



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 31 2014** OFFICE: VERMONT SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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. Dilly
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center ("the director"), denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it operates "Fuel Distributorship and Retail Stores." The petitioner indicates that it was established in 1997 and employs 24 personnel in the United States. It seeks to continue the employment of the beneficiary as a "Credit Analyst" from January 2, 2013, until January 2, 2016.¹ Accordingly, the petitioner endeavors to continue the classification of the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the denial decision; and (5) the Form I-290B (Notice of Appeal or Motion) and counsel's brief in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.²

The director denied the petition, determining that the record did not establish that the job offered qualifies as a specialty occupation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition. For this reason the appeal will be dismissed and the petition will remain denied.

I. FACTUAL AND PROCEDURAL HISTORY

On the Form I-129, the petitioner identified the proffered position as a "Credit Analyst." The petitioner also attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Credit Analysts," SOC (ONET/OES) Code 13-2041, at a Level I (entry-level) wage.³ The LCA was certified on August 3, 2012, for a validity period from January 2, 2013 to January 2, 2016.

¹ In the petitioner's response to the director's Request for Further Evidence, the petitioner amended the duration of its request for the beneficiary's H-1B classification, requesting that the classification conclude on October 1, 2015.

² The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

In its August 21, 2012 letter in support of the petition, the petitioner stated that its primary business is distributing fuel products to gas stations. The petitioner asserted a need for a credit analyst to enhance its work flow and to accomplish its goal of becoming a major participant in the industry. The petitioner described the beneficiary's specific duties as:

- i. Analyzing current credit data and financial statements of commercial clients to determine the degree of risk involved in extending credit or lending money;
- ii. Preparing reports with this credit information for use in decision-making;
- iii. Comparing key ratios of liquidity, profitability, credit history, and cash flow;
- iv. Analyzing income growth, market share, industry risk, and collateral appraisal; and
- v. Summarizing credit analysis and credit approval.

The petitioner noted: "[d]ue to the complex and demanding requirements of the position of a Credit Analyst, only a person of exceptional ability and skills in business administration is capable of qualifying as a Credit Analyst for [the petitioner]." The petitioner stated that the minimum prerequisite for the proffered position is a bachelor's degree in business administration, accounting, or a related field.

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

In a response dated January 16, 2013, counsel for the petitioner expanded upon the description of the petitioner's business, asserting that the petitioner owns and operates several businesses and that, under its fuel distributorship alone, the petitioner has over 100 commercial accounts. Counsel indicated that it is a normal industry standard for fuel distributorships to extend credit to its customers and that the amount of credit and time period for repayment is based on a customer's credit history and other factors. Counsel claimed that the petitioner "requires individuals in the specialty occupation of Credit Analyst to perform job duties which are so complex that they requires [sic] theoretical and practical application of a body of highly specialized knowledge" and that the "position itself is so complex that only a person with a bachelor's or higher degree can adequately perform these job duties with little or no supervision." Counsel adds that the credit analyst needs "to be self-motivated and disciplined" and that the credit analyst's time is allocated as follows:

- Analyze current credit data and financial statements of commercial clients and association members to determine the degree of risk involved in extending credit – 40%;
- Prepare reports with this credit information for use in decision-making – 10%;
- Compare key ratios of liquidity, profitability, credit history, and cash flow – 25%;
- Analyze income growth, market share, industry risk, and collateral appraisal; and summarize credit analysis and credit approval – 25%.

Counsel also provided further information regarding the duties associated with each of the above general tasks. Counsel asserted that the described "duties require candidates to possess skills in the area of Business Administration, which requires attainment of at least a Bachelor's degree" and that "these skills can only be learned through vigorous college courses." Counsel added, in part:

Credit Analysts establish and implement policies, goals, objectives, and procedures for the financial operations. [The petitioner], consistent with other similar businesses, requires an individual who is hired into this position to hold a baccalaureate degree or equivalent experience. A person who holds a baccalaureate degree normally requires little supervision in order to perform the required duties. For small businesses the ability to hire an individual who can carry on the responsibilities of the position with little or no supervision is a critical asset. This ability allows the executive level individuals of the business to devote their time and energies to other areas of running the business that need their attention.

