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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 24 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:  
[REDACTED]

INSTRUCTIONS:

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

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. 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,

  
for

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner, through counsel, submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on or about April 10, 2013. On the Form I-129 visa petition, the petitioner describes itself as a wholesaler of leather garments with five employees, established in 2005. In order to employ the beneficiary in what it designates as a "Business Analyst, Corporate" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on June 25, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted an appeal of the decision on July 25, 2013. On appeal, counsel for the petitioner states that the director's basis for denial of the petition on the specialty occupation issue was erroneous. Counsel submits a brief in support of the appeal.

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

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

In this matter, the petitioner indicated in the Form I-129 and supporting documentation that it seeks the beneficiary's services in a position that it designates as a "Business Analyst, Corporate" to work on a part-time basis of 20 hours per week at a salary of \$28,340.00 per year.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification "Management Analysts" - SOC (ONET/OES) Code 13-1111, at a Level I (entry level) wage.

In its support letter, dated March 15, 2013, that accompanied the Form I-129, the petitioner provided the following description of the proffered position:

- Serves as financial and logistics liaison between U.S. office and very large overseas suppliers.
- Analyzes financial status of enterprise: Includes analysis of costs, profit, and/or loss using various sorting variables, including product-specific and

customer-specific analysis, with respect to large volume of imported goods. Studies existing product mix to identify areas of strength and weakness. Prepares management reports citing data and reaching appropriate conclusions and recommendations.

- Analyzes high-volume international product flow with specific attention to costs associated with various logistics factors. Formulates recommendations for management use to realize improved efficiencies in product flow, inventory, using data derived from key performance metrics, to include in stock, fill rate, availability-to-promise, etc.
- Reviews all financial commitments, agreements, and contracts for financial terms and conditions. May recommend modifications when appropriate.
- Studies management initiatives for company expansion with special attention to financial requirements and options. Includes product-specific analysis of proposals for adding product lines, taking into account adequacy of distribution outlets (retail), financial commitments involved, potential for investment recovery and profit-making.
- Designs and implements improvements in internal accounting and control systems to achieve better data gathering and analysis capabilities.
- As recommendations are adapted by management, performs variance analysis of plan-versus-performance as assigned.
- Corporate financial planning based on sales projections, analysis of proposed corporate acquisitions/divestitures, identification of industry trends, budgeting, modification of business model, and financing options for new business initiatives.
- May prepare packages regarding company finances for submission to potential lenders/investors.

In the support letter, the petitioner stated that the educational requirements of the proffered position are a "Bachelor's Degree in Finance or Accounting (or advanced degree in the field)." The petitioner stated that the beneficiary is qualified to perform services in the proffered position by virtue of his degrees. The petitioner provided a copy of the beneficiary's Master of Science degree in Finance and unofficial transcript from [REDACTED]. The petitioner also submitted a copy of the beneficiary's undergraduate diploma for the completion of a four year program in finance at the [REDACTED]. The petitioner included an uncertified English translation of the beneficiary's Chinese language diploma that was translated by the beneficiary.<sup>1</sup> In addition, while the petitioner provided a copy

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<sup>1</sup> Because the petitioner did not submit a certified translation of the document, the AAO cannot



of the beneficiary's transcript, in English, from [REDACTED] the AAO cannot determine whether the document is an official transcript.

The petitioner also provided a credential evaluation by [REDACTED] dated March 25, 2013, equating the beneficiary's Chinese bachelor's degree to a four-year Bachelor of Science Degree in Finance from an accredited U.S. college or university.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE on April 19, 2013. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On June 11, 2013, counsel for the petitioner responded to the RFE and submitted a letter dated June 6, 2013<sup>2</sup>, as well as additional evidence. In the letter dated June 6, 2013, the petitioner and counsel reiterated the original description of the duties of the proffered position, but added the percentage of time devoted to each duty and courses taken by the beneficiary corresponding to each duty. The petitioner and counsel noted that the approximate percentage of time devoted to each duty was "...sometimes expressed as a range (thus, totals are min. 90% to max [sic] 115%)" and stated the following:

