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



U.S. Citizenship
and Immigration
Services

DATE: **JUN 02 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,

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

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 8, 2013. On the Form I-129 petition, the petitioner describes itself as a "flame retardant manufacturer for industrial and commercial purposes." In order to employ the beneficiary in a position to which it assigned the job title of "Financial Analyst," the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on July 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. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

I. THE LAW

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), 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.

II. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated on the Form I-129 petition that it is a flame retardant manufacturer, and that it seeks the beneficiary's services in a position that it designates as a "Financial Analyst" to work on a full-time basis with an annual salary of \$65,000. The petitioner was established in 2002 and has 6 employees and a gross annual income of \$497,000.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Financial Analysts" - SOC (ONET/OES) Code 13-2051, at a Level I (entry-level) wage.

The petitioner provided the following description of the proffered position in an undated letter submitted in support of the petition:

Apply principles of financial accounting to analyze past and present financial operations regarding assets, valuation and estimate future revenues and expenditures to prepare budget and optimal cash flow. Examine, analyze, and interpret financial information and accounting records and prepare reports concerning its financial status and operating procedures. Analyze financial information and prepare specific financial statements and other reports to reflect company's assets, liabilities, capital, profit and loss, income and cash flow, and company's current and projected financial position. Advise on matters, such as effective use of resources and assumptions underlying company finance and budget.

The petitioner further stated that the beneficiary will perform these duties independently and under minimal supervision from her supervisor, and claimed that she will not personally supervise any employees. In further support of eligibility, the petitioner submitted (1) an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (*Handbook*) pertaining to the occupation of financial analyst; (2) copies of job advertisements; (3) a copy of the beneficiary's diplomas and transcripts; and (4) a copy of the beneficiary's resume.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 14, 2013. In the RFE, the director asked the petitioner to provide additional evidence to establish that the proffered position qualifies as a specialty occupation. The notice included a request to provide a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the specific job duties, the percentage of time to be spent on each duty, the level of responsibility, hours per week of work, etc. The director outlined the evidence to be submitted.

The petitioner's former counsel responded to the director's RFE and submitted a response letter and additional evidence. That response letter included an additional description of the duties of the described position, which we shall directly address later in this decision.

The petitioner also provided (1) another excerpt from the *Handbook* pertaining to financial analysts; (2) additional copies of job postings for positions it claimed were parallel to the proffered position within similar organizations; and (3) two Internet articles discussing the educational requirements for financial analyst positions.

The director denied the petition on July 25, 2013, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, newly-retained counsel for the petitioner asserts that the director's denial was erroneous, and submits a brief and additional evidence. Counsel contends that the director's inference that the proffered position was not a specialty occupation based on the nature of the industry in which it is engaged was misplaced, and further asserts that the job postings submitted have established a hiring standard for degreed individuals within the petitioner's industry. In addition to the appeal brief, counsel submits (1) an additional excerpt from the *Handbook* addressing the occupation of "financial advisor;" (2) a customer list; (3) copies of the first page of the petitioner's Form 1120, U.S. Corporation Tax Return for 2010 and 2011; and (4) a 2008 non-precedent decision issued by the AAO.

III. ANALYSIS

The AAO reviewed the record of proceeding in its entirety. To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As a preliminary matter, we here state our finding that the evidence of record does not present the proffered position and its constituent duties in sufficient detail to establish either the substantive nature of the work that the beneficiary would perform in the proffered position or

any particular educational or education-equivalent level of any body of highly specialized knowledge in any specific specialty that the beneficiary would have to apply to perform the position.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position proffered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, 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."

As already noted, the petitioner's letter of support filed with the petition described the position as follows:

Apply principles of financial accounting to analyze past and present financial operations regarding assets, valuation and estimate future revenues and expenditures to prepare budget and optimal cash flow. Examine, analyze, and interpret financial information and accounting records and prepare reports concerning its financial status and operating procedures. Analyze financial information and prepare specific financial statements and other reports to reflect company's assets, liabilities, capital, profit and loss, income and cash flow, and company's current and projected financial position. Advise on matters, such as effective use of resources and assumptions underlying company finance and budget.

Former counsel's June 12, 2013 letter replying to the RFE presented the duties of the proffered position (and percentage estimates of the associated work-time) as follows:

- Apply principles of financial accounting to analyze past and present financial operations regarding assets, valuation and estimate future revenues and expenditures to prepare budget and optimal cash flow. (15%)
- Examine, analyze, and interpret financial information and accounting records and prepare reports concerning its financial status and operating procedures. (10%)
- Provide company financial reports and analyses as requested. Calculate commissions monthly for various Sales and Marketing personnel. Draw charts and graphs, using computer spreadsheets, to illustrate technical reports. (18%)
- Inform investment decisions by analyzing financial information to forecast business, industry, or economic conditions. Monitor developments in the fields of industrial technology, business, finance, and economic theory. (17%)

- Advise on matters, such as effective use of resources and assumptions underlying company finance and budget. (10%)
- Analyze financial information and prepare specific financial statements and other reports to reflect company's assets, liabilities, capital, profit and loss, income and cash flow, and company's current and projected financial position. (13%)
- Interpret data on price, yield, stability, future investment-risk trends, economic influences, and other factors affecting investment programs. Monitor fundamental economic, industrial, and corporate developments by analyzing information from financial publications and services, investment banking firms, government agencies, trade publications, company sources, or personal interviews. (22%)

One consideration that is fundamental to the issue of whether a proffered position qualifies as a specialty occupation is whether the petitioner has provided substantive information and supportive documentation showing that the beneficiary would be performing services for the type of position for which the petition was filed.

In the above regard, we note that the last-listed bullet-description of the duties quoted above ascribe approximately 22% of the position's work to largely investment-type pursuits (focused upon such investment-related factors as "price, yield, stability, future investment-risk trends, economic influences") "affecting investment programs." However, we see no evidence in the record that the petitioner maintains or is otherwise involved in "investment programs," let alone involved to an extent that would require the services of a person in the Financial Analysts occupational classification. Likewise, the record of proceeding does not even generally describe, let alone provide supportive documentation of, any "investment decisions" that it is said the beneficiary would "[i]nform . . . by analyzing financial information to forecast business, industry, or economic conditions." We conclude that the evidence in the record of proceeding does not establish that the beneficiary would actually be involved in Financial Analysts work.

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

In pertinent part, the *Handbook* states the following with regard to the general duties of positions within the Financial Analysts occupational group:

Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments. . . .

¹ 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.

Financial analysts typically do the following:

- Recommend individual investments and collections of investments, which are known as portfolios
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting the company's future earnings
- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy side analysts and sell side analysts.

- Buy side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.
- Sell side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and are impartial, falling into neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is becoming more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to

understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

Portfolio managers supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio but also are expected to explain investment decisions and strategies in meetings with investors.

Fund managers work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

Ratings analysts evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

Risk analysts evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last accessed May 28, 2014).

The O*NET Summary Report for the Financial Analysts occupational category also clearly indicates that positions within the Financial Analysts occupational group are not inwardly focused upon the employer's financial status but rather focus outwardly, upon other business entities for possible investment by the financial analysts employer. That Summary Report identifies the following tasks or duties for the Financial Analysts positions:

- Conduct quantitative analyses of information affecting investment programs of public or private institutions.
- * * *
- Draw charts and graphs, using computer spreadsheets, to illustrate technical reports.
- Inform investment decisions by analyzing financial information to forecast business, industry, or economic conditions.
- Monitor developments in the fields of industrial technology, business, finance, and economic theory.

- Interpret data on price, yield, stability, future investment-risk trends, economic influences, and other factors affecting investment programs.
- Monitor fundamental economic, industrial, and corporate developments by analyzing information from financial publications and services, investment banking firms, government agencies, trade publications, company sources, or personal interviews.
- Recommend investments and investment timing to companies, investment firm staff, or the public.
- Determine the prices at which securities should be syndicated and offered to the public.
- Prepare plans of action for investment, using financial analyses.
- Evaluate and compare the relative quality of various securities in a given industry.
- Present oral or written reports on general economic trends, individual corporations, and entire industries.

Read in the total context of all of the information in the *Handbook* and in the O*NET about the Financial Analysts occupational group, it is clear that the associated research, monitoring, analysis and other functions with regard to a business entity or entities does not refer to activities directed to the employer that is engaging the services of a financial analyst, but rather business entities that the employer firm is evaluating for potential investment.

Next, we find that the record's earlier-quoted bullet phrases that we did not address do not appear to fall within the scope of the Financial Analysts occupational category as addressed in either the *Handbook* or the O*NET.²

² These segments of those earlier quoted duty descriptions are:

- Apply principles of financial accounting to analyze past and present financial operations regarding assets, valuation and estimate future revenues and expenditures to prepare budget and optimal cash flow. (15%)
- Examine, analyze, and interpret financial information and accounting records and prepare reports concerning its financial status and operating procedures. (10%)
- Provide company financial reports and analyses as requested. Calculate commissions monthly for various Sales and Marketing personnel. Draw charts and graphs, using computer spreadsheets, to illustrate technical reports. (18%)

Additionally, the petitioner provides no documentation related to its financial operations or organization that would shed light on the substantive nature or complexity of the work to be performed by the beneficiary. Other than a copy of a Federal Income Tax return and its statements on the Form I-129 petition, in which the petitioner states that it is a flame-retardant manufacturer established in 2002, with 6 employees, and with a gross annual income of approximately \$497,000, and a net annual income of \$10,000, the petitioner provided no information at all regarding the current financial profile of its operations. Rather, we find that the petitioner describes the proffered position and its duties in relatively abstract terms of generalized functions (such as, for instance, "apply principles of financial accounting" and "analyze financial information.").