Credit Analysts require knowledge of business management and financial principles and practices. They should demonstrate initiative, self-discipline, good judgment, and decisiveness and should be able to communicate clearly and persuasively with business contacts and other workers. These duties are duties that require prior knowledge and ability that can only be obtained through the attainment of a baccalaureate level education. A bachelor's degree provides the necessary skills and abilities such as decision-making, problem solving, and analytical-thinking. These skills [such as] financial and investment planning [are] so often taught in bachelor and advanced level business administration programs.

Counsel stated further:

Due to the complexity of the voluminous credit transactions taking place, [the petitioner] strongly believes that having a full-time Credit Analyst will be efficient, cost-effective, and highly beneficial for the company. [The beneficiary's] responsibilities primarily include managing and directing the credit analysis of our customers and our company. [The beneficiary] would be spending [the] majority of her time evaluating and reviewing customers' credit history to make altering [*sic*] decisions of whether or not to extend credit and how much credit to extend and for how long. The ability to think logically, analyze each case, and make decisions on whether or not to extend credit, how much and for how long are skills that are learned through formal education. These responsibilities require comprehensive knowledge of financing structures, income statistics, demographic measurement and analysis, and data analysis. Credit Analyst also needs to keep abreast of the latest computer technology in order to increase the efficiency of firm's finance and credit operations. To develop and maintain successful cash and risk management campaign, an individual must have the sophisticated level of knowledge of business, accounting and finance

functions and income concepts as well as [a] good grasp of Federal and State laws and regulations that is gained through completion of a bachelor's degree in Business Administration, or a closely related field.

Counsel also attached a May 4, 2011 letter authored by [REDACTED] Professor of Operations Management and Management Science at the [REDACTED] who opined, in part, that "a minimum of a Bachelor's Degree in Finance, Business Administration, or a closely related field, or the equivalent, provides the student with the core competencies and skills needed for a Credit Analyst position with the responsibilities" that [REDACTED] letter listed for the proffered position.

Counsel noted that the petitioner had previously used an outside company to conduct credit analyses of its customers and that it currently employs the beneficiary in the proffered position.

Counsel attached the petitioner's prior advertisements for a credit analyst which indicated that a BBA (Bachelors of Business Administration) degree was required. Counsel also attached copies of degrees for the petitioner's employees holding other positions in the company as well as the petitioner's advertisements for the positions of systems analyst and financial analyst.

The petitioner's submitted organizational chart shows: (1) a president/director; (2) employees in the positions of systems analyst, office manager, purchasing director, general manager, accountant, financial analyst, and the proffered position of credit analyst, all reporting to the president/director; and (3) lower position tiers reporting to the general manager.

The petitioner also provided thirteen advertisements posted on the Internet for positions from a variety of organizations. Of the thirteen advertisements, two listed a bachelor's degree in business as required; four indicated only that a bachelor's degree was required and of those four, one indicated that a degree in accounting or finance was preferred; six indicated that a bachelor's degree in finance, accounting, or a number of related degrees was required; and one noted that an advanced degree was required, preferably a master's degree in business administration.

The record also included: (1) the petitioner's 2011 tax returns; (2) the petitioner's payroll labor distribution summary; (3) the petitioner's Independent Accountant's Compilation Report; (4) the petitioner's certificate of incorporation and assumed name certificate; (5) the petitioner's bank statements in 2011 and 2012; (6) a sampling of the petitioner's invoices; and (7) an Internet printout from the Department of Labor's Occupational Information Network (O*NET OnLine) for the occupation of credit analyst.

Upon review, including the petitioner's response to the RFE, the director determined that the record did not establish that the proffered position is a specialty occupation.

