one of those individuals held a bachelor's degree in electrical engineering and the other held a bachelor's degree in economics and mathematics. The petitioner noted that the "Beneficiary must interact with, communicate sophisticated information with, and understand the needs of these senior associates, which requires that the person operate at a professional level and possess a Bachelor's degree in the required specialty area."

The petitioner provides brief biographies of the individuals holding the positions it claims are similar to the proffered position as well as photocopies of their degrees. The petitioner, however, does not describe the duties of the referenced positions in detail sufficient to establish the claimed similarity. Moreover, as the petitioner noted, these individuals hold degrees in disparate fields. Thus, the employment of these individuals fails to establish that the proffered position requires a bachelor's degree in a specific discipline.

We note that while a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position. The petitioner's recruiting and hiring history is insufficient to establish this element.

We also observe that while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing

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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties as described do not show that they are more specialized and complex than a financial management specialist position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. In addition to the lack of sufficient specificity to distinguish the proffered position from other financial analyst positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is a comparatively low, entry level position for an employee who has only basic understanding of the occupation.<sup>6</sup>

The AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the petitioner would be paying a wage-rate that is only appropriate for a low, entry level position relative to others within the occupation, as this factor is inconsistent with the analysis of the relative specialization and complexity required to satisfy this criterion. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy. *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I wage, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the

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<sup>6</sup> *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).



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

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

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

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

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

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

*Id.*

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

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

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

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

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

*Id.*

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

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

*Id.*

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission, the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

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



Additionally, given the *Handbook's* indication that a typical financial analyst position does not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry into the occupation, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement.<sup>7</sup>

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

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to conclude that it requires a baccalaureate or higher degree in a specific specialty or its equivalent. As observed above, absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Thus, we do not reach the question of the beneficiary's qualifications and whether she is qualified to perform the duties of the position because the record does not establish that the proffered position is a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

The director's decision will be withdrawn and the matter remanded for entry of a new decision. The director may issue a second RFE and afford the petitioner reasonable time to provide evidence pertinent to the issues of the nature of the proffered position and the lack of an LCA that corresponds to the petition. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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<sup>7</sup> It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. As noted above, the petitioner has offered the beneficiary a wage of \$40,000 per year, which satisfied the Level I prevailing wage for a financial specialist, all other, in the San Jose-Sunnyvale-Santa Clara, California, Metropolitan Area at the time the LCA was certified. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Financial Specialists, All Other," <http://flcdatacenter.com/OesQuickResults.aspx?code=13-2099&area=41940&year=13&source=1> (last visited Feb. 14, 2014). However, in order to offer employment to the beneficiary at a Level II (qualified) wage-level, which would involve only "moderately complex tasks that require limited judgment," the petitioner would have been required to raise her salary to at least \$54,267 per year. The Level III (experienced) prevailing wage was \$68,931 per year, and the Level IV (fully competent) prevailing wage was \$83,574 per year. *Id.*

**ORDER:** The director's May 13, 2013 decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision.