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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: JAN 22 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE: [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:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director of the California Service Center denied the nonimmigrant visa petition and certified the decision to the Administrative Appeals Office (AAO). The AAO reviewed the record of proceeding in its entirety and finds that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will be affirmed and the petition will be denied.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2013. In the Form I-129 visa petition, the petitioner describes itself as a professional sports agency established in 1983. In order to employ the beneficiary in what it designates as an "Administrative Specialist – Japanese Baseball" position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on September 23, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Thereafter, the director certified the decision to the AAO for review. In response to the director's certification, counsel submitted a brief to the AAO as permitted by 8 C.F.R. § 103.4(a)(2). Counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; (5) the Notice of Certification; and (6) counsel's submission to the AAO. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director's decision that the record of proceeding does not establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. Accordingly, the director's decision will not be disturbed. The decision certified to the AAO will be affirmed, and the petition will be denied.

Furthermore, later in the decision, the AAO will also address several additional, independent grounds, not identified by the director's decision, that the AAO finds also preclude approval of this petition. Thus, the petition cannot be approved for these reasons as well.¹

I. The Factual and Procedural History

In this matter, the petitioner states on the Form I-129 that it seeks the beneficiary's services as a full-time (40 hours per week) administrative specialist – Japanese baseball.² The petitioner indicated on the form that the beneficiary will be paid an annual salary of \$30,160 per year.

¹ The AAO conducts its review of service center decisions on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

² Throughout the record of proceeding, the petitioner identifies the proffered position in slightly different

On the Form I-129, the petitioner describes the proposed duties of the position as follows:

Provide administrative support to professional sports agents representing Japanese baseball players playing in the United States for Major League and or Minor League teams. Job requirements include: serving as the primary liaison on client's Japanese tax and business issues; author correspondence in appropriate honorific language; translate as needed; and other duties.

In a letter of support dated March 28, 2013, the petitioner states that it represents "professional baseball players in the U.S. Major Leagues from the United States and abroad, including several professional baseball players from Japan." The petitioner continues by providing the following information regarding the duties of the proffered position:

We are currently in need of an Administrative Specialist – Japan Baseball to provide support to our Sports Agents representing the Japanese baseball market. The Administrative Specialist will be responsible for supporting our Sports Agents in representing the clients' personal, business and tax interests in Japan, and is the staff person primarily responsible for informing both our agency and its clients regarding Japanese tax obligations and supervising all Japanese business correspondence to ensure that it conforms to Japanese cultural norms of politeness, which is considered extremely important in any Japanese business setting.

In a world that is becoming increasingly smaller due to globalization, understanding the individuality of cultures around the globe is a vitally important skill for any company. The traditional elements of Japanese business etiquette drive profoundly from the Japanese culture in all its expressions. Japanese, like only a few other languages, is characterized by the extensive use of honorific speech, in which the hierarchical rank of the listener heavily affects the discourse. The challenge for Western companies is the fact that business etiquette and good manners in Japan are completely different than in Western societies, and also strictly approved and adhered to by the Japanese. Representing our clients' interests in a country with such a unique culture and tradition requires fine knowledge of Japanese negotiating techniques and behavior, and it is the role of the Administrative Specialist to provide this experience.

In the support letter, the petitioner claims that "[d]ue to the advanced nature of the duties to be performed by the [b]eneficiary in this position, it requires a minimum of a [b]achelor's degree in [i]nternational [r]elations, or a business field in combination ([b]usiness [a]dministration, [a]ccounting, or a related field) **in combination with** extensive Japanese cultural experience, or its equivalent as a prerequisite."

terms. At times, the petitioner states that the beneficiary will serve as an "Administrative Specialist – Japanese Baseball." At other times, the petitioner refers to the position as an "Administrative Specialist – Japan Baseball." Thus, any variations of the job title within this decision are due to the different job titles used by the petitioner in the record of proceeding.

With the Form I-129 petition, the petitioner submitted a copy of the beneficiary's diploma and transcript. The documentation indicates that the beneficiary was granted a Bachelor of Arts degree, with a major in international relations, from [REDACTED] in the United States in 2012.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant petition. The petitioner designated the proffered position under the occupational category "Business Operations Specialists, All Other" – SOC (ONET/OES) code 13-1199, at a Level I (entry) wage.

In addition, the petitioner provided printouts from its website. The petitioner did not submit any further documentation regarding its business operations or the proffered position.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 23, 2013. In the request, the director asked the petitioner to provide additional evidence to establish that the proffered position qualifies as a specialty occupation. The notice included a request to provide a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the specific job duties, the percentage of time to be spent on each duty, level of responsibility, hours per week of work, etc.³ The director outlined

³ As reflected in the description of the position as quoted above, the petitioner states the proposed duties in terms that fail to convey the relative complexity, uniqueness and/or specialization of the proffered position or its duties. The abstract level of information provided about the proffered position and its constituent duties is exemplified by the petitioner's assertion that the beneficiary will "provide support" and "be responsible for supporting" its sports agents. These statements do not include information regarding the day-to-day tasks of the position, and the term "support" does not delineate the actual work that the beneficiary will perform. This is again illustrated by the petitioner's statement that the beneficiary will "[be] the staff person primarily responsible for informing [the petitioner's] agency and its clients regarding Japanese tax obligations." The petitioner does not explain the beneficiary's specific role with respect to "informing" others about these obligations. Further, the petitioner's statement does not illuminate the substantive application of knowledge involved or any particular educational attainment associated with such application.

Additionally, the petitioner claims that the beneficiary will provide "knowledge of Japanese negotiating techniques and behavior." The petitioner fails to sufficiently define how the task of providing "knowledge of Japanese negotiating techniques and behavior" entails the need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. Thus, upon review, it is not evident that the proposed duties as described, and the position that they comprise, merit recognition of the proffered position as qualifying as a specialty occupation. That is, to the extent that they are described, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the performance of the proffered position for the entire period requested. The job description does not persuasively support the claim that the position's day-to-day job responsibilities and duties would require the theoretical and practical application of a particular educational level of highly specialized knowledge in a specific specialty directly related to those duties and responsibilities.

Furthermore, the petitioner did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform these functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position, and it did not establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular

the evidence to be submitted.

The petitioner responded to the RFE by providing a letter, dated August 12, 2013, and additional evidence in support of the H-1B petition. In the support letter, the petitioner claims that the proffered position qualifies as a specialty occupation.⁴

In addition, the petitioner states that the beneficiary will report to [redacted] [the] Office Manager, who is also a Japanese citizen and who also possesses native level fluency in Japanese language and business culture as well as a four year-degree."⁵ Further, according to the petitioner, the proffered position "supports [the] Director – Japan Baseball, Mr. [redacted] a Japanese citizen with native level fluency in Japanese language and business culture and a four-year degree in a related field."⁶

The petitioner further claims that "because [the proffered] position specifically requires native-level fluency in Japanese and knowledge of Japanese business culture, it is highly unlikely that we would be able to find a candidate who is not a Japanese national to fill the position." In addition, the petitioner provided a list of courses completed by the beneficiary, which included Hangul I & II. The petitioner continued by stating that "Hangul is the native script of Korea (Korean written language), and as part of her job duties, [the beneficiary] may be called upon to review documents in that language."

With the RFE response, the petitioner submitted a document entitled "Administrative Specialist – Japan Baseball[,] Breakdown of Job Duties," which according to the petitioner was "provided by [the beneficiary's] direct supervisor, Ms. [redacted] [the office manager]." The document states the following:

intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

⁴ The petitioner claims that the proffered position qualifies as a specialty occupation because "[t]he degree requirement is common to the industry." However, it must be noted that the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) (first prong, emphasis added) is "[t]he degree requirement is common to the industry *in parallel positions among similar organizations*." Further, the petitioner also asserts that "[t]he nature of the specific duties of the Administrative Specialist – Japanese Baseball are so specialized and complex that a bachelor's or higher level degree is required." Yet, the regulation states that a petitioner must demonstrate that "[t]he 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*" to satisfy this criterion. 8 C.F.R. § 214.2(h)(4)(iii)(A)(4)(emphasis added).

⁵ The petitioner states that Ms. [redacted] possesses a degree, but the petitioner did not provide further information regarding her academic credentials, including the field of study. Further, the petitioner did not submit documentation in support of its statement (i.e., evidence of Ms. [redacted] academic credentials).

⁶ With regard to Mr. [redacted], the petitioner claims that he possesses a degree in "a related field," but the petitioner did not state the field of study or discipline. Again, the petitioner did not provide evidence to corroborate its claim, such as a copy of Mr. [redacted] diploma or transcript.