On appeal, counsel for the petitioner claims that the petitioner's credit analyst will "help to ensure that the company's sales and distribution functions are functioning more efficiently." Counsel asserts that the position of credit analyst is "a widely recognized 'specialty occupation' that requires knowledge that normally requires theoretical and practical application of a body of

highly specialized knowledge." Counsel paraphrases and repeats her response to the director's RFE and contends that the duties of the position and the nature of the petitioner's business require the services of a credit analyst and that the industry standard requires a minimum of a bachelor's degree in business administration.

Counsel avers, in sum, that the petitioner has "submitted sufficient evidence that the proposed employment is for a real position with the petitioner in an appropriate specialty occupation and that the beneficiary is qualified to fill that position." Counsel contends that the evidence submitted clearly shows that the law was inappropriately applied by the service in reaching its decision. Counsel asserts that USCIS has become overly restrictive in its analysis of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and that with USCIS's "new" interpretations it is nearly impossible for any position to qualify as a specialty occupation.

II. LAW AND ANALYSIS

A. Preliminary Findings

Before discussing the application of the H-1B statutory and regulatory framework to the record of proceeding we will render specific findings on items of documentary evidence upon which the petitioner appears to place special reliance.

1. Implications of the Petitioner's Acceptance of a Bachelor's Degree in Business Administration as a Sufficient Educational Credential

As will be discussed at greater length later in this decision, the petitioner (1) specified a bachelor's degree in Business Administration as one of the educational credentials that would adequately equip a person to perform the proffered position, and (2) by submitting the opinion letter of [REDACTED] without reservation, endorsed [REDACTED] conclusions, one of which was that a Bachelor's Degree in Business Administration would be a sufficient educational credential for the proffered position. Accordingly, we find that the petitioner has effectively acknowledged that the particular position that is the subject of this petition is *not* one whose performance would require the theoretical and practical application of at least a bachelor's degree level of a body highly specialized knowledge in a specific specialty. For this reason alone the appeal must be dismissed and the petition must be denied.

2. The Letter Submitted for Consideration as an Expert Opinion

[REDACTED] framed his letter around the aforementioned job description that we earlier quoted from the petitioner's support letter. That is, [REDACTED] stated, in pertinent part:

Specifically, the Credit Analyst for [the petitioner] will be responsible for:

- Analyzing current credit data and financial statements of commercial clients to determine the degree of risk involved in extending credit or lending money;

- Preparing reports with this credit information for use in decision-making;
- Comparing key ratios of liquidity, profitability, credit history, and cash flow;
- Analyzing income growth, market share, industry risk, and collateral appraisal; and
- Summarizing credit analysis and credit approval.

The opinion letter opined:

[A]fter examining the responsibilities of this Credit Analyst position in detail, it becomes apparent that a minimum of a Bachelor's Degree in Finance, Business Administration, or a closely related field, or the equivalent, provides the student with the core competencies and skills needed for a Credit Analyst position with the responsibilities listed above.

[REDACTED] listed a variety of courses required for a business or finance major and claimed that such courses directly correspond to and prepare the student for the specific responsibilities of the position.⁴ [REDACTED] stated that this type of position is a typical job placement for students completing a Bachelor's Degree at his school. [REDACTED] opined: "these duties are specialized and require the theoretical and practical application of a body of highly specialized knowledge." Dr. [REDACTED] noted additionally, that "it is standard for a company such as the petitioner to hire a Credit Analyst and require that individual to have attained at least a Bachelor's Degree." [REDACTED] generally referenced - i.e. without substantial descriptions or analytical discussions of their pertinent characteristics - the petitioner's numerous commercial accounts, the need to analyze financials and determine lines of credit, and the effect of such determinations on the petitioner's revenues and profits and concluded: "the industry standard for a position such as Credit Analyst for [the petitioner] is to be filled through recruiting a college graduate with the minimum of a Bachelor's Degree in Finance, Business Administration, or similar preparation." Dr. [REDACTED] summarized by noting that in his opinion: "the described duties are of a professional nature and require preparation at the Bachelor's Degree level at a minimum."⁵ [REDACTED] also provided his opinion regarding the beneficiary's foreign academic degree.