- Serves as financial and logistics liaison between U.S. office and very large overseas suppliers. **10-15%.** RELEVANT GRADUATE AND UNDERGRADUATE COURSES TAKEN BY BENEFICIARY: FINANCIAL MANAGEMENT, BUSINESS STRATEGY, BUSINESS ANALYSIS, INTERNATIONAL TRADE, ACCOUNTING, INTERNATIONAL FINANCE.
- Analyzes financial status of enterprise: Includes analysis of costs, profit, and/or loss using various sorting variables, including product-specific and customer-specific analysis, with respect to large volume of imported goods. Studies existing product mix to identify areas of strength and weakness. Prepares management reports citing data and reaching appropriate conclusions and recommendations. **15-20%.** COURSES: ENTERPRISE RESOURCE PLANNING (ERP), FINANCIAL MANAGEMENT, MICROECONOMICS, STATISTICS, FINANCE, DATABASE APPLICATIONS, MARKETING, ACCOUNTING.
- Analyzes high-volume international product flow with specific attention to

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determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

<sup>2</sup> The contents of the June 6, 2013 letter in response to the RFE were confirmed, verified, and ratified as true and adopted as the petitioner's own by the petitioner's chief executive officer in a signed statement at the conclusion of the letter.



costs associated with various logistics factors. Formulates recommendations for management use to realize improved efficiencies in product flow, inventory, using data derived from key performance metrics, to include in stock, fill rate, availability-to-promise, etc. **15%**. COURSES: INTERNATIONAL TRADE, FINANCIAL MODELING, FINANCIAL MANAGEMENT, FINANCIAL INSTRUMENTS, MACRO- AND MICROECONOMICS, ACCOUNTING, STATISTICS, DATABASE APPLICATIONS, BUSINESS ANALYSIS.

- Reviews all financial commitments, agreements, and contracts for financial terms and conditions. May recommend modifications when appropriate. **5%**. COURSES: FINANCIAL MANAGEMENT, FINANCIAL INSTRUMENTS.
- Studies management initiatives for company expansion with special attention to financial requirements and options. Includes product-specific analysis of proposals for adding product lines, taking into account adequacy of distribution outlets (retail), financial commitments involved, potential for investment recovery and profit-making. **10%**. COURSES: FINANCIAL MANAGEMENT, BUSINESS STRATEGY, BUSINESS ANALYSIS, ACCOUNTING, STATISTICS, BANK ACCOUNTING, MACRO- AND MICROECONOMICS.
- Designs and implements improvements in internal accounting and control systems to achieve better data gathering and analysis capabilities. **15%**. ERP, ACCOUNTING, DATABASE APPLICATIONS, STATISTICS.
- As recommendations are adopted by management, performs variance analysis of plan-versus-performance as assigned. **5-10%**. STATISTICS, ERP, DATABASE APPLICATIONS.
- Corporate financial planning based on sales projections, analysis of proposed corporate acquisitions/divestitures, identification of industry trends, budgeting, modification of business model, and financing options for new business initiatives. **15-20%**. FINANCE MANAGEMENT, BUSINESS ANALYSIS, INTERNATIONAL TRADE, STATISTICS, MACROECONOMICS, ERP.
- May prepare packages regarding company finances for submission to potential lenders/investors. **0-5%**. BANK ACCOUNTING, ACCOUNTING, FINANCIAL INSTRUMENTS.

The petitioner and counsel asserted that:

[M]ost of the listed duties involve the application of intellectual skills to enable the complex analysis required to produce meaningful and useful management

information without which modern enterprises can no longer perform effective planning. Thus, the instant job offer describes a specialty occupation under at least two of the alternative regulatory criteria: 1) the baccalaureate degree requirement in a “specific specialty”, as properly understood, is indeed the normal minimum requirement for entry into the occupation; 2) the job is plainly so complex as to associated with the completion of the degree.