Although counsel states on appeal that "the company is a growing and developing company, and its financial strength and needs for a college trained financial analyst is present and critical," there is no evidence in the record to support these claims. 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. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The petitioner provides no evidence that would indicate that it has taken any substantive steps towards any expansion or investment activities.

We further find that neither the descriptions of the proposed duties nor the discussions of the proffered position anywhere in this record of proceeding provide substantial details sufficient to convey either the substantive nature of the matters upon which the beneficiary would work or any particular applications of a body highly specialized knowledge that the beneficiary would have to apply to perform such work.

In this regard, the AAO notes by way of a few illustrative examples that the petitioner does not substantiate the level of "principles of financial accounting" that the beneficiary would apply, does not provide evidence of the nature and extent of the "past and present financial operations" that the beneficiary would have to analyze, or the scope and level of complexity of the budgeting that would involve the beneficiary. So too we see that the record contains no substantial evidence of the scope of the "financial information and accounting records" that the beneficiary

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- Advise on matters, such as effective use of resources and assumptions underlying company finance and budget. (10%)
 - Analyze financial information and prepare specific financial statements and other reports to reflect company's assets, liabilities, capital, profit and loss, income and cash flow, and company's current and projected financial position. (13%)

would "[e]xamine, analyze, and interpret," and no substantive descriptions of what methodologies and application of knowledge such examination, analysis, and interpretation would require.

Such relatively vague and abstract information is not indicative of a need for at least a bachelor's degree level of knowledge in any specific specialty. Likewise, the AAO finds, the evidence of record fails to provide information sufficient to establish relative complexity, specialization, and/or uniqueness as distinguishing attributes of the proffered position or its constituent duties.

For adjudicative efficiency and economy, we hereby incorporate these comments and findings into the analysis of each of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), which will follow later in this decision.

Even if the petitioner had established that the proffered position falls into the financial analyst category, the evidence of record is insufficient to establish that such a position satisfies any criterion 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 petitioner stated that the beneficiary would be employed in a position to which it assigned the job title of "Financial Analyst." However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation, as required by the Act.

As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Financial Analysts." Although we find that the evidence of record does not establish the proffered position as belonging within this occupational group, we shall address why the evidence of record would not satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) even if the proffered is analyzed as a position within the Financial Analysts occupational group.

The AAO reviewed the information in the *Handbook* regarding the occupational category "Financial Analysts," including the sections regarding the typical duties and requirements for this

occupational category.³ However, the *Handbook* does not support a conclusion that this occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Financial Analyst" states the following about this occupational category:

Financial analysts typically must have a bachelor's degree, but a master's degree is often required for advanced positions.

Education

Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering. For advanced positions, employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

Licenses, Certifications, and Registrations

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job. Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

³ For additional information regarding the occupational category "Financial Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Financial Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last accessed May 28, 2014).

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.

Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.

Computer skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.

Decision making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.

Detail oriented. Financial analysts must pay attention to details when reviewing possible investments, as small issues may have large implications for the health of an investment.

Math skills. Financial analysts use mathematical skills when estimating the value of financial securities.

To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, "Financial Analysts," available on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last accessed May 28, 2014).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Although the *Handbook* states that most financial analysts typically need a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be *in a specific specialty*.⁴ Rather, the narrative of the *Handbook* reports that "[a] number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and

⁴ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of financial analyst positions require at least a bachelor's degree, it could be said that "most" financial analyst 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. 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.

engineering."

Thus, for the reasons discussed above, the *Handbook* does not support a claim that "Financial Analysts" 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 into the 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. 190).

The AAO notes the petitioner's submission of two Internet articles discussing the educational requirements for entry into the occupation of financial analyst. Both articles indicate that financial analysts typically hold bachelor's degrees in business, business administration, finance, or a related field. Counsel asserts that these articles, along with the educational requirements set forth in the *Handbook*, clearly establish the proffered position as being that of a specialty occupation.

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

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.⁵ The AAO, therefore,

⁵ Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

accords no evidentiary weight to these two Internet articles.

On appeal, counsel further refers to an unpublished decision in which the AAO determined that the position of financial analyst proffered in that matter qualified as a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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 normally the minimum requirement for entry into the occupation is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner 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 criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

In determining whether there is 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).

[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.

Id.

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter.