⁴ [REDACTED] list of courses included: Financial Management, Investment Principles, Financial Theory, Capital Markets, Income Theory, Price Theory, Operations Management, Business Management, Accounting, and Business Communications. We note, however, that [REDACTED] does not relate what particular aspects of such courses would be required for particular aspects of the proffered position, and why.

⁵ The petitioner initially indicated that the minimum prerequisite for the proffered position is a bachelor's degree in business administration, accounting, or a related field. However, in response to the RFE, counsel for the petitioner sometimes indicates that, to perform the duties of the position, the petitioner

The AAO has reviewed Dr. [REDACTED] position evaluation letter and his opinion regarding the minimum educational requirements to perform the duties of the proffered position. Upon review, we find that the letter does not constitute probative evidence establishing the proffered position as a specialty occupation under the statutory and regulatory scheme.

In his letter, dated May 4, 2011, Dr. [REDACTED] (1) identifies his position at the [REDACTED] School of Business; (2) re-states the brief job description initially submitted; (3) opines that a "minimum of a Bachelor's Degree in Finance, Business Administration, or a closely related field or the equivalent, provides the student with the core competencies and skills needed for a Credit Analyst position with the responsibilities listed above;" (4) identifies the coursework required for a business or finance major and claims that such courses directly correspond to and prepare the student for the specific responsibilities of the position;" and (5) concludes that "the described duties require preparation at the Bachelor's Degree level at a minimum."

First, [REDACTED] submission does not discuss the duties of the proffered position in any substantive detail. Nor does it provide an analytical explanation of how Dr. [REDACTED] determined a necessary nexus between the performance requirements of the particular position here at issue and the educational requirements that he pronounced. To the contrary, although Dr. [REDACTED] repeated the petitioner's initial general description of duties, he provided little analysis of them. The degree to which Dr. [REDACTED] analyzed these duties prior to formulating his letter is not evident. Although Dr. [REDACTED] listed coursework that would provide core competencies and skills to perform the duties of the petitioner's credit analyst, he failed to detail why the courses were relevant and how the individual in the proffered position would be required to implement the knowledge gained in those classes to the position at hand. Consequentially, the letter is cursory and conclusory and, as such, worth little to no weight.

In addition, as noted above, Dr. [REDACTED] does not provide consistent information regarding the actual minimum educational requirements that he believes are necessary to perform the duties of the proffered position.

requires only a bachelor's degree with no specific major. Other times counsel indicates that the petitioner requires a bachelor's degree in business administration or a related field to perform the duties of the position. Similarly, Dr. [REDACTED] opines that it is an industry standard for a credit analyst position to be filled by a college graduate with a minimum of a bachelor's degree in finance, business administration, or similar preparation. [REDACTED] also notes, however, that it is standard for a company such as the petitioner to hire a credit analyst and require that individual to have attained at least a bachelor's degree with no specific major listed. Thus, it is unclear whether the petitioner requires a degree in finance, business administration or a related degree or whether the petitioner will accept a bachelor's degree in any discipline as sufficient to perform the duties of the proffered position. Likewise, [REDACTED] does not consistently identify the minimum educational requirements to perform the duties of the position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Next the letter is not accompanied by, and does not expressly state the full content of, whatever documentation and/or oral transmissions upon which it may have been based. For instance, Dr. [REDACTED] does not indicate whether he visited the petitioner's business premises or communicated with anyone affiliated with the petitioner as to what the performance of the general list of duties he cited would actually require. Nor does Dr. [REDACTED] letter articulate whatever familiarity he may have obtained regarding the particular content of the work products that the petitioner would require of the beneficiary. In short, while there is no standard formula or "bright line" rules for producing a persuasive opinion regarding the educational requirements of a particular position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of that particular position in question than Dr. [REDACTED] has done here. Nor does Dr. [REDACTED] reference and discuss any studies, surveys, industry publications, other authoritative publications, or other sources of empirical information which he may have consulted in the course of whatever evaluative process he may have followed.