The director reviewed all of the information provided by the petitioner. 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. The director denied the petition on June 25, 2013. Counsel for the petitioner submitted a timely appeal of the denial of the H-1B petition.

On appeal, counsel asserts that the “preponderance of the evidence” standard is applicable in this matter and claims that the director failed to utilize this standard in the instant case by ignoring the comprehensive response to the RFE provided by counsel and the petitioner.

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.

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

\* \* \*

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

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is “more likely than not” or “probably” true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*,

480 U.S. 421, 431 (1987) (discussing “more likely than not” as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004), and, in doing so, it applies the preponderance-of-evidence standard as described above. As reflected in this decision, however, the AAO finds that the petitioner has not met its burden by a preponderance of the evidence.

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. Applying the preponderance of the evidence standard, the AAO agrees with the director and finds that the evidence of record fails to establish that the position as described is more likely than not a specialty occupation.

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

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

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

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

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

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



- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

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

occupations that Congress contemplated when it created the H-1B visa category.

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

At this juncture, the AAO notes its finding that, upon consideration of the totality of all of the evidence and information submitted by the petitioner with regard to the proffered position and its constituent duties, the evidence of record does not address any aspects of the proffered position or its duties in sufficient detail to establish the substantive nature and the associated educational requirements of the actual work in which the beneficiary would engage if this petition were approved.<sup>2</sup>

Rather, the AAO finds that the proposed duties and the proffered position itself are presented in terms of numerous but relatively generalized and abstractly described functions. As such, the record of proceeding lacks details about either the position or its constituent duties that would be sufficiently specific and substantial to convey the substantive nature and associated educational demands of the actual work that would engage the beneficiary on a day-to-day basis in actually performing the generalized functions that the petitioner ascribes to the proffered position.

As a few illustrative examples of this evidentiary deficiency, the AAO notes that the petitioner and counsel asserted that the beneficiary would serve "as financial and logistics liaison between U.S. office and very large overseas suppliers," but failed to provide any substantive information regarding the nature of the activities the beneficiary would perform as the "financial and logistics liaison" or to identify any of these "very large overseas suppliers." In addition, the petitioner and counsel stated that one of the particular duties of the proffered position was "[d]esigns and implements improvements in internal accounting and control systems to achieve better data gathering and analysis capabilities" without providing any substantive information with regard to the manner, methods, or specialized applications such design and implementation would involve. Moreover, the petitioner and counsel claimed that another particular duty of the proffered position was "[a]nalyzes high-volume international product flow with specific attention to costs associated with various logistics factors," without identifying either the nature of or the methodology involved in this analysis or providing any substantive information regarding the

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<sup>2</sup> In reaching this determination, the AAO has taken into account the full extent of the evidence and information presented in support of the petition, including, but not limited to, the record's descriptions of the petitioner's operations, of the proffered position, and of the constituent duties; the documentary evidence of the types of goods the petitioner markets and of the types of materials used to promote their sale; and all of the relevant assertions, whether made in the initial filing, in response to the director's RFE, or on appeal.



logistics factors affecting costs.

Further, the AAO finds, that the petitioner has not supplemented the job and duty descriptions with documentary evidence establishing the substantive nature of the work that the beneficiary would perform, whatever practical and theoretical applications of highly specialized knowledge in a specific specialty would be required to perform such substantive work, and whatever correlation may exist between such work's associated performance-required knowledge and attainment of a particular level of education, or educational equivalency, in a specific specialty.

The AAO also finds that, as numerous as the listed duties may be, they are not described with sufficient substantive detail to develop them or the proffered position as being particularly complex, unique, and/or specialized, let alone as either constituting a position so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty or as involving duties whose nature is so specialized and complex that their performance would require knowledge usually associated with attainment of at least a bachelor's degree level of knowledge in a specific specialty.