Please note that with regard to all communication, whether it be with our Japanese clients, Japanese individual professional baseball teams or the league, or with Japanese government agencies, vendors, or other business partners (e.g., companies with whom our clients have endorsed contracts), the Administrative Specialist – Japan Baseball is primarily responsible for ensuring that our agency communicates appropriately in honorifics, or "keigo" ([Japanese], literally "respectful language"), which are considered extremely important in Japanese business settings. Only Japanese speakers with native-level fluency are able to perform this task adequately.

With regard to [the] position duties, the Administrative Specialist – Japan Baseball is responsible for the following tasks:

40% - Client Business Management. The Administrative Specialist is responsible for maintaining and developing client-business relationships. In that function, the Administrative Specialist is responsible for Japanese tax return preparation for all tax clients, handles invoice requests and prepares expense reports, oversees the accuracy of translation of Japanese business documents, and is responsible for all communication with Japanese vendors.

35% - Client Communications. The Administrative Specialist-Japan Baseball is responsible to proactively support our agency's image and reputation with our clients. The Administrative Specialist independently responds to immediate/urgent client requests and/or needs. The Administrative Specialist follows up on specific client inquiries/problems regarding bills, appearances, logistics, special requests, travel arrangements, etc.

10% - Liaison to Nippon Professional Baseball teams. Nippon Professional Baseball (in Japanese: [Japanese] nippon yakyu kikou) or "NPB" is the highest level of baseball in Japan. Locally, it is often called Puro Yakyu [Japanese], meaning Professional Baseball. Outside of Japan, it is often just referred to as "Japanese baseball." The roots of the league can be traced back to the formation of the "Greater Japan Tokyo Baseball Club" ([Japanese] Dai-Nippon Tokyo Yakyu Kurabu) in 1934 and the original Japanese Baseball League. NPB was formed when that league reorganized in 1950. The league consists of two six-team circuits, the Central League and the Pacific League. Each season the winning clubs from the two leagues compete in the Japan Series, the championship series of NPB. The Administrative Specialist-Japanese Baseball serves as the liaison between [the petitioner]'s Baseball Division and the individual NPB teams on behalf of our clients playing professional baseball in Japan (per the attached list).⁷ In that role, it is the

⁷ The petitioner submitted a client list designating (a) Japanese baseball players working in the United States, (b) Japanese baseball players working in Japan, and (c) "non-Japanese" baseball players working in Japan. More specifically, the list consists of the following:

Administrative Specialist's duty to ensure that our agency is focused and responsive to the goals and aims of both the individual teams and our clients, and to ensure that our clients receive the best instruction, assistance, and opportunities that the NPB can provide. It is essential that the Administrative Specialist work closely with the individual team's front offices as well as the clients, both to understand their needs and to keep them informed about our agency's services and resources. In addition, the Administrative Specialist reviews contracts and other correspondence to ensure accuracy of translation. In particular, the accuracy of contract translation is of utmost importance to our agency in the representation of our clients.

15% - Office Administration. The Administrative Specialist-Japan Baseball provides high-level administrative support by conducting research, preparing statistical reports, handling information requests, and performing limited clerical functions such as preparing correspondence in English and Japanese, receiving visitors, arranging conference calls, and scheduling meetings. The Administrative Specialist is assisted by an intern with regard to lower-level clerical functions.

Here, the petitioner has described the above "Office Administration" duties of the beneficiary's employment in the same general terms as those that are provided for the occupational category "Executive Secretaries and Executive Administrative Assistants" – SOC (ONET/OES) code 13-1199. That is, the wording of the above duties as provided by the petitioner for the proffered position is recited almost verbatim from the U.S. Department of Labor's (DOL) Foreign Labor Certification (FLC) Data Center. Specifically, the occupational category "Executive Secretaries and Executive Administrative Assistants" is described as follows:

Provide high-level administrative support by conducting research, preparing statistical reports, handling information requests, and performing clerical functions such as preparing correspondence, receiving visitors, arranging conference calls, and scheduling meetings. May also train and supervise lower-level clerical staff.

-
- Three Japanese individuals assigned to baseball teams in the United States,
 - Two Japanese individuals assigned to baseball teams in Japan, and
 - Seventeen "non-Japanese" individuals assigned to baseball teams in Japan.

In the Form I-129 petition (page 11), the petitioner stated that the beneficiary would "[p]rovide administrative support to professional sports agents representing Japanese baseball players playing in the United States for Major League and or Minor League teams." According to the client list, this translates to the beneficiary providing administrative support to professional sports agents who represent three baseball players. Notably, on the Form I-129, the petitioner did not indicate that the beneficiary would be performing duties involving baseball players working in Japan.

In response to the RFE, the petitioner stated that the beneficiary would serve as a liaison on behalf of its clients playing baseball in Japan. According to the client list, this would expand the beneficiary's duties to serving as a liaison (rather than just providing administrative support) for an additional 19 baseball players.

U.S. Dep't of Labor, Office of Foreign Labor Certification, Online Wage Library, All Industries Database for 7/2012 - 6/2013 for "Executive Secretaries and Executive Administrative Assistants" on the Internet at <http://www.flcdatacenter.com/OesQuickResults.aspx?code=43-6011&area=16974&year=13&source=1> (last visited January 17, 2014).

Furthermore, in the job description *supra*, the petitioner claims that the beneficiary will be "primarily responsible for ensuring that [the] agency communicates appropriately in [Japanese] honorifics," and that "[o]nly Japanese speakers with native-level fluency are able to perform this task adequately." However, the petitioner has not established the beneficiary's level of responsibility in performing this task, as the beneficiary will be assisting two senior employees, who are Japanese citizens with "native level fluency in Japanese language and business culture."⁸

In response to the RFE, the petitioner provided an organizational chart for its baseball division. In the August 12, 2013 letter of support, the petitioner indicated that the entry "Support Specialist" on the organizational chart refers to the proffered position. The hierarchy of the chart depicts an "Intern" as reporting directly to the beneficiary.⁹ The organizational chart further indicates that the beneficiary reports directly to the "Office Manager." The chart includes entries for a Sr. Advisor Contracts and Research, a Financial Planner, a Tax Accountant, Client Managers, an Athlete Marketing and Legal Liaison, and Client Service Advisors, as well as others.¹⁰ These positions are independent from the referenced "Office Manager," "Support Specialist," and "Intern" positions.¹¹

Additionally, the petitioner provided: (1) printouts from the Internet regarding its business operations; and (2) documents relating to [REDACTED]. The petitioner claims that Mr. [REDACTED] previously served in the proffered position.¹²

⁸ As noted above, the petitioner states that the beneficiary will directly report to the office manager, who is a "Japanese citizen and who also possesses native level fluency in Japanese language and business culture." Further, the beneficiary will provide support to the director – Japan baseball, who is "a Japanese citizen with native level fluency in Japanese language and business culture."

⁹ In the initial H-1B submission, the petitioner did not indicate that the proffered position entails supervisory duties. In response to the RFE, the petitioner states for the first time that the beneficiary will supervise an intern. No explanation was provided by the petitioner for failing to previously provide this information.

¹⁰ The petitioner did not provide job descriptions for the other positions in its baseball division. The job titles, however, suggest that these individuals are responsible for contracts, financial planning, tax and accounting issues, legal issues, etc.

¹¹ In the initial submission, the petitioner states that the beneficiary will "provide support to [its] Sports Agents representing the Japanese baseball market." In response to the RFE, the petitioner indicates that the beneficiary will report directly to the office manager and support the director – Japanese baseball. Notably, the organizational chart does not contain any entries designated for sports agents. No explanation was provided by the petitioner or its counsel.

¹² The AAO reviewed the petitioner's H-1B submission on behalf of Mr. [REDACTED]. In a letter of support dated May 27, 2010, the petitioner claimed that the position "requires a minimum of a Bachelor's degree in

In the support letter, the petitioner claims that "it is difficult to locate comparable positions. However, we attached several position postings for similar positions (administrative support positions) that also have the four-year degree requirement." The AAO reviewed the record in its entirety and notes that the referenced job postings were not submitted by the petitioner. No explanation was provided by the petitioner for not including the postings.

Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, or its equivalent. The director denied the petition on September 23, 2013. Subsequently, the director certified the decision to the AAO. In response to the director's certification, counsel submitted a brief to the AAO.¹³

II. The Standard of Proof

In response to the certification, counsel states that the "standard of proof applicable to I-129 petitions is the 'preponderance of the evidence' standard, where the petitioner's claim is true 'more likely than not,' defined as a greater than 50% probability of something occurring." Counsel further asserts that USCIS failed "to apply the preponderance of the evidence in evaluating evidence from DOL resources."