Furthermore, Dr. [REDACTED] description of the position upon which he opines does not indicate that he considered, or was even aware of, the fact that the petitioner submitted an LCA that was certified for a wage-level (i.e., Level I – the lowest of the four assignable levels) that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as noted *infra*, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. Dr. [REDACTED] nowhere discusses this aspect of the proffered position. The AAO considers this a significant omission, in that it suggests an incomplete review of the position in question and a faulty factual basis for Dr. [REDACTED] ultimate conclusion as to the educational requirements of the position upon which he opines.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). Further, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought; the submission of letters for consideration as expert opinions is not presumptive evidence of eligibility. *Id.*; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) ("[E]xpert opinion testimony, while undoubtedly a form of evidence, does not purport to be evidence as to 'fact' but rather is admissible only if 'it will assist the trier of fact to understand the evidence or to determine a fact in issue.'").

For these reasons, the generic letter submitted as expert testimony is not probative in establishing the proffered position as a specialty occupation.

3. The 1995 Policy Letter from the Immigration and Naturalization Service

On appeal, counsel also refers to a memorandum issued by the no-longer existing INS Office of Examinations in 1995, a copy of which had been submitted as part of the petitioner's response to the RFE. Counsel's brief quotes that memorandum from Louis Crocetti Jr., Associate Commissioner, INS Office of Examinations, *Supporting Documentation for H-1B Petitions*, HQ 214h-C (November 13, 1995) (hereinafter referred to as the Crocetti memo), as follows:

According to a Memo issued to all Service Center Directors by the Associate Commissioner, Louis D. Crocetti, Jr., regarding supporting documentation for H-1B [petitions] outlines that "Credential evaluations submitted with an H-1B petition by a reputable credentials evaluation service should be accepted without question unless containing obvious errors." Given the totality of the evidence provided, [the] Service should be satisfied unless a decision was already made prior to receiving the Petitioner's response.

The full portion of the Crocetti memo from which counsel extracted the quote reads as follows (with the unquoted language in italics):

CREDENTIALS EVALUATION

This office has also received a number of letters relating to cases, which were returned to the petitioner with questions concerning the validity of a credentials evaluation performed by a credentials evaluation service. Credentials evaluations submitted with an H-1B petition by a reputable credentials evaluation service should be accepted without question unless containing obvious errors. *The ability of the credentials evaluator to perform the evaluation should not be challenged if the evaluation was performed by a professional credentials evaluation service. If the bona fides of a particular credentials evaluator are questioned, HQADN should be contacted for appropriate action.*

Counsel's citing to the Crocetti memo to bolster the weight of Dr. [redacted] submission is ineffective. The section of the Crocetti memo referenced by counsel discusses credentials evaluations prepared by credential evaluation services. Counsel does not allege that the Crocetti memo discusses position evaluations. However, the issue before the AAO is not the beneficiary's credentials or qualifications but rather whether the position itself is a specialty occupation. USCIS is required to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation]."). Therefore, absent a determination that the proffered position is in fact a specialty occupation, there is no basis to determine whether the beneficiary is qualified or unqualified to perform the duties of the claimed specialty occupation.

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." Moreover, the regulations at 8 C.F.R. §§ 103.2(b)(8) and 214.2(h)(9)(i) provide the director broad discretionary authority to require such evidence as contracts to establish that the services to be performed by the beneficiary will be in a specialty occupation. A service center

director may issue an RFE for evidence that he or she may independently require to assist in adjudicating an H-1B petition, and his or her decision to approve a petition must be based upon consideration of all of the evidence as submitted by the petitioner, both initially and in response to any RFE that the director may issue. *See* 8 C.F.R. § 214.2(h)(9). The purpose of an RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(1), (b)(8), and (b)(12).

