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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: **JUL 25 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 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.

On the Form I-129 visa petition, the petitioner describes itself as a non-profit organization, established in 1980, that advocates for and supports social entrepreneurs worldwide. In order to employ the beneficiary in what it designates as a global communications policy associate 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, 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. On appeal, counsel for the petitioner 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 contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. We reviewed the record in its entirety before issuing our decision.

For the reasons that will be discussed below, we agree with the director 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. The petition will be denied.

## I. FACTUAL AND PROCEDURAL HISTORY

In the petition signed on June 28, 2013, the petitioner indicates that it wishes to employ the beneficiary in a global communications policy associate position on a full-time basis at the rate of pay of \$44,000 per year. In the support letter dated May 23, 2013, the petitioner states that "the Beneficiary will be responsible for helping [the petitioner] to research and manage data assets and will then [utilize] research findings to develop or improve communications strategies for our various programs, initiatives and/or for various geographic regions." The petitioner further states that "[s]he will also help develop written materials that will help in our global advocacy and relationship development efforts, and will help oversee the implementation of our global outreach efforts." In addition, the petitioner states that the beneficiary will be employed to perform the following duties:

- The Beneficiary will research, organize and manage data that [the petitioner] gathers in the course of its global operations and that she will obtain through her own efforts. This data will be in the form of country reports, project reports, [and] performance data on various projects/initiatives that we manage, budgetary reports, etc. These reports are generated by our international offices and by our headquarters offices, and we also maintain data in a 'wiki' -type environment that

is designed to educate our staff and help us learn lessons from our work around the world. She will also engage in her own research on policy, economic and other matters that impact our work in various countries around the world.

- Utilizing the research and data she collates, the Beneficiary will then to[sic] hone our global communications strategies. This includes developing messaging strategies for particular programs or initiatives of ours and segmenting such communications by geographic region. She may for example recommend communications that highlight the public policy or economic impacts of one of our programs in a particular country as a way to attract strategic partners or potential donors.
- The Beneficiary will also be responsible for developing written materials that will help us in our global advocacy and communications efforts. This may includes[sic] such materials as memos, policy briefs, press releases, presentations, grant proposals, etc. These materials will be used by our international offices to showcase [the petitioner's] impact on public policy, local/regional economies, etc. It will also be used to educate the public about our organization, to solicit potential partners from the business and advocacy communities, and to solicit potential donors who may contribute financially to support our global efforts.
- The Beneficiary will also help oversee the implementation of our global outreach efforts. This includes helping to track the effectiveness of of [sic] outreach campaigns[sic] by analyzing feedback and impact data, providing ad hoc research and knowledge support to our local offices as issues arise in their outreach efforts, etc.

Furthermore, the petitioner states that "the Global Communications Policy Associate position with our organization requires a minimum of a Bachelor[']s degree in an area related to International Policy, Business Management, Communications, or a closely related field." In support, the petitioner submitted copies of the beneficiary's diploma and academic transcripts for a Master's degree in International Policy Studies from [redacted] in California, and a Bachelor's degree in Economics from [redacted] in Illinois.

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. We note that the LCA designation for the proffered position corresponds to the occupational classification of "Social Science Research Assistants" - SOC (ONET/OES Code) 19-4061, at a Level II (qualified) wage.

In support of the H-1B petition, the petitioner submitted additional information regarding its organization, which includes printouts from its website, past approval notices and related filing documentation, and its financial documents.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and

issued an RFE on September 12, 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 October 28, 2013, the petitioner and counsel responded by submitting further information regarding the proffered position and additional evidence. Specifically, the petitioner and counsel submitted: (1) a revised job description for the proffered position, along with the approximate percentage of time the beneficiary will spend on each duty; (2) a letter from [REDACTED] Communications Director for the [REDACTED]; (3) a letter from [REDACTED] Associate Director for [REDACTED]; (4) job vacancy announcements; (5) the resumes and earnings statements of [REDACTED] and [REDACTED] and (6) a document entitled [REDACTED]. Further, in its response dated October 23, 2013, the petitioner stated, "[i]n view of the above job duties, it should be clear why a Bachelor[']s degree in economics, international policy/affairs, international development or a related area is required for this position."