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

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

* * *

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

[b]usiness [a]dministration, [a]ccounting, or a related field, or its equivalent as a prerequisite." Notably, the petitioner now claims, for the instant H-1B petition, that a degree in international relations is acceptable for the position. While it appears that this change in the petitioner's stated requirements for the position was made to accommodate the beneficiary's educational background and permit her to qualify for this job, no explanation for the variance in the academic requirements was provided by the petitioner.

¹³ The vast majority of the statements in counsel's brief (from pages 1 to 11) are copied from a letter sent on April 4, 2012 to Alejandro Mayorkas, Director of U.S. Citizenship and Immigration Services (USCIS), from the American Immigration Lawyers Association (AILA).

* * *

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.

Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) examines 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. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. 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. As will be discussed, in the instant case, that burden has not been met.

III. Beyond the Director's Decision – Additional Grounds for Denial of the H-1B Petition

The AAO reviewed the record of proceeding in its entirety and, as will be discussed below, has identified additional issues that preclude the approval of the H-1B petition that were not identified by the director. Consequently, the issue certified to the AAO as to whether the proffered position qualifies as a specialty occupation is essentially moot. Thus, even if the petitioner overcame the grounds for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought. Specifically, the AAO notes that the petitioner has failed (1) to establish that it will pay the beneficiary an adequate salary for her work in accordance with the applicable statutory and regulatory provisions; and (2) to submit an LCA that supports the instant petition. Accordingly, the petition cannot be approved.

A. The Petitioner Has Not Establish that It Would Pay the Beneficiary an Adequate Salary for Her Work if the Petition Were Granted

More specifically, under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and

qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the LCA.¹⁴ See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A); *Patel v. Boghra*, 369 Fed. Appx. 722, 723 (7th Cir. 2010). 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]").

In this matter, the petitioner stated on the Form I-129 petition that it seeks the beneficiary's services as an administrative specialist – Japanese baseball to serve on a full-time basis (40 hours per week) in [REDACTED]. The petitioner requested that the petition be approved with validity dates of October 1, 2013 to September 9, 2016. On the Form I-129 petition (on page 5), the petitioner reported that the beneficiary would be paid \$30,160 per year. On the H-1B Data Collection and Filing Fee Exemption Supplement (page 17), the petitioner also stated that the beneficiary would be paid \$30,160 per year. The petitioner's vice-president of talent signed the Form I-129 petition on March 25, 2013 under penalty of perjury that the information supplied to USCIS on the petition and the evidence submitted with it was true and correct.

The instructions to the Form I-129 (10/07/11), the version of the form completed by the petitioner, state, in pertinent part, the following:

Rate of pay per year. The "rate of pay" is the salary or wages paid to the beneficiary. Salary or wages must be expressed in an annual full-time amount and do not include non-cash compensation or benefits. For example, an H-1B worker is to be paid \$6,500 per month for a 4-month period including a health benefits package and transportation. The yearly rate of pay if he or she were working for a full year would be 12 times the monthly rate or \$78,000. This amount does not include health benefits or transportation costs. The figure \$78,000 should be entered on this form as the rate of pay.

See Instructions for Form I-129, Petition for a Nonimmigrant Worker, available at <http://www.uscis.gov/files/form/i-129instr.pdf>.

In the LCA, the petitioner designated the proffered position as falling under the occupational category "Business Operations Specialist, All Other." The petitioner indicated the entry-level prevailing wage for this occupation was \$15.44 per hour (\$32,115 per year).¹⁵ The wage source is

¹⁴ The prevailing wage rate is defined as the average wage paid to similarly employed workers in a specific occupation in the area of intended employment. The required wage rate means the rate of pay which is the higher of the actual wage for the specific employment in question or the prevailing wage rate for the occupation in which the beneficiary will be employed in the geographic area of intended employment. See 20 C.F.R. § 655.715.

¹⁵ The petitioner also indicated the rate of pay is \$15.44 per hour on the LCA.

listed as the OES (Occupational Employment Statistics) OFLC (Office of Foreign Labor Certification) Online Data Center.¹⁶ The LCA was certified by DOL on March 15, 2013 and signed by the petitioner on March 28, 2013.

The AAO reviewed the OES OFLC Online Data Center database regarding the prevailing wage for the occupational category "Business Operations Specialist, All Other." It indicates that the prevailing wage for the occupational category of "Business Operations Specialist, All Other" for a Level I position in Cook County (Chicago, Illinois) was \$32,115 per year at the time the petitioner submitted the LCA.¹⁷

Thus, the petitioner's offered wage on the Form I-129 petition is below the prevailing wage level for the occupational classification in the area of intended employment by \$1,955 per year. Neither section 212(n) of the Act, the regulations at 20 C.F.R. § 655.731(c), nor any other statutory or regulatory provision permits an employer to pay wages below the required wage.¹⁸ By signing the Form I-129, the petitioner confirms "under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it are all true and correct."

As such, the petitioner has failed to establish that, if the petition were granted, it would pay the beneficiary an adequate salary for her work, as required under the Act. The petitioner's offered salary on the Form I-129 does not comply with the statutory and regulatory provisions regarding payment of wages to an H-1B employee. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial, the petition could still not be approved.

Further, in the instant case, the petitioner has characterized the duties of the proffered position as pertaining to multiple occupational categories. As previously stated, the petitioner submitted an LCA in support of the instant petition designating the proffered position under the occupational category "Business Operations Specialists, All Other." In response to the RFE, however, the

¹⁶ The Occupational Employment Statistics (OES) program produces employment and wage estimates for over 800 occupations. See U.S. Dep't of Labor, Bureau of Labor Statistics, on the Internet at <http://www.bls.gov/oes/> (last visited January 17, 2014). The OES All Industries Database is available at the Foreign Labor Certification Data Center, which includes the Online Wage Library for prevailing wage determinations and the disclosure databases for the temporary and permanent programs. The Online Wage Library is accessible at <http://www.flcdatcenter.com/>.

¹⁷ For additional information on the prevailing wage for this occupation in Cook County, see the All Industries Database for 7/2012 - 6/2013 for Business Operations Specialist, All Other at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=13-1199&area=16974&year=13&source=1> (last visited January 17, 2014).

¹⁸ Under the H-1B Visa Reform Act of 2004, H-1B employers are required to pay 100% of the prevailing wage as opposed to the previous ability to pay 95% of the prevailing wage. Notably, the petitioner's offered wage is less than 95% of the prevailing wage.

petitioner provided a job description which describes some of the duties of the beneficiary's employment in the same terms as those that are provided for the occupational category "Executive Secretaries and Executive Administrative Assistants."

When the duties of a proffered position involve more than one occupational category, DOL provides clear guidance for selecting the most relevant Occupational Information Network (O*NET) code classification. The "Prevailing Wage Determination Policy Guidance" issued by DOL, states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [designator] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [designator] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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.

Based upon the petitioner's statements, the proffered position is a combination of occupations.¹⁹ Accordingly, DOL guidance indicates that the petitioner should have chosen the relevant occupational code on the LCA for the highest paying occupation. Importantly, the prevailing wage for "Executive Secretaries and Executive Administrative Assistants" is higher than the prevailing wage for "Business Operations Specialists, All Other."

That is, the prevailing wage for "Executive Secretaries and Executive Administrative Assistants" (assuming for a Level I position) was \$32,718 per year at the time of submission, in the area of intended employment.²⁰ The prevailing wage for the occupational category "Business Operations

¹⁹ The petitioner also indicated that the beneficiary will translate documents. The entry-level, prevailing wage for "Interpreters and Translators" in the area of intended employment at the time of submission was \$26,790 per year. See the All Industries Database for 7/2012 - 6/2013 at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatabasecenter.com/OesQuickResults.aspx?area=16974&code=27-3091&year=13&source=1> (last visited January 17, 2014). Thus, the entry-level prevailing wage for "Interpreters and Translators" was less than the entry-level prevailing wage for the occupational categories "Business Operations Specialists, All Other" and "Executive Secretaries and Executive Administrative Assistants."

²⁰ For additional information regarding the prevailing wage for Executive Secretaries and Executive Administrative Assistants in Cook County, see the All Industries Database for 7/2012 - 6/2013 at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at

Specialists, All Other" for a Level I position was \$32,115 per year.²¹ Thus, according to DOL guidance, because the proffered position was described as a combination of O*NET occupations, the petitioner should have chosen the relevant occupational code for the highest paying occupation. The petitioner, however, selected the occupational code for a lower paying occupational category.