While the Crocetti memo states that requests for contracts should not be a normal requirement for the approval of an H-1B petition from an employment contractor, the memo does not prohibit such RFE requests. Read as a whole, the memo counsels against issuing RFEs for contracts from employment contractors without a specific need that the requesting officer can articulate for the requesting the documents. The memo, the AAO notes, does not require the requesting officer to actually articulate the need. Nor does the memo purport to bar agency officers from issuing RFEs to any category of H-1B petitioners. Further, this 1995 internal memo must be read in the context of the regulations that now invest USCIS officers with broad authority to pursue such evidence as they determine necessary in the exercise of their responsibility to adjudicate H-1B petitions in accordance with the applicable statutes and regulations.

B. The Specialty Occupation Issue

We now proceed to directly address the principle issue in this matter (i.e., whether the director correctly determined that the evidence of record failed to establish that the proffered position is a specialty occupation). It should be noted that we incorporate into our analyses of this issue our comments, analyses, and findings as stated in the preceding Preliminary Findings.

To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

To that end and to make its determination as to whether the evidence in the record of proceeding establishes the proffered position as a specialty occupation, the AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the Department of Labor's *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁶ The AAO reviewed the information in the *Handbook* regarding the occupational category "Credit Analysts" and notes that this occupation is one for which the *Handbook* does not provide detailed data. The *Handbook* states the following about such 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.

⁶ The AAO references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

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 Mar. 24, 2014).

Thus, the narrative of the *Handbook* indicates that for certain occupations only brief summaries are presented. Where, as here, the *Handbook* does not provide substantial information and therefore 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 more likely than not satisfies this or one of the other criteria, 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 objective, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation.

The AAO observes that the minimal information that the *Handbook* presents does not indicate that credit analysts' positions comprise an occupational group for which normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Accordingly, the proffered position's inclusion within the Credit Analysts occupational group is not in itself sufficient to establish it as, in the words of the criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry." The full-text of the *Handbook* regarding this occupational category is as follows:

Credit Analysts

(O*NET 13-2041.00)

Analyze credit data and financial statements of individuals or firms to determine the degree of risk involved in extending credit or lending money. Prepare reports with credit information for use in decisionmaking.

- 2012 employment: **61,800**
- May 2012 median annual wage: **\$61,080**
- Projected employment change, 2012-22:
 - Number of new jobs: **6,400**
 - Growth rate: **10 percent (about as fast as average)**
- Education and training:
 - Typical entry-level education: **Bachelor's degree**
 - Work experience in a related occupation: **None**
 - Typical on-the-job-training: **None**

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-2015 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited Mar. 26, 2014).




The *Handbook's* reporting of a bachelor's degree as "typical" entry level education does not establish that the proffered position is, pursuant to the language of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), one for which a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry. In fact, we find that this statement of the "typical" education level of those entering the occupation does not even amount to a statement of a typical educational *requirement* for entry. After all, there is no evidence of record or in any authoritative source cited in the record, regarding any percentage of those entering with a bachelor's or higher degree who would not have been hired with lesser credentials or who were required to have at least a bachelor's degree, let alone one in a specific specialty closely related to the requirements of the position.

The AAO has also reviewed the Occupational Information Network (O*NET) Summary Report for the Credit Analysts occupational classification, and finds that it is also insufficient to establish that the particular position for which the petition has been filed is, in the words of the criterion, one for which "a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

The pertinent section of the O*NET OnLine Internet site relevant to the SOC Code 13-2041.00 occupational group "Credit Analysts" does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, the O*NET OnLine information is not probative of the proffered position being a specialty occupation.

Additionally, we quote below the O*NET Summary Report's "Education" section on the Credit Analysts occupational group, which reads:

Education

Percentage of Respondents	Education Level Required
50 	Bachelor's degree
27 	Associate's degree
13 	Some college, no degree

O*NET OnLine , Summary Report: Credit Analysts, on the Internet at <http://www.onetOnLine.org/link/summary/13-2041.00> (accessed March 26, 2014).