The director reviewed the information provided by the petitioner and counsel. 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 November 7, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

## II. BEYOND THE DIRECTOR'S DECISION

We reviewed the record of proceeding in its entirety. As will be discussed later in the decision, we agree with the director that the petitioner has not established eligibility for the benefit sought. Moreover, we have identified several, additional issues that preclude the approval of the H-1B petition that were not identified by the director. Consequently, 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.<sup>1</sup>

### A. Minimum Requirements for the Proffered Position

More specifically, the petitioner has provided inconsistent information regarding the minimum requirements for the proffered position. In the initial submission, the petitioner stated that the position requires "a minimum of a Bachelor[']s degree in an area related to International Policy, Business Management, Communications, or a closely related field." However, in response to the RFE, the petitioner stated that "a Bachelor[']s degree in **economics**, international policy/affairs, **international development** or a related area is required" for the proffered position (emphasis added). No explanation was provided for the variance.

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

Further, the petitioner's claimed entry requirement of at least a bachelor's degree in international policy/affairs, business management, communications, economics, and/or international development for the proffered position, without more, is inadequate to establish that the proposed position qualifies as a specialty occupation. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in international policy/affairs, business management, communications, economics, and/or international development. The issue here is that it is not readily apparent that these fields of study are closely related or that all of the fields are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, simply fails to establish either (1) that all of these disciplines are closely related fields, or (2) that all of the fields are directly related to the duties and responsibilities of the proffered position. As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge in a specific specialty, or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a degree in any of these fields suggests that the proffered position is not in fact a specialty occupation. Therefore, absent probative evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent.

Moreover, the petitioner claims that a degree in business management is sufficient for the proffered position. The claimed requirement of a degree in business management for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there

must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business management, 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*, U.S. Citizenship and Immigration Services (USCIS) interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>2</sup>

Upon review of the record of proceeding, 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. The petitioner's assertions regarding its requirements for the proffered position are tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the petitioner had overcome the ground for the director's denial of the petition (which it did not do), the instant petition could not be approved for this reason.

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

Moreover, we find that there are significant discrepancies with regard to the proffered position. These material conflicts, when viewed in the context of the record of proceeding, further undermine

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<sup>2</sup> 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.

the claim that the proffered position qualifies as a specialty occupation under the pertinent statutory and regulatory provisions.

As previously stated, the petitioner submitted an LCA in support of the instant petition that designated the proffered position under the occupational title of "Social Science Research Assistants" - SOC (ONET/OES) code 19-4061. The petitioner stated in the LCA that the wage level for the proffered position was Level II and claimed that the prevailing wage in [REDACTED] (Virginia) for the proffered position was \$39,229 per year. The LCA was certified on May 21, 2013 and signed by the petitioner on May 28, 2013.

In the appeal, counsel states, *for the first time*, that the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*)'s description for the occupational category, sociologist, "is one of the closest titles to that of Social Science Research Assistants." Counsel also refers to the *Handbook*'s description for political scientists and states that the responsibilities of political scientists are "very similar to those to be carried out by the Beneficiary with the Petitioner." In addition, counsel states that "[t]he above two descriptions [sociologists and political scientists], each of which has aspects very similar to the Global Policy Communications Associate position offered by the Petitioner, clearly indicate that not only is a bachelor[']s degree or higher normally required for entry into the field but that studies in particular areas or majors is[sic] also required." Counsel cites the academic requirements for sociologists and political scientists as stated in the *Handbook*, in support of his assertion that the proffered position qualifies as a specialty occupation position.

While the occupational categories "Sociologists," "Political Scientists," and "Social Science Research Assistants" may have some general duties in common, they are clearly separate occupational categories. When the duties of the proffered position involve more than one occupational category, DOL provides clear guidance for selecting the most relevant Occupational Information Network (O\*NET) occupational code classification.

The "Prevailing Wage Determination Policy Guidance" 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 SWA 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 SWA 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

Thus, if the petitioner believed its position was described as a combination of O\*NET occupations, then according to DOL guidance the petitioner should have chosen the relevant occupational code for the highest paying occupation. The occupational categories "Sociologists" and "Political Scientists" have significantly higher prevailing wages than the occupational category "Social Science Research Assistants." More specifically, the prevailing wages for "Sociologists" was \$82,992 per year and for "Political Scientists" was \$95,243 per year for a Level II position in the area of intended employment.<sup>3</sup> Notably, the petitioner's offered wage to the beneficiary of \$39,229 per year is significantly below the prevailing wage for the occupational categories "Sociologists" and "Political Scientists."

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 application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct occupational classification 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 occupational category at a lower prevailing wage than the one that it claims it is offering to the

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<sup>3</sup> For more information, see the All Industries Database for 7/2012 - 6/2013 for Political Scientists at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=19-3094&area=47894&year=13&source=1>, and for Sociologists at <http://www.flcdatcenter.com/OesQuickResults.aspx?code=19-3041&area=47894&year=13&source=1> (last visited July 24, 2014).

beneficiary. Here, the LCA does not properly reflect the correct occupational category and thus does not correspond to the H-1B petition. Further, the petitioner has not demonstrated that it would pay an adequate salary for the beneficiary's work, as required under the Act, if the petition were granted.