Thus, the AAO also finds that the petitioner's and counsel's claims regarding the required coursework associated with each duty are conclusory and have no probative value. Neither the petitioner nor counsel provided an objective, analytical foundation for how they arrived at their assertions from such a skeletal framework of duties that are not accompanied by any independent documentation of their substantive nature and any associated educational requirements.

Nevertheless, for purposes of providing a comprehensive analysis, as to whether the proffered position qualifies as a specialty occupation, the AAO turns to the additional, supplemental criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The petitioner should note that the above findings and comments with regard to the evidentiary deficiencies in this record of proceeding should be deemed incorporated into this decision's treatment of each of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>3</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational category, "Management Analysts."

Although the AAO is not persuaded that the proffered position falls within the "Management Analysts" occupational category, as claimed, the AAO nevertheless will review the information

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<sup>3</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2014-2015 edition available online.



in the *Handbook* regarding this occupational category.<sup>4</sup>

The subchapter of the *Handbook* entitled “What Management Analysts Do” states the following about this occupational category:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues.

### **Duties**

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports
- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

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<sup>4</sup> In this regard, the AAO finds that, particularly in the light of the earlier-discussed list of duties presented in the letter in response to the RFE, the totality of evidence simply does not substantiate that the beneficiary would be engaged to any appreciable degree in analyzing the petitioner's organization for efficiency improvements.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Management Analysts, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (last visited Jan. 23, 2014).

As will now be discussed, the *Handbook* indicates that management analysts do not 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. The *Handbook's* subsection "How to Become a Management Analyst" states the following about this occupational category:

Most management analysts have at least a bachelor's degree. The Certified Management Consultant (CMC) designation may improve job prospects.

### **Education**

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

### **Licenses, Certifications, and Registrations**

The Institute of Management Consultants USA (IMC USA) offers the Certified Management Consultant (CMC) designation to those who meet minimum levels of education and experience, submit client reviews, and pass an interview and exam covering the IMC USA's Code of Ethics. Management consultants with a CMC designation must be recertified every 3 years. Management analysts are not required to get certification, but it may give jobseekers a competitive advantage.

## Work Experience in a Related Occupation

Many analysts enter the occupation with years of work experience. Organizations that specialize in certain fields typically try to hire candidates who have experience in those areas. Typical work backgrounds include management, human resources, and information technology.

## Advancement

As consultants gain experience, they often take on more responsibility. At the senior level, consultants may supervise teams working on more complex projects and become more involved in seeking out new business. Those with exceptional skills may eventually become partners in their consulting organization and focus on attracting new clients and bringing in revenue. Senior consultants who leave their consulting company often move to senior management positions at non-consulting organizations.

## Important Qualities

**Analytical skills.** Management analysts must be able to interpret a wide range of information and use their findings to make proposals.

**Communication skills.** Management Analysts must be able to communicate clearly and precisely in both writing and speaking. Successful analysts also need good listening skills to understand the organization's problems and propose appropriate solutions.

**Interpersonal skills.** Management analysts must work with managers and other employees of the organization where they provide consulting services. They should work as a team toward achieving the organization's goals.

**Problem-solving skills.** Management Analysts must be able to think creatively to solve clients' problems. Although some aspects of different clients' problems may be similar, each situation is likely to present unique challenges for the analyst to solve.

**Time-management skills.** Management Analysts often work under tight deadlines and must use their time efficiently to complete projects on time.

*Id.*, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited Jan. 23, 2014).