Upon review, the petitioner's offered wage to the beneficiary (throughout the record of proceeding) for the proffered position is less than the prevailing wage for the occupational category "Executive Secretaries and Executive Administrative Assistants." As previously discussed, the petitioner is obligated to pay the beneficiary the required wage. See section 212(n)(1)(A) of the Act. In the instant case, the petitioner has not demonstrated that it would pay the beneficiary an adequate salary for her work, as required under the Act, if the petition were granted. Accordingly, the petition cannot be approved.

B. The LCA Filed in the Instant Matter Would Not Correspond to a Higher-Level and More Complex Position Which Requires a Special Skill

Moreover, even if the petitioner had selected the proper occupational category for the LCA, the AAO observes that the LCA was certified at a Level I (entry level) wage. Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.²²

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.²³ DOL

<http://www.flcdatcenter.com/OesQuickResults.aspx?area=16974&code=43-6011&year=13&source=1> (last visited January 17, 2014).

²¹ For additional information regarding the prevailing wage for Business Operations Specialists, All Other in Cook County, see the All Industries Database for 7/2012 - 6/2013 at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?area=16974&code=13-1199&year=13&source=1> (last visited January 17, 2014).

²² For additional information on wage levels, 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.

²³ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the

emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

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

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.

In the instant case, the petitioner emphasizes the importance of foreign language skills for the proffered position. For example, the petitioner states that the beneficiary will "author correspondence in the appropriate Japanese honorific language," as well as "translate documents as needed." Further, the petitioner claims that the beneficiary will be "supervising all Japanese business correspondence to ensure that it conforms to Japanese cultural norms of politeness, which is considered extremely important in any Japanese business setting." The petitioner notes that "Japanese, like only a few other languages, is characterized by the extensive use of honorific speech, in which the hierarchical rank of the listener heavily affects the discourse." Moreover, the petitioner reports that it offered the beneficiary the proffered position based upon her "fluency in Japanese language and culture." Additionally, the petitioner claims that "[the proffered] position specifically requires native-level fluency in Japanese and knowledge of Japanese business culture." According to the petitioner, the beneficiary's duties will include "oversee[ing] the accuracy of translation of Japanese business documents" and "review[ing] contracts and other correspondence to ensure [the] accuracy of translation." The petitioner also states that "Hangul is the native script of Korea (Korean written language), and as part of her job duties, [the beneficiary] may be called upon to review documents in that language."

level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for special skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses supervisory duties, with a "1" entered unless supervision is generally required by the occupation.

In accordance with the guidance provided by DOL, a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of "Foreign Language Teachers and Instructors," "Interpreters," and "Caption Writers." *Id.* In the instant case, the petitioner designated the proffered position under the occupational category "Business Operations Specialists, All Other" at a Level I (the lowest of four assignable wage levels), and it has not established that the foreign language requirement was reflected in the wage-level for the proffered position. As such, for this reason also, the petitioner has failed to establish that it would pay the beneficiary an adequate salary for her work, as required under the Act, if the petition were granted.

Moreover, throughout the record of proceeding, the petitioner and counsel claim that the proffered position involves complex, unique and/or specialized duties. Additionally, in a letter dated March 28, 2013, the petitioner claims that the beneficiary will be "the staff person primarily responsible for informing both [the] agency and its clients regarding Japanese tax obligations and supervising all Japanese correspondence." The petitioner states that "[r]epresenting our clients' interests in a country [Japan] with such a unique culture and tradition requires fine knowledge of Japanese negotiating techniques and behavior, and it is the role of the Administrative Specialist to provide this expertise." According to the petitioner, the beneficiary was selected for the position "on the basis of her education, experience, and fluency in Japanese language and culture." The petitioner emphasizes that the beneficiary is an "expert in her ability to communicate in the required honorific style." The petitioner references "the advanced nature of the duties to be performed by the [b]eneficiary in this position" and claims that it requires "extensive Japanese cultural experience."

Upon review, it appears that the claimed level of education, experience, knowledge and special skills required to perform the duties of the proffered position as stated by the petitioner is at odds with the wage-rate selected by the petitioner on the LCA. This is further exemplified by the petitioner's response to the RFE. For instance, the petitioner claims that "[b]ecause this position is so specialized, it is difficult to locate comparable positions." The petitioner submitted a revised description of job duties, which the petitioner claims demonstrate "the specific, specialized and complex job duties [of the position]." Further, the petitioner reports that the beneficiary will be primarily responsible for ensuring that the petitioner communicates appropriately in honorifics with clients, baseball teams and leagues, government agencies, vendors and other partners. The petitioner continues by stating that this is "considered extremely important in Japanese business settings." Additionally, according the petitioner, the proffered position includes supervisory duties, specifically, supervision of an intern.

The petitioner also claims that "the [a]dministrative [s]pecialist is responsible for maintaining and developing client-business relationships." Moreover, the job description indicates that the beneficiary "oversees the accuracy of translation of Japanese business documents, and is responsible for all communication with Japanese vendors." The job description also states that the beneficiary "independently responds to immediate/urgent client requests and/or needs." The petitioner asserts that the beneficiary will serve as a liaison and "ensure that [the petitioner] is focused and responsive to the goals and aims of the [baseball] teams and [the petitioner's] clients." The petitioner reports that in the proffered position, the beneficiary "reviews contracts and other correspondence to ensure accuracy of translation" and that "[i]n particular, the accuracy of contract

translation is of the utmost importance to [the petitioner's] agency in the representation of [its] clients."

In response to the certification, counsel claims that "the duties are clearly specialized and specific to the uniqueness, complexity, and business necessity of the [p]etitioner, its industry, and its client services." Further, the petitioner submitted a letter from [redacted] of [redacted] regarding the proffered position. Ms. [redacted] states that the position "consists of complex and specialized duties requiring a particular set of knowledge and skills." She claims that the proffered position "entails difficult tasks such as contract review, research and the preparation of statistical reports." The petitioner also provided an opinion letter from [redacted] of [redacted] who asserts that "the job duties of the Administrative Specialist-Japanese Baseball with regard to client contract review [is] particularly specialized and complex, as she will essentially function informally in the same manner in which a lawyer would function in the United States."

The petitioner therefore appears to claim that it will be relying heavily on the beneficiary's work product and expertise to make critical decisions regarding the company's business and operations. Such reliance on the beneficiary's work appears to surpass the expectations of a Level I position, as described above, where the employee works under close supervision, performing routine tasks that require only a basic understanding of the occupation and limited exercise of judgment. In the instant case, rather than the beneficiary's work being "monitored and reviewed for accuracy," it appears that the petitioner claims that it will be relying on the accuracy of the beneficiary's work with regard to important business decisions for the company.

Thus, upon review of the assertions regarding the proffered position, the AAO must question the stated requirements for the proffered position, as well as the level of complexity, independent judgment and understanding that are actually needed for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties, responsibilities and requirements as described in the record of proceeding conflict with the wage-rate element of the LCA selected by the petitioner, which is indicative of a comparatively low, entry-level position relative to others within the same occupation.

As previously discussed, under the H-1B program, the petitioner must pay the beneficiary at least the same wage rate as that paid to other employees with similar experience and qualifications or the local prevailing wage for the occupation in the area of employment, whichever is higher. In the instant case, the petitioner designated the proffered position as a Level I position. Notably, if the proffered position had been designated at a higher level, the prevailing wage at that time (for the claimed occupational category "Business Operations Specialists, All Other") would have been \$49,587 per year for a Level II position, \$67,080 per year for a Level III position, and \$84,552 per year for a Level IV position.²⁴

²⁴ Again, when a petitioner's job opportunity is a combination of occupations, the petitioner should select the relevant occupational category for the highest paying 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 petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. Therefore, if the proffered position were found to qualify as a specialty occupation on the basis that it was a higher-level and more complex position, as claimed elsewhere in the petition, the petition could still not be approved as the petitioner has failed to establish that it would pay the wage required for that level of work as required under the Act.

This aspect of the LCA undermines the credibility of the petition and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. 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. at 591-92.

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] 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 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 . . . 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. Here, provided the proffered position was in fact found to be a higher-level and more complex position (which requires special skills) as asserted by the petitioner and counsel elsewhere in the petition, the petitioner would have failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position; that is,

specifically, the LCA submitted in support of the petition would then fail to correspond to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance section 212(n)(1)(A) of the Act and the pertinent LCA regulations.