Moreover, as we noted earlier, the petitioner initially stated that its minimum prerequisite for the proffered position is a bachelor's degree in business administration, accounting, or a related field,

and the petitioner also submitted the similar opinion rendered by Dr. [REDACTED]. We reiterate that such acceptance of a generalized degree in Business Administration without further specification as sufficient for the position, the petitioner has in effect acknowledged that the proffered position is not one requiring at least a bachelor's degree, or the equivalent, in a specific specialty.

To satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), the petitioner must demonstrate that a baccalaureate or higher degree in a *specific discipline* is normally the minimum requirement for entry into the particular position. 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). 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).⁷ Moreover, the petitioner's acknowledgment that a bachelor's degree in business administration satisfies the minimum requirement to enter the proffered position is tantamount to an admission that the position here proffered is not a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Thus, neither the *Handbook*, O*NET OnLine, nor the letter provided by Dr. Chen support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent. At most, the *Handbook* and O*NET OnLine indicate only that bachelor's degrees – that is, as generically and without specification of any particular majors or academic concentrations – are typically *held by* – not typically *required of* – persons entering Credit Analyst positions. And, for the reasons earlier discussed, Dr. [REDACTED] letter is not probative toward establishing that the proffered position has satisfied any criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The evidence of record, therein, has not established that the proffered position falls under an

⁷ 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.

Id.

occupational category for which the *Handbook*, or other authoritative source, indicates that there is a requirement for at least a bachelor's degree in a specific specialty or its equivalent. Accordingly, the petitioner has not satisfied the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102). As already discussed, the *Handbook* does not report an industry-wide requirement for at least a bachelor's degree in a specific specialty for the proffered position. The record of proceeding does not contain any evidence from the industry's professional association to indicate that a degree in a specific discipline is a minimum entry requirement. The petitioner also did not submit any letters or affidavits from firms or individuals in the industry. However, the record of proceeding contains several job announcements.

As evident in the wording of the criterion, an essential requirement for establishing the relevancy and weight of any evidence under this criterion is that the evidence relates to the employment practices of the *particular industry* to which the petitioner belongs.⁸

On the Form I-129, the petitioner states that it operates "Fuel Distributorship and Retail Stores" and it lists its gross annual income as close to \$25,000,000. However, the AAO notes that the petitioner does not tell us how much of that income is generated by the fuel distributorship component, which is the area in which the beneficiary would apparently devote his services.

In the Form I-129 H-1B Data Collection and Filing Fee Exemption Supplement, at Part A, section 6, the petitioner specifies its North American Industry Classification System (NAICS) Code as "454310," which refers to the Industry.⁹

⁸ We note the pertinent phrasing of this first alternative prong (which we italicized for emphasis):

The degree requirement is *common to the industry in parallel positions* among similar organizations . . .

⁹ The U.S. Census Bureau's OnLine glossary includes following definition of NAICS:

A system of grouping establishments into industries based on the similarity of their production processes. This system is used by the United States, Canada and Mexico.

The system's latest version – the 2012 NAICS - defines the industry code that the petitioner specified on the Form I-129 as follows:

454310 Fuel Dealers

This industry comprises establishments primarily engaged in retailing heating oil, liquefied petroleum (LP) gas, and other fuels via direct selling.

Cross-References. Establishments primarily engaged in--

- Providing oil burner repair services--are classified in U.S. Industry 811411, Home and Garden Equipment Repair and Maintenance; and
- Installing oil burners--are classified in Industry 238220, Plumbing, Heating, and Air-Conditioning Contractors.