The *Handbook* does not support the assertion that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry into this occupation. While the *Handbook* indicates that a bachelor's degree is the typical entry-level requirement, the *Handbook* does not indicate that a degree in a *specific specialty* is normally the minimum requirement for entry into these positions. The *Handbook* reports that many fields of study provide a suitable



educational path for these positions. The *Handbook* identifies common areas of study to include business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English. However, neither the petitioner nor counsel has submitted any evidence to establish that the fields of business, management, economics, political science and government, accounting, finance, marketing, psychology, computer and information science, and English encompass a specific specialty. Without documentary evidence to support the claim, the assertions of the petitioner and counsel will not satisfy the petitioner's burden of proof. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)) The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Furthermore, the *Handbook* indicates that a common field of study for this occupation is business and that some employers prefer to hire candidates who have an advanced degree in business administration. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree in a specific specialty is not a normal, minimum entry requirement for this occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Additionally, the AAO finds that the Institute of Management Consultants USA does not require a bachelor's degree in any specific specialty to qualify as a Certified Management Consultant (CMC) at the basic level. This organization's Internet site's section on certification, states, in pertinent part, the following information:

**Basic** for consultants with [(1)] a minimum of 3 up to 9 years of management consulting experience as independent or internal consultants with five satisfactory clients evaluations, and [(2)] [(A)] a Bachelor's degree or [(B)] at least 5 years of

work experience including 3 years of full time consulting plus significant professional education in management consulting. Pass a [sic] written and oral examinations.

Institute of Management Consultants USA, "How to Become Certified as a CMC," available on the Internet at <http://www.imcusa.org/?page=CERTHOW> (last visited Jan. 23, 2014).

The AAO notes that in the letter dated June 6, 2013, sent in response to the RFE, the petitioner and counsel cited 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.

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>5</sup> Section 214(i)(1)(B) of the Act (emphasis added). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, the petitioner and counsel have furnished insufficient evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.<sup>6</sup> The AAO also notes that, in contrast to the broad precedential authority

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

<sup>6</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many



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.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally required for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports 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 its previous discussion on the matter. Also, the AAO notes that the record of proceeding does not contain any submissions from professional associations, individuals or similar firms in the petitioner's industry attesting that a degree requirement is common to the industry for individuals employed in positions parallel to the proffered position.

Thus, based upon a complete review of the record, the AAO finds that the petitioner has not

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



established that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is common in the petitioner's industry for positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. Thus, 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 its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.

As noted earlier, the AAO here incorporates, and adopts into the analysis of this prong, its earlier comments and findings with regard to the evidentiary deficiencies of the descriptions of the proposed duties and the position that they are said to comprise. As noted and reflected in those comments and findings, the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the proffered position's duties as described in this record of proceeding comprise a position that requires the theoretical and practical application of such an educational level of a body of highly specialized knowledge in a specific specialty that only a person with a bachelor's or higher degree in a specific specialty or its equivalent can perform it.

Counsel's assertion on appeal that "[t]he business activities and the world-class caliber of [the] Petitioner's clients establish the "complexity" criterion for specialty occupation classification" is not persuasive. Although the record contains extensive documentation reflecting the petitioner's sale of the [REDACTED] line of leather garments and fashion accessories to prominent retailers such as [REDACTED] in the period from June 2012 to October 2012, the fact that retailers that counsel characterizes as "world-class" carry the petitioner's fashion line does not establish the complexity of the proffered position. Rather, the fact that such retailers carry the petitioner's line of fashions is a reflection of the quality of the product, as well as the markets these retailers target for sales, instead of the relative complexity or uniqueness of the proffered position.

The AAO must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.<sup>7</sup> This designation is indicative of a comparatively low, entry-level position

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

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

relative to others within the occupation.<sup>8</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to only have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems." Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor's degree in a specific specialty.

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

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

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implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

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

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

*Id.*



Of course, the AAO will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past. Here, there is no such evidence, as the record does not indicate that the petitioner has previously employed anyone in the proffered position. Therefore, 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 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.

Upon review of the record of the proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. There is insufficient evidence in the record to establish that the duties of the "Business Analyst, Corporate" position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

The AAO finds that the petitioner has not provided 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. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

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

The petitioner has submitted insufficient evidence to satisfy this criterion of the regulations. That is, the petitioner has not established that the nature of the duties of the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found



that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

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

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

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