The statements regarding the requirements and claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceeding, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

As such, a review of the enclosed LCA indicates that the information provided therein does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements, which if accepted as accurate would result in the beneficiary being paid a salary below that required by law. As a result, even if it were determined that the proffered position were a higher-level and more complex position as described and claimed elsewhere in the petition in support of the petitioner's assertions that this position qualifies as a specialty occupation, the petition could still not be approved for this additional reason.²⁵

For the reasons discussed above, the petitioner has failed (1) to establish that it will pay the beneficiary an adequate salary for her work in accordance with the applicable statutory and regulatory provisions; and (2) to submit an LCA that supports the instant petition.²⁶ These grounds for denial of the petition render the remaining issues in this proceeding moot. Thus, while the AAO need not address the director's decision that the proffered position does not qualify as a specialty occupation, the AAO will nevertheless discuss this issue as it is the basis of the director's certified decision to the AAO.

²⁵ Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position to obtain a lower prevailing wage; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position (which requires special skills) in order to support its claim that the position qualifies as a specialty occupation. The petitioner cannot have it both ways. Either the position is a more senior and complex position that involves special skills (based on a comparison of the petitioner's job requirements to the standard occupational requirements) and thereby necessitates a higher required wage, or it is an entry-level position for which a lower wage would be acceptable. To permit otherwise would be directly contrary to the U.S. worker protection provisions contained in section 212(n)(1)(A) of the Act and its implementing regulations.

²⁶ The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The regulations at 8 C.F.R. § 214.2(h)(2)(i)(E) instead require that the petitioner "file an amended or new petition, with fee, with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment"

IV. The Director's Basis for Denial of the H-1B Petition

The AAO will now specifically address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described more likely than not constitutes a specialty occupation. It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into each basis discussed below for affirming the director's decision.

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

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

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

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

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

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

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

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS therefore 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 particular 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 or its equivalent as the minimum for entry into the occupation, as required by the Act.

It is incumbent upon the petitioner to demonstrate it has sufficient work to require the services of a person with at least a bachelor's degree in a specific specialty, or its equivalent, to perform duties at a level that requires the theoretical and practical application of a body of highly specialized knowledge for the requested validity dates. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. The AAO will first discuss some findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

On June 1, 2010, the petitioner submitted an H-1B petition on behalf of a different beneficiary, [REDACTED] for the position of administrative specialist – Japanese baseball.²⁷ In a letter of support dated May 27, 2010, the petitioner claimed that the position "requires a minimum of a [b]achelor's degree in [b]usiness [a]dministration, [a]ccounting, or a related field, or its equivalent as a prerequisite."

Notably, the petitioner now claims, for the instant H-1B petition, that "it requires a minimum of a [b]achelor's degree in [i]nternational [r]elations, or a business field [(b)usiness [a]dministration, [a]ccounting, or a related field) in combination with extensive Japanese cultural experience, or its equivalent." Thus, a degree in international relations or "a business field" is acceptable for the proffered position.²⁸ The petitioner did not provide an explanation for the variance in the stated academic requirements. The petitioner also did not address or provide the reason that the academic requirements as stated in the prior petition are not the same as the requirements as provided in the instant petition. The AAO notes that this inconsistency raises questions as to the petitioner's actual requirements for the proffered position.

The petitioner has indicated that it will now accept a degree in international relations or a business field. In satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy

²⁷ In a letter dated August 12, 2013 the petitioner claimed that the prior H-1B submission on behalf of Mr. [REDACTED] was relevant to the instant case.

²⁸ The beneficiary possesses a degree in international relations.

and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). 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.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in international relations or a business field.²⁹ The issue here is that, based on the evidence presented, it is not readily apparent that these fields of study are closely related or that any and all business fields are directly related to the duties and responsibilities of the particular position proffered in this matter.

Moreover, the petitioner submitted a letter from [REDACTED] of [REDACTED]. The letter is dated October 17, 2013. In the letter, Mr. [REDACTED] describes his credentials and claims to provide the letter as a professional and expert. He indicates that he has reviewed the petitioner's job description. According to Mr. [REDACTED] the relevant academic credentials for the proffered position include a degree in sports industry management or a degree in sports management.³⁰ Mr. [REDACTED] acknowledges that the beneficiary possesses a degree in international relations, but states that he is not able to determine "whether or not that particular degree is related to this position."

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails

²⁹ The word "business" is defined as "1. The occupation, work, or trade in which one is engaged. . . . 2. Commercial, industrial, or professional dealings. 3. A commercial enterprise or establishment." WEBSTER'S II NEW COLLEGE DICTIONARY 153 (2008). A degree in "a business field" may include a range of disciplines, some of which may not directly relate to the duties of the proffered position. For instance, U.S. News and World Report publishes a guide for colleges. The entry for Harvard University indicates that its business school offers concentrations in a range of disciplines, including arts administration, e-commerce, health care administration, human resources management, manufacturing and technology management, marketing, not-for-profit management, public administration, public policy, real estate, as well as many others. See U.S. News and World Report on the Internet at http://www.usnewsuniversitydirectory.com/graduate-schools/business/harvard-university_01110.aspx (last visited January 17, 2014).

³⁰ Mr. [REDACTED] does not claim that he possesses any specific knowledge of the educational requirements for administrative specialist – Japanese baseball positions based upon actual research or any particular authoritative sources (e.g., statistical surveys, authoritative industry or government publications, or professional studies). Mr. [REDACTED] makes an assertion regarding the proffered position, but fails to provide any objective, supporting authority or any empirical basis for the pronouncement.

to establish either: (1) that international relations and "a business field" are closely related fields or (2) that these fields are directly related to the duties and responsibilities of the proffered 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. Accordingly, 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, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

Furthermore, it must be noted that the petitioner's claim that a bachelor's degree in a business field 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 general-purpose degree (such as a degree in a business field), 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 demonstrate 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 a business field, 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 147.³¹

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in a business field. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied

³¹ 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.

on this basis alone.

The AAO notes that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. *See Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). The AAO does not find, however, that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner. Instead, USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. Furthermore, the AAO does not find (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. at 560 ("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].").

Second, in promulgating the H-1B regulations, the former Immigration and Naturalization Service (INS) made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*

In the instant case, as discussed, the petitioner previously claimed that the position "requires a minimum of a [b]achelor's degree in [b]usiness [a]dministration, [a]ccounting, or a related field, or its equivalent as a prerequisite." The petitioner now asserts, for the instant H-1B petition, that "it requires a minimum of a [b]achelor's degree in [i]nternational [r]elations, or a business field [(b)usiness [a]dministration, [a]ccounting, or a related field) **in combination with** extensive Japanese cultural experience, or its equivalent." The petitioner repeatedly emphasizes the importance of hiring "a Japanese national to fill the position." Upon review, however, the petitioner has not asserted and the record of proceeding does not support the conclusion that the petitioner's claimed requirement of a general degree plus Japanese cultural experience is equivalent to a bachelor's or higher degree in a specific specialty.

In response to the director's certification, counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."³²

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, in this matter, and as just discussed, there are discrepancies in the petitioner's statements with regard to its claimed requirements for the proffered position. Further, the petitioner has not demonstrated that it requires a degree in a specific specialty that is directly related to the proposed position. For instance, the petitioner has indicated that a general-purpose bachelor's degree, i.e., a bachelor's degree in a business field, is sufficient for the proffered position. Moreover, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.³³ Accordingly, counsel's reliance on this United States district court's decision is misplaced.

The fact that a person may be employed in a position designated by an employer as that of an administrative specialist – Japanese baseball and may apply some related principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree in a specific specialty, or its equivalent. When "any person makes an application for a visa or any other document required for entry, or makes an application for admission, [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such benefit. Section 291 of the Act; see also *Matter of Treasure Craft of California*, 14 I&N Dec. 190.

³² It must be noted that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

³³ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and the description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.

The AAO will now review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position. It must be noted that in the initial H-1B submission and in response to the RFE, the petitioner did not assert that the proffered position qualifies as a specialty occupation under this criterion of the regulations. Nevertheless, for the purpose of providing a comprehensive discussion as to whether the petitioner's administrative specialist – Japanese baseball position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

The AAO recognizes DOL's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³⁴ As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Business Operations Specialists, All Other."