2002	2007	2012	
NAICS	NAICS	NAICS	

454319	454319	454310	Alternative fuels, direct selling
454312	454312	454310	Bottled gas dealers, direct selling
454319	454319	454310	Coal dealers, direct selling
454319	454319	454310	Firewood dealers, direct selling
454311	454311	454310	Fuel oil (i.e., heating) dealers, direct selling
454311	454311	454310	Heating oil dealers, direct selling
454312	454312	454310	Liquefied petroleum gas (LPG) dealers, direct selling

U.S. Census Bureau, U.S. Department of Commerce, Search for NAICS Code 454310, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited February 20, 2014).

NAICS classifies industries using 2-, 3-, 4-, 5-, and 6- digit levels of detail. Two-digit codes represent sectors, the broadest classifications. Six-digit codes represent individual industries in the U.S. The North American Industry Classification System was developed by representatives from the United States, Canada, and Mexico, and replaces each country's separate classification system with one uniform system for classifying industries. In the United States, NAICS replaces the Standard Industrial Classification, a system that federal, state, and local governments, the business community, and the general public have used since the 1930s.

U.S. Census Bureau, Census Bureau Glossary, "North American Classification System," available on the Internet at http://www.census.gov/glossary/#term_NorthAmericanIndustryClassificationSystemNAICS.

The originators of the job postings submitted into the record include a bank, [REDACTED] a steel product company, an underwriter, and several staffing agencies. Accordingly, the AAO discounts those advertisements because they do not relate to the petitioner's industry, as is required for those submissions to fall within this prong's zone of consideration. Again, the language of this prong limits the range of relevant evidence to requirements of the petition-pertinent industry's practices (stating "[t]he degree requirement" as one that would be "common to the industry" in positions that are both "parallel" to the one being proffered in the petition and among "organizations" that are "similar" to the petitioner.

Also, the petitioner indicates on its Internal Revenue Service (IRS) Form 1140S for 2011 that it operated at a loss for that year. For the petitioner to establish that the organizations advertising for credit analysts are similar to its organization, it must demonstrate that it 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). The advertisers on the job postings submitted include a bank, [REDACTED] Finance, a steel product company, an underwriter, and several staffing agencies. The petitioner did not present any evidence establishing that these organizations are similar to the petitioner in type, scope of operations, level of revenue or level of staffing.

Moreover, the petitioner did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. Additionally, upon review of the job postings, the AAO finds that they do not establish that requiring 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.

It must be noted that even if all of the job postings specified a bachelor's degree in a specific specialty as a hiring requirement – which is not the case – the evidence of record does not establish how representative those job postings would be of even the advertising employer's actual hiring practices for the types of positions advertised, let alone of industry-wide recruiting and hiring practices for the specific type of position that is the subject of this petition.¹⁰

¹⁰ 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).

As such, even if the content of the job announcements had satisfied the requisite foundational elements for consideration under this alternative prong (i.e., that (1) the advertising organizations were in the petitioner's industry, (2) those organizations were similar to the petitioner, (3) they routinely required a bachelor's or higher degree in a specific specialty or its equivalent for the positions advertised, and (4) those advertised positions are parallel to the one proffered in this petition – none of which is the case here) still such a limited number of advertisements that appear to have been consciously selected would not be sufficient to satisfy this prong. That is, the advertisements do not establish that, in the words of this alternative prong, "[t]he degree requirement is common to the industry in parallel positions among similar organizations."

As observed above, [REDACTED] letter, appears to acknowledge that a general bachelor's degree is sufficient to perform the duties of the proffered position. Thus, the record, including [REDACTED] opinion, is insufficient to establish that the duties of the proffered position require a degree with a precise course of study that results in a specialized discipline in order to perform them. Thus, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is commonly required where the employers (1) are in the petitioner's industry and (2) recruiting for positions in the industry that are both (a) parallel to the proffered position and (b) located in organizations similar to the petitioner.

For all of the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

The evidence of record simply does not develop relative complexity or uniqueness as a dimension of the proffered position, let alone as one elevating it above the range of credit analyst positions encompassed by the *Handbook's* discussion that