### III. THE DIRECTOR'S DECISION

#### Specialty Occupation

We will now 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, we agree with the director and find that the evidence fails to establish that the position as described constitutes a specialty occupation. For efficiency's sake, we hereby incorporate the above discussion and analysis into the record of proceeding regarding the beneficiary's proposed employment.

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 147 (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.

We 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.

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>4</sup> As previously mentioned, the petitioner asserted in the LCA that the proffered position falls under the occupational category "Social Science Research Assistants." We reviewed the information in the *Handbook* regarding the occupational category "Social Science Research Assistants" and note that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about these occupations:

**Data for Occupations Not Covered in Detail**

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, this page presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O\*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited July 24, 2014).

Thus, the narrative of the *Handbook* indicates that there are many occupations for which only brief summaries are presented. That is, detailed occupational profiles for these occupations are not developed.<sup>5</sup>

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

<sup>5</sup> The occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators; first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

The text of the *Handbook* regarding this occupational category is as follows:

Social Science Research Assistants

(O\*NET 19-4061.00 and 19-4061.01)

Assist social scientists in laboratory, survey, and other research. May help prepare findings for publication and assist in laboratory analysis, quality control, or data management. Excludes "Graduate Teaching Assistants" (25-1191).

- 2012 employment: 29,600
- May 2012 median annual wage: \$37,140
- Projected employment change, 2012-22:  
     Number of new jobs: 4,400  
     Growth rate: 15 percent (faster than average)
- Education and training:  
     Typical entry-level education: Associate's degree  
     Work experience in a related occupation: None  
     Typical on-the-job-training: None

*Handbook*, 2014-15 ed., Data for Occupations Not Covered in Detail, on the Internet at <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited July 24, 2014).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position as a Level II position (out of four possible wage-levels). This designation is indicative that the beneficiary is expected to have a good understanding of the occupation and that she will perform moderately complex tasks that require limited judgment relative to others within the occupation.<sup>6</sup>

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty is normally required for entry into this occupational category. The *Handbook* summary data

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<sup>6</sup> The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level II wage rate is described by DOL as follows:

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

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

provides "education and training categories" for occupations. The occupational category "Social Science Research Assistants" falls into the group of occupations for which an associate's degree is the typical entry-level education. The *Handbook* does not indicate that normally the minimum requirement for entry into the occupation is at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the *Handbook* does not support the petitioner's assertion that the proffered position qualifies as a specialty occupation.

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 a beneficiary qualifies to perform in a specialty occupation.

On appeal, counsel references the O\*NET Online Summary Report for the occupational category "Social Science Research Assistants." Counsel asserts that "O[\*]NET indicates that 46% of survey subjects stated that a Bachelor[']s degree is required for entry into this position, and 32% said a Master's degree is required." Upon review, we find that contrary to counsel's assertion, O\*NET does not establish that the proffered position satisfies the requirements for a specialty occupation position. Under the subsection entitled "Education," O\*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." However, "most" is not indicative that a particular position normally requires at least a bachelor's degree in a specific specialty, or its equivalent.<sup>7</sup> Furthermore, O\*NET does not state that a degree must be in a specific specialty, or its equivalent. Therefore, O\*NET is not probative evidence to establish that the proffered position qualifies as a specialty occupation.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement 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 position is one

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<sup>7</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which is designated as a Level I position in the LCA). 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.

for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

As stated earlier, 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)).

Here and as already 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, we incorporate by reference the previous discussion on the matter. The petitioner did not submit any documentation from the industry's professional association stating that it has made a degree a minimum entry requirement.

In the Form I-129 petition, the petitioner stated that it is an non-profit organization, established in 1980, that advocates for and supports social entrepreneurs worldwide. The petitioner further stated that it has 147 employees in the United States. In addition, the petitioner stated that its gross annual income is over \$68 million and its net annual income is over \$53 million. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 813319.<sup>8</sup> This NAICS code is designated for "Other Social Advocacy Organizations." The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This U.S. industry comprises establishments primarily engaged in social advocacy (except human rights and environmental protection, conservation, and wildlife preservation). Establishments in this industry address issues, such as peace and international understanding; community action (excluding civic organizations); or advancing social causes, such as firearms safety, drunk driving prevention, or drug abuse awareness. These organizations may solicit contributions and offer memberships to support these causes.

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<sup>8</sup> According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited July 24, 2014).