The AAO reviewed the *Handbook* regarding the occupational category "Business Operations Specialists, All Other." However, the *Handbook* does not provide a detailed narrative account nor does it provide summary data for the occupational category "Business Operations Specialists, All Other." More specifically, the *Handbook* does not state the typical duties and responsibilities for this category. Further, the *Handbook* does not include any information regarding the academic and/or professional requirements for this occupation. The *Handbook* states the following with regard to occupations not covered in detail:

Data for Occupations Not Covered in Detail

Employment for the hundreds of occupations covered in detail in the *Handbook* accounts for more than 121 million, or 85 percent of all, jobs in the economy. [The *Handbook*] presents summary data on 162 additional occupations for which employment projections are prepared but detailed occupational information is not developed. These occupations account for about 11 percent of all jobs. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2010 employment, the May 2010 median annual wage, the projected employment change and growth rate from 2010 to 2020, and education and training categories are presented. For guidelines on interpreting the descriptions of projected employment change, refer to the section titled "Occupational Information Included in the OOH."

Approximately 5 percent of all employment is not covered either in the detailed occupational profiles or in the summary data given here. The 5 percent includes categories such as "all other managers," for which little meaningful information could be developed.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Data for Occupations Not Covered in Detail, on the Internet at <http://www.bls.gov/ooh/About/Data->

³⁴ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

for-Occupations-Not-Covered-in-Detail.htm (last visited January 7, 2014).

Thus, the narrative of the *Handbook* indicates that there are over 160 occupations for which only brief summaries are presented. That is, detailed occupational profiles for these 160+ occupations are not developed.³⁵ The *Handbook* continues by stating that approximately five percent of all employment is not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not probative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, 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 the *Handbook*'s support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that indicates whether the position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider all of the evidence presented to determine whether the petitioner has established eligibility for the benefit sought. Upon review of the record, the petitioner has failed to meet its burden in this regard.³⁶ More specifically, the petitioner did not submit probative evidence that normally the minimum requirement for positions falling under the occupational category "Business Operations Specialists, All Other" is at least a bachelor's degree in a specific specialty, or its equivalent.

In response to the RFE, the petitioner provided a revised job description for the proffered position. A portion of the description includes duties (recited virtually verbatim) from the occupational category "Executive Secretaries and Executive Administrative Assistants" as described in DOL's

³⁵ The occupational categories for which the *Handbook* only provides summary data includes a range of occupations, such as, for example, farm labor contractors; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, postmasters and mail superintendents; as well as others.

³⁶ As previously mentioned, the brief submitted by counsel in response to the director's certification appears to have been largely copied from an April 2012 letter sent by AILA to the USCIS Director. Further, many of the statements do not appear to be applicable to the instant case. For instance, the brief states that the director "fail[ed] to afford proper weight to evidence from the Department of Labor's Occupational Outlook Handbook." However, as discussed *supra*, the *Handbook* does not contain a detailed narrative account or summary data for the occupational category "Business Operations Specialists, All Other." The director found that the proffered position is an amalgamation of multiple occupations, and that the *Handbook* does not contain a classification that is analogous to the proffered position. Notably, the petitioner submitted a letter from [REDACTED] from the [REDACTED] at [REDACTED] stating that "the Occupational Outlook Handbook is irrelevant as it contains no information." Therefore, the assertion in counsel's brief that the director "fail[ed] to afford proper weight to evidence from the Department of Labor's Occupational Outlook Handbook" appears to have been recited from the AILA memorandum without consideration as to its relevance here.

FLC Data Center. Thus, the petitioner appears to claim that this occupational category is relevant to the instant petition.

The *Handbook* indicates that executive secretaries and executive administrative assistants fall under the broader occupational category "Secretaries and Administrative Assistants."³⁷ Accordingly, the AAO reviewed the chapter of the *Handbook*. The *Handbook*, however, does not support the assertion that this occupational category qualifies as a specialty occupation. More specifically, the subchapter of the *Handbook* entitled "How to Become a Secretary or Administrative Assistant" states the following about the educational and training requirements for this occupation:

Education and Training

High school graduates can get basic office, computer, and English grammar skills in various ways: through high school vocational education programs, vocational-technical schools, or community colleges. Many temporary placement agencies also provide formal training in computer and office skills.

Employers of more specialized positions, including medical and legal secretaries, often require applicants to have some knowledge of industry-specific terminology and practices. Community colleges and vocational-technical schools usually offer instruction in these areas.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Secretaries and Administrative Assistants," on the Internet at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Secretaries-and-administrative-assistants.htm#tab-4> (last visited January 7, 2014).

According to the *Handbook*, a high school diploma is usually sufficient for entry into this occupational category. The *Handbook* states that skills for this occupation can be obtained through a variety of paths, including through high school vocational education programs, vocational-technical schools, or community colleges. The *Handbook* indicates that training may also be available through temporary placement agencies. The narrative of the *Handbook* continues by reporting that community colleges and vocational-technical schools offer instruction in industry-specific terminology and practices for more specialized positions. The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or the equivalent, is normally the minimum requirement for entry into this occupational category.

In the Form I-129 (page 11), the petitioner indicates that the beneficiary will translate documents as needed. In response to the RFE, the petitioner states that the beneficiary will perform translation services, including "oversee[ing] the accuracy of translation of Japanese business documents" and

³⁷ The chapter of the *Handbook* "Secretaries and Administrative Assistants" includes information on various types of secretaries and administrative assistants, including executive secretaries and administrative assistants. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Secretaries and Administrative Assistants, on the Internet at <http://www.bls.gov/ooh/Office-and-Administrative-Support/Secretaries-and-administrative-assistants.htm#tab-2> (last visited January 7, 2014).

"review[ing] contracts and other correspondence to ensure [the] accuracy of translation." In addition, the petitioner states that "Hangul is the native script of Korea (Korean written language), and as part of her job duties, [the beneficiary] may be called upon to review documents in that language."

Accordingly, the AAO reviewed the chapter of the *Handbook* entitled "Interpreters and Translators," including the sections regarding the typical duties and requirements for this occupational category. Although the proffered position has some duties in common with those associated with the occupational category "Interpreters and Translators," the petitioner has not indicated the specific amount of time that the beneficiary will spend performing these duties. Thus, it cannot be determined whether these duties are primary responsibilities of the proffered position or simply incidental or secondary tasks. Nevertheless, upon review of the *Handbook*, the AAO notes that it does not indicate that "Interpreters and Translators" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

More specifically, the subchapter of the *Handbook* entitled "How to Become an Interpreter or Translator" states the following about the educational requirements for this occupational category:

Education

The educational backgrounds of interpreters and translators vary, but it is essential that they be fluent in English and at least one other language.

High school students interested in becoming an interpreter or translator should take a broad range of courses that includes English writing and comprehension, foreign languages, and computer proficiency. Other helpful pursuits for prospective foreign-language interpreters and translators include spending time abroad, engaging in direct contact with foreign cultures, and reading extensively on a variety of subjects in English and at least one other language. Through community organizations, students interested in sign language interpreting may take introductory classes in ASL and seek out volunteer opportunities to work with people who are deaf or hard of hearing.

Beyond high school, people interested in becoming an interpreter or translator have many educational options. Although a bachelor's degree is often required for jobs, majoring in a language is not always necessary. An educational background in a particular field of study can provide a natural area of subject-matter expertise.

However, interpreters and translators generally need specialized training on how to do the work. Formal programs in interpreting and translating are available at colleges and universities nationwide and through nonuniversity training programs, conferences, and courses.

Many people who work as conference interpreters or in more technical areas—such as localization, engineering, or finance—have a master's degree. Those working in

the community as court or medical interpreters or translators are more likely to complete job-specific training programs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Translators and Interpreters," on the Internet at <http://www.bls.gov/ooh/Media-and-Communication/Interpreters-and-translators.htm#tab-4> (last visited January 7, 2014).

According to the *Handbook*, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree. This passage of the *Handbook* reports that the educational backgrounds of interpreters and translators vary but that it is essential that they be fluent in English and at least one other language. The *Handbook* states that it may be helpful for prospective candidates to spend time abroad, engage in direct contact with foreign cultures, and read extensively on a variety of subjects in English and at least one other language. The *Handbook* states that beyond high school, people interested in becoming an interpreter or translator have many educational options. Further, the narrative of the *Handbook* indicates that although a bachelor's degree is often required for jobs, it does not conclude that these positions normally require a bachelor's degree in a specific specialty for entry into the occupation.³⁸ The *Handbook* describes several avenues for preparation for a career as an interpreter or translator, including studying abroad, participating in a formal "program" at a college or university, and attending "nonuniversity training programs, conferences, and courses." The *Handbook* indicates that some interpreters and translations complete job-specific training programs. Thus, the *Handbook* states that there are many paths of academic and non-academic preparation for a career as an interpreter or translator. The *Handbook* does not report that attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

Again, in the initial H-1B submission and in response to the RFE, the petitioner did not assert that the proffered position qualifies as a specialty occupation under this criterion of the regulations. Moreover, based upon a complete review of the record of proceeding, the AAO finds that in the instant case, the record does not establish that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that normally the minimum requirement for entry into the particular position proffered here is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner also do not indicate that this particular position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

³⁸ For instance, the definition of "often" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[m]any times; frequently." It cannot be found, therefore, that a particular degree that is "often" required for positions in a given occupation would equate to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

Next, the AAO will review the record of proceeding regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source) reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The record of proceeding also does not contain any evidence from an industry professional association to indicate that a degree is a minimum entry requirement.