The petitioner designated its business operations under the corresponding North American Industry Classification System (NAICS) code 32599 designated for "All Other Chemical Product and Preparation Manufacturing " on the LCA.⁶ The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments primarily engaged in manufacturing chemical products (except basic chemicals, resins, and synthetic rubber; cellulosic and noncellulosic fibers and filaments; pesticides, fertilizers, and other agricultural chemicals; pharmaceuticals and medicines; paints, coatings, and adhesives; and soaps, cleaning compounds, and toilet preparations; printing inks; and explosives).

U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 32599 – All Other Chemical Product and Preparation Manufacturing on the Internet at <http://www.census.gov/epcd/ec97/def/32599.HTM> (last accessed May 28, 2014).

Preliminarily, the AAO notes the director's finding that "no evidence in the Handbook indicates that financial analysts are used by flame retardant manufacturing facilities." While the AAO notes that the *Handbook* makes no specific reference to the specific industry of the beneficiary, this omission does not equate to a finding that similar organizations within the petitioner's industry do not employ financial analysts. The director's comments in this regard are hereby withdrawn.

Nevertheless, the petitioner must establish that similar organizations in fact routinely require specialty-degreed individuals in parallel positions. 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, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner.

The AAO notes that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, the AAO finds that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

⁶ 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 accessed May 28, 2014).

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted copies of twelve advertisements in support of the petition and in response to the RFE. We find, however, that 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.

For instance, the advertisements include positions with a broadcasting/music film production company, a consumer packaged goods company, a newspaper publishing company, a live entertainment and eCommerce company, and a financial and accounting consulting company. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Moreover, there are five postings by recruiters which do not identify the name of the company seeking to hire a financial analyst, and one posting for a position with "Cooper," but no information regarding the nature of the services provided by Cooper is provided. The petitioner's submission of these job postings, for which little or no information regarding the employers is provided, renders the record devoid of sufficient information regarding the advertising organizations to permit the AAO to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Moreover, most of the advertisements do not appear to be for parallel positions. For instance, most of the positions require significant experience working in the industry, ranging from 2 to 7 years of experience. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position. Furthermore, some of the positions do not appear to have similar duties to the proffered position. For example, one of the postings for a confidential employer is for a "staff accountant." For these postings, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or the equivalent, is required for the positions. For example, some of the postings state that a bachelor's degree is required, but they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. Moreover, the AAO observes that some of the advertisements indicate that a bachelor's degree in business or business administration is acceptable. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not support the assertion that a position is a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The AAO reviewed all of the submitted advertisements. 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 similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.⁷

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that 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.

At the outset, we refer the petitioner back to our earlier comments and findings with regard to the record's presentation of the proffered position and its duties in terms of generalized functions that are not described in sufficient detail to establish either whatever substantive work their actual performance would entail or the nature and educational or education-equivalency level of knowledge in any specific specialty that such work would require. As reflected in those discussions, we find that the evidence of record does not establish relative complexity or uniqueness as distinguishing features of the proffered position, let alone as aspects that would establish the position as requiring the service of a person with at least bachelor's degree, or the equivalent, in a specific specialty.

In the instant case, the petitioner failed to sufficiently develop 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 require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

⁷ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

In addition to this decisive evidentiary deficiency, we also find that the content of LCA submitted into the record weighs against a favorable finding here. The LCA indicates a wage level based upon the occupational classification "Financial Analysts" at a Level I (entry) wage.⁸ This wage-level designation is appropriate for positions for which the petitioner expects the beneficiary to only have a basic understanding of the occupation.⁹ That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment, that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. However, the AAO recalls that in the letter of support submitted with the petition, the petitioner claimed that the beneficiary will perform her duties "independently" and "under minimal supervision." Without further evidence, it is simply not credible that the petitioner's proffered

⁸ 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 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.

⁹ 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.

position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, 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."¹⁰ 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.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next 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 its equivalent, for the position.

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.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe and 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

¹⁰ For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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").

Moreover, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The petitioner submits no evidence in support of the contention that it has routinely employed only specialty-degreed individuals in the proffered position. Since the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO finds that the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the entire record of the proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations.

We again refer the petitioner to our earlier discussions with regard to the generalized and relatively abstract information provided about the nature of the proposed duties. As there reflected, the evidence of record simply does not provide sufficient details about the nature of the proposed duties to establish the level of specialization and complexity required to satisfy this particular criterion.

By the same token, 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 positions

in the Financial Analysts 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 also 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 appropriate for a low, entry-level position relative to others within the occupational category of "Financial Analysts" 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."

As the evidence of record has not established that the nature of the 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, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The AAO concludes that 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.

V. CONCLUSION

The petition will be denied and the appeal dismissed for the above stated reasons. 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.