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 813319 – Other Social Advocacy Organizations, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 24 2014).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

The petitioner and counsel submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that such reliance on the job announcements is misplaced.

Upon review of the documentation, the petitioner fails 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.

The petitioner submitted advertisements from employers that appear to be advocacy organizations; specifically, [REDACTED]

However, the advertisements do not contain sufficient information about the employers to determine if the employers are similar to the petitioner. For example, while the advertisements state their location and the areas of focus, they do not provide sufficient information about the employers' operations such as the level of revenue or staffing. The petitioner did not supplement the record with further information and we are unable to determine if the advertising employers are similar to the petitioner.

More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. For instance, the position at [REDACTED] requires the individual to perform administrative tasks 50% of the time, such as "help receive and host visitors to the [REDACTED] office," "maintain [REDACTED] general mailboxes and voicemail," "oversee management of work room (mailboxes, copier, work tables, etc.)," "maintain [REDACTED] calendar with upcoming meetings and travel dates" and more. Further, the advertisements do not contain sufficient information regarding the day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required, the amount of supervision received, or other relevant factors within the context of the advertising employers' business operations to make a legitimate comparison of the advertised positions to the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, the postings do

not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For instance, EAP requires a Bachelor's degree in a relevant field of study related to agricultural economics, business, policy, international development, or environmental studies. Again, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, a minimum entry requirement of a degree in disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). On the other hand, [REDACTED] states an ideal candidate will have a Bachelor's degree or coursework in women's rights, international affairs, social science or related field. Notably, it does not say that a Bachelor's degree is required. Thus, upon review, the advertisements do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the duties of the position is required.

On appeal, counsel asserts that "the requirement that the degree must be in a specific academic major has recently been explicitly rejected by a United States District Court." 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 (emphasis in the original)." On appeal, counsel asserts that "[t]he 'body of highly specialized knowledge' which must be applied theoretically and practically in the performance of the duties of the occupation must by necessity be directly related to the duties of the occupation, that is, 'the specific specialty.'" Counsel further claims that the "source of that knowledge, however, may originate in different fields or disciplines, or a combination of fields or disciplines."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." Again, 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 film and nonprofit management for example, 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.

In this matter, we note that 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*.<sup>9</sup> We also note that, in contrast to the broad precedential authority of the case law of a

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<sup>9</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many

United States circuit court, we are 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 us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.<sup>10</sup>

In support of the assertion that the proffered position is a specialty occupation under this criterion of the regulations, the petitioner and counsel also submitted a letter from [REDACTED] of the [REDACTED]. Although the writer appears to represent a non-profit organization, it must be noted that the letter lacks sufficient information regarding the organization to conduct a meaningfully substantive comparison of the company's business operations to the petitioner. The letter does not provide information regarding which specific aspects or traits (if any) it shares with the petitioner. Notably, the petitioner failed to provide any supplemental information to establish that the organization is similar to the petitioner. Thus, from the onset, this prong of the regulations has not been established by Mr. [REDACTED] ("the writer").

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factual errors made by the service center in its decision denying the petition. We further note 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, we 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 us in our *de novo* review of the matter.

<sup>10</sup> Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that parallel positions for companies that are similar to the petitioner and in the same industry require a bachelor's or higher degree in a specific specialty, or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for entry into the occupation in the United States.

Moreover, while Mr. [REDACTED] claims that his position of communications director "is similar in function to that of [the beneficiary's], as we are both essentially responsible for data analysis, communications strategy, and advocacy," he failed to provide any specific job duties and day-to-day responsibilities for his communications director position. There is no information regarding the complexity of the job duties, supervisory duties (if any), independent judgment required or the amount of supervision received. Accordingly, there is insufficient information regarding the duties and responsibilities of the position to determine whether Mr. [REDACTED] position is the same or parallel to the proffered position. Further, the writer did not provide any documentary evidence to corroborate that he currently or in the past employed individuals in parallel positions, nor did he provide any documentation to substantiate his claimed academic requirements. The writer has failed to submit any probative evidence of his recruitment and hiring practices. Thus, the letter is not probative evidence to establish that the degree requirement is common to the industry in parallel positions among similar organizations.

In addition, the petitioner and counsel also submitted a letter dated October 8, 2013 from [REDACTED] an Associate Director for [REDACTED]. In the letter, Ms. [REDACTED] states that "[the petitioner]'s minimum requirements for entry into this position is at least a bachelor's degree, preferably a master's degree, in business, management, economics, international policy or a closely related field." Ms. [REDACTED] further adds that "[the petitioner's] minimum educational requirement is reasonable and on par with the requirements of other large international non-profit policy organizations." Notably, Ms. [REDACTED] does not state that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the position.