In response to the RFE, the petitioner stated that "[t]he degree requirement is common to the industry." In support of this assertion, the petitioner claimed that it was submitting job postings for similar positions. However, as previously noted, the referenced job postings were not provided to USCIS with the RFE response (or even subsequently). No explanation was provided. Thus, at the time of the director's decision, the record of proceeding did not contain any evidence in support of the petitioner's assertion. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190). Consequently, the director did not err in finding that the petitioner failed to satisfy this criterion of the regulations.

Thereafter, counsel submitted a letter from Mr. [REDACTED] an associate dean of Sports Industry Management at the School of Continuing Studies at [REDACTED]. The letter is dated October 17, 2013. In the letter, Mr. [REDACTED] describes his qualifications, including his educational credentials and professional experience.

Based upon a complete review of Mr. [REDACTED] letter, the AAO notes that Mr. [REDACTED] may, in fact, be a recognized authority on various topics; however, he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. He has not established his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. That is, without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of a for-profit "professional sports agency" in the industry of "Agents and Managers for Artists, Athletes, Entertainers, and Other

Public Figures" (as designated by the petitioner in the Form I-129 and its NAICS code) or similar organizations for administrative specialist – Japanese baseball positions (or parallel positions).

Mr. [REDACTED] opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

Moreover, in the letter, Mr. [REDACTED] claims that relevant degrees for the proffered position would include sports industry management and sports management. Mr. [REDACTED] states that he cannot determine whether or not a degree in international relations (as required by the petitioner) is related to the proffered position. Thus, the letter does not indicate that the petitioner's academic requirements are common to the industry in parallel positions among similar organizations.

Further, Mr. [REDACTED] states in his letter that his "determination was reached on the basis of the materials supplied by [the petitioner] describing the duties and responsibilities of the position." In the letter, Mr. [REDACTED] provided the job duties of the proffered position as stated by the petitioner in response to the RFE. Upon review of the opinion letter, there is no indication that Mr. [REDACTED] possesses any knowledge of the petitioner's proffered position beyond this information. Mr. [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For example, there is no evidence that Mr. [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job.

In any event, Mr. [REDACTED] claims that "based on his familiarity with the industry and the practices of other sports agencies, similar mid-level positions with other sports agents/agencies would have a similar degree requirement in a relevant field." Although Mr. [REDACTED] states that the position is a mid-level position, the petitioner actually classified the proffered position as a Level I position on the LCA, which is indicative of a comparatively low, entry-level position relative to others within the occupation. It must be noted that there is no indication that the petitioner and counsel advised Mr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level administrative specialist position, for a beginning level employee who has only a basic understanding of the occupation (as indicated by the wage-level selected by the petitioner on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment relative to others within the same occupation; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. It appears that Mr. [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Mr. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine similar or parallel positions.

Mr. [REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. For the foregoing reasons, Mr. [REDACTED] does not provide sufficiently substantive and analytical bases for his opinion.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

As a preliminary matter, it must be noted that in the initial H-1B submission and in response to the RFE, the petitioner did not assert that the proffered position qualifies as a specialty occupation under this prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Nevertheless, the AAO will address this prong of the regulations for the purpose of providing a comprehensive discussion as to whether the petitioner's administrative specialist – Japanese baseball position qualifies as a specialty occupation.

The record of proceeding contains evidence regarding the proffered position, as well as several documents regarding the petitioner's business operations, including: (1) printouts from the petitioner's website; (2) two printouts from the Internet regarding awards received by the petitioner; (3) an organizational chart of the petitioner's baseball division; and (4) the petitioner's client list of baseball players. The AAO reviewed the record in its entirety and notes that while the petitioner provides some insights into the proffered position and the petitioner's business activities, the evidence does not establish that the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

More specifically, the petitioner has not demonstrated exactly what the beneficiary will do on a day-

to-day basis such that complexity or uniqueness can even be determined. Furthermore, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how the duties 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. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or its equivalent.

In response to the RFE, the petitioner claims that the position "specifically requires native-level fluency in Japanese and knowledge of Japanese business culture." The petitioner continues by stating that "it is highly unlikely that we would be able to find a candidate who is not a Japanese national to fill the position." Thus, the petitioner suggests that such knowledge would not be expected to be obtained through education, training and/or work experience.

The petitioner lists various courses completed by the beneficiary at a junior college as "relevant to [the] tasks" of the position and which "prepared [the beneficiary] to work in a cross-cultural business field." The courses include English & American Cultural Studies, Information Technology, Anthropology, Sociology, Hangul (Korean), and Statistics. In addition, the petitioner provides a list of eight courses completed by the beneficiary for her undergraduate degree at [REDACTED] which also "prepared [the beneficiary] to work in a cross-cultural business field." These courses are Principles of Microeconomics, Comparative Politics, World Politics, Japan and the World, Communications in Society, Communications Law & Ethics, Government & Politics of Japan, and a Seminar. The petitioner claims that the degree program completed by the beneficiary "trains students for responsible global citizenship and entry into internationally related jobs in business, government or international public or private agencies."

While such courses as those listed above may be beneficial in performing certain duties of the 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 proffered position. The petitioner has not established why being a Japanese national with an inherent "native-level fluency in Japanese and knowledge of Japanese business culture," along with a few courses or industry experience (such as an internship), is insufficient preparation for the proffered position.

Further, the petitioner's description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the petitioner's claimed occupational classification "Business Operations Specialists, All Other" at a Level I (entry level) wage. The

petitioner designated the position as a Level I position (the lowest of four assignable wage levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Further, DOL guidance states that a job offer for a research fellow, a worker in training, or an internship would be an indication that a Level I wage should be considered. Without further evidence, it is not credible that the duties of the petitioner's proffered position are complex or unique relative to others within the asserted occupation, as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."³⁹ Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed at least a baccalaureate program in a specific discipline, or its equivalent, that directly relates to the proffered position.

In the support letter dated March 28, 2013, the petitioner asserts that the beneficiary is "ideally qualified to fill the position of Administrative Specialist-Japanese Baseball." The petitioner references the beneficiary's academic degree in international relations and emphasizes that "[she] is a fluent, native speaker of Japanese, and is [an] expert in her ability to communicate in the required honorific style." Moreover, the petitioner claims that the beneficiary "has demonstrated her ability to perform in the offered position by excelling on several trial assignments during her internship with [the petitioner] over the past year." However, the test to establish a position as a specialty occupation is not the credentials or skills of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge and attainment of at least a baccalaureate-level degree in a specialized area or its equivalent for entry into that position.

Again, in the instant case, the petitioner did not claim in its initial submission or in response to the RFE that the proffered position is so complex or unique that it can be performed only by an individual with a baccalaureate (or higher degree) in a specific specialty, or its equivalent. Moreover, upon review of the record of proceeding, the AAO finds that the evidence does not demonstrate the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position. To this end, USCIS usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of

³⁹ For additional information on wage levels, 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.

recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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

The petitioner states in the Form I-129 petition that it has over 340 employees and that it was established in 1983 (approximately 30 years prior to the H-1B submission). In response to the RFE and certification, the petitioner indicated that one person, [REDACTED] has served in the petitioner's administrative specialist – Japanese baseball position. It must be noted that it cannot be determined based on the evidence submitted whether the petitioner has only employed *one individual over a 30 year period* in the same position proffered here.