In the letter, Ms. [REDACTED] states that "[m]y extensive experience working with graduate students and employers has given me in-depth knowledge of the skills required for the Communications Policy Associate role." However, Ms. [REDACTED] fails to provide any further information regarding any expertise or specialized knowledge of the instant matter. Her opinion letter does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has published any work or conducted any research or studies pertinent to the educational requirements for global communications policy associate positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that she is an authority on those specific requirements. The opinion letter contains no evidence that it was based on scholarly research conducted by Ms. [REDACTED] in the specific area upon which she is opining. In reaching this determination, Ms. [REDACTED] provides no documentary support for her ultimate conclusion regarding the education required for the position (i.e., statistical surveys, authoritative industry publications, or professional studies).

Further, Ms. [REDACTED] claims that she has "reviewed the job responsibilities and stated qualifying requirements for the Global Communications Policy Associate." However, there is no indication that Ms. [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the job description. The fact that she attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion. Ms. [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. Her

opinion does not relate her 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. There is no evidence that Ms. [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. Ms. [REDACTED] provides general conclusory statements regarding global communications policy associate positions, but she does not provide a substantive, analytical basis for her opinion and ultimate conclusions.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Ms. [REDACTED] is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by Ms. [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which she reached such conclusions. Further, the opinion is not in accord with other information in the record.

We may, in our discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of our discretion, and for the reasons discussed above, we find the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding Ms. [REDACTED] opinion letter into its analyses of each criterion at 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).

We 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.

On appeal, counsel claims that the proffered position is so complex and/or unique that it can be performed only by an individual with at least a bachelor's degree. The record of proceeding contains information regarding the proffered position and the petitioner's business operations. However, upon review of the record of proceeding, we find that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

That is, the petitioner failed to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties

of the proffered position. While related courses may be beneficial or in some cases even required to perform certain duties of a global communications policy associate position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Additionally, there is the aforementioned countervailing impact of the wage level on the LCA. As noted earlier, the LCA indicates a wage level based upon the occupational classification "Social Science Research Assistants" at a Level II wage. This designation is only appropriate for positions for which the petitioner expects the beneficiary to have a good understanding of the occupation to perform moderately complex tasks that require limited judgment relative to others within the occupation. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, 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."<sup>11</sup>

The 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 record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner claims that the beneficiary's academic background will assist her in carrying out the duties of the proffered position. However, as previously mentioned, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area (or its equivalent). The petitioner does not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, we find that the petitioner has failed to establish 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 a bachelor's degree in a specific specialty, or its equivalent, for the position. We usually review the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

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<sup>11</sup> 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

To merit approval of the petition under this criterion, the record must establish that the imposition of a degree requirement by the petitioner 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 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 cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has approximately 147 employees in the United States and that it was established in 1980 (approximately 33 years prior to the submission of the H-1B petition). In response to the director's RFE, the petitioner and counsel submitted the resumes and earnings statements of [REDACTED]

In the letter submitted in response to the RFE, the petitioner claims that these individuals "have similar job responsibilities as [the beneficiary] will have." However, the petitioner did not submit copies of diplomas or academic transcripts to substantiate these individuals' academic credentials. Further, the petitioner should note that the evidentiary weight of a resume is insignificant. It represents a claim by an individual, rather than evidence to support that claim. In the instant case, no further documentation was submitted of the individuals' asserted credentials. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Moreover, the petitioner did not provide the job duties and day-to-day responsibilities of the positions that it claims are the same as the proffered position. The petitioner 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. Accordingly, it is unclear whether the duties and responsibilities of these individuals were the same or related to the proffered position. In addition, the submission of *three resumes over a 33 year period* is not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the position.

On appeal, counsel stated that the "[b]eneficiary is being hired as part of a new wave of hiring" and that the "[p]etitioner has not hired in this position in the past." Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its

equivalent.

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.

In the instant case, the petitioner provided documents regarding its proffered position and business operations. However, upon review of the record of the proceeding, we note 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 that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, we hereby incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level II position (out of four possible wage-levels). Without further evidence, it is simply 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 III (experienced) or IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, 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" and requires a significantly higher wage.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. We, therefore, conclude 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.<sup>12</sup>

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<sup>12</sup> As the identified grounds for denial are dispositive of the petitioner's eligibility, we need not address the additional issues in the record of proceeding including whether the petitioner has established that it qualifies for an exemption from the H-1B numerical cap.

## IV. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied 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 1043, *aff'd*, 345 F.3d 683; *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

The appeal will be dismissed 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, 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.