In any event, aside from the job title, the petitioner did not provide any information regarding Mr. [REDACTED] position. While the petitioner provided a general statement that it had previously employed an individual to serve in its administrative specialist – Japanese baseball position, the petitioner failed to provide the job duties and day-to-day responsibilities of the position that it claimed was the same as the proffered position.⁴⁰ The petitioner also did not provide any information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Thus, the petitioner did not establish that

⁴⁰ The petitioner claims that USCIS approved an H-1B petition on behalf of Mr. [REDACTED] to serve in an administrative specialist – Japanese baseball position. The petitioner did not provide a copy of the H-1B petition and supporting documents submitted to USCIS on behalf of Mr. [REDACTED]. If the petitioner wished to have the prior decision considered by USCIS in its adjudication of the instant petition, the petitioner was permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. As previously mentioned, when "any person makes an application for a visa or any other document required for entry, or makes an application for admission, [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such benefit. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190. Any suggestion that USCIS must request and review a prior case file would be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act. Accordingly, while the AAO requested and reviewed this prior case file, neither the director nor the AAO was required to request and/or obtain a copy of this H-1B petition cited by the petitioner.

Mr. [REDACTED] duties and responsibilities were the same as or similar to those of the proffered position. Consequently, the director did not err in finding that the petitioner failed to establish eligibility under this criterion of the regulations.

Subsequently, the AAO requested and reviewed the petitioner's H-1B submission on behalf of Mr. [REDACTED]. Notably, when comparing the prior petition to the instant petition, the AAO observes that there are discrepancies in the petitioner's statements with regard to the position and its requirements. For instance, in the H-1B Data Collection and Filing Fee Exemption Supplement on behalf of Mr. [REDACTED] the petitioner listed the DOT Code as 169, which is designated under "Occupations in Administrative Specializations."⁴¹ In the instant case, however, the petitioner listed the DOT Code as 199, which is designated for "Miscellaneous Professional, Technical, and Managerial Occupations." Furthermore, in a letter of support dated May 27, 2010, the petitioner claimed that the position "requires a minimum of a [b]achelor's degree in [b]usiness [a]dministration, [a]ccounting, or a related field, or its equivalent as a prerequisite." As previously discussed, the petitioner now claims, for the instant H-1B petition, that a degree in international relations is acceptable for the position. No explanation for the variance in the designation of the occupational groups and the stated academic requirements was provided by the petitioner. The information suggests that the positions may not be the same.

Furthermore, in the prior petition, the petitioner stated that Mr. [REDACTED] was ideally qualified to fill the position based upon his academic credentials, which consisted of a Master of Business Administration degree and a Master of Law degree from [REDACTED] in the United States, as well as a Bachelor of Law degree from a Japanese university. The petitioner claimed that Mr. [REDACTED] possessed "extensive familiarity with the Japanese legal system and business culture." The petitioner also emphasized Mr. [REDACTED] four years of experience working for the [REDACTED] where "[he] was responsible for coordinating law related matters with outside counsel, and worked closely with tax experts and the Japanese Tax Agency, and received training on Japan's Bank Law and Banking guarantee system."

This was further highlighted by counsel in her response to the certification of the instant H-1B petition. According to counsel, "the first employee in this position was a Japanese citizen with a Japanese law degree and a U.S. MBA." Counsel continued by claiming that "[t]he first employee had a legal and business background that made him suitable for the position." Counsel stated that the position involves "dealing with the Japanese National Tax Agency and reviewing contracts." Again, although a potential employee's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation, the AAO observes that the petitioner and counsel emphasized Mr. [REDACTED] academic background in business and law, as well as his prior legal and tax experience as relevant in performing the duties of the position.⁴²

⁴¹ The DOT Code is a three-digit occupational group for professional, technical, and managerial occupations, which is designated by the petitioner on the Form I-129. See Instructions for Form I-129, Petition for a Nonimmigrant Worker, available at <http://www.uscis.gov/files/form/i-129instr.pdf>.

⁴² It now appears that the petitioner may have sought to underemploy Mr. [REDACTED] in a position for which he was overqualified. Had the director been aware of the discrepancies between the prior petition and this one, the director likely would have not reached the same conclusion with regard to the petition.

In the instant case, however, the petitioner does not claim that the beneficiary possesses any particular legal, business and tax related experience or knowledge. Rather, as previously mentioned, the petitioner lists various courses completed by the beneficiary at a junior college and at a university as "relevant to [the] tasks" of the position and claims that the courses "prepared [the beneficiary] to work in a cross-cultural business field."⁴³

In response to the RFE, the petitioner stated that the beneficiary will provide support to the office manager and to the director – Japan baseball. The petitioner claimed that both the office manager and director – Japan baseball possess four-year degrees, but did not identify the fields of study or disciplines. Nevertheless, even if such information had been provided, it must be noted that the educational level of employees who hold positions that are not the proffered position (or parallel to that position) is not relevant to the instant issue of whether the proffered position qualifies as a specialty occupation.

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

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

approved for Mr. [REDACTED] 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). Regardless, as discussed above, the petitioner's stated acceptance in this prior petition of a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration, without more, indicates that the approval of this prior petition may have violated 8 C.F.R. § 214.2(h) or involved gross error.

⁴³ In response to the certification, the petitioner provided a letter from [REDACTED] an associate professor of politics and international relations at [REDACTED]. The letter is dated October 15, 2013. Ms. [REDACTED] states that an international relations major at the university "teaches students to think analytically and critically, while enhancing their understanding of intercultural communications, and political, economic and social systems worldwide." While knowledge of such broad concepts may be beneficial in performing the duties of a position, it must be noted that the statement is not persuasive in establishing that the petitioner normally requires at least a baccalaureate (or higher degree) in a specific specialty directly related to the duties of the position (or its equivalent). Furthermore, while some of the courses completed by the beneficiary may be applied in the performance of this occupation, Ms. [REDACTED] does not establish that the proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation, as required by the Act.

In response to the RFE, the petitioner provided several documents to establish the "specialized and complex job duties" of the proffered position, including: (1) a revised job description; (2) an organizational chart of the petitioner's baseball division; and (3) the petitioner's client list of baseball players.

Upon review of the record of proceeding, the AAO notes that the petitioner has not provided sufficient probative evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. As reflected in this decision's earlier comments and findings with regard to the generalized level at which the proposed duties are described, the petitioner has not presented the proposed duties with sufficient specificity and substantive content to establish relative specialization and complexity as distinguishing characteristics of those duties, let alone that they are at a level that would require knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.⁴⁴

In the instant case, the petitioner claims that it needs to employ an individual with bilingual abilities and cultural knowledge to properly address and provide services to its Japanese clients.⁴⁵ The duties of the proffered position as stated by the petitioner, however, fail to convey any particular level of specialization and complexity. The petitioner does not define how the nature of the proposed 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, in a specific specialty, or its equivalent.

Further, the AAO also reiterates its earlier comments and findings with regard to the implication of the petitioner's designation of the proffered position in the LCA as a Level I (the lowest of four assignable levels). That is, the designation of the administrative specialist – Japanese baseball position at a Level I is indicative of a low, entry-level position relative to others within the same claimed occupational category and, hence, one not likely distinguishable by relatively specialized

⁴⁴ The petitioner submitted a letter from [REDACTED] of [REDACTED] Ms. [REDACTED] states that she is commenting upon the "requirement that the occupant possess native-level fluency in Japanese language and culture in order to be eligible for the position." She states that t evaluation is limited to the duties of the proffered position that require native level fluency in the Japanese language and business culture. The AAO acknowledges that the petitioner views these skills and qualities as essential to the proffered position. However, while these aspects may be important to the petitioner, the petitioner has not established that these skills and qualities entail or require the theoretical and practical application of a body of highly specialized knowledge and the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). Furthermore, according to the petitioner "[o]nly Japanese speakers with native-level fluency" are able to perform these tasks adequately.

⁴⁵ According to the petitioner "[o]nly Japanese speakers with native-level fluency" are able to perform the tasks adequately. The AAO will briefly note that such a statement does not convey that the nature of the duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a bachelor's or higher degree in a specific specialty, or its equivalent. For instance, a requirement for native-level English fluency is not the same as requiring a bachelor's or higher degree in English (or its equivalent).

and complex duties. As noted earlier, DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation." Moreover, DOL guidance states that a job offer for a research fellow, a worker in training, or an internship would be an indication that a Level I wage should be considered.

Without further evidence, it is not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage of \$84,552 per year, a difference of over \$50,000 per year (for the alleged occupational category "Business Operations Specialists, All Other" as designated by the petitioner on the LCA). For instance, as previously mentioned, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

Upon review of the record of proceeding, the AAO finds that the petitioner has submitted insufficient probative evidence to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner has failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The petitioner has submitted insufficient evidence to satisfy 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. Accordingly, the director's decision must be affirmed and the petition denied on this basis.

V. Conclusion

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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

The petition must be denied for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The director's decision is affirmed. The petition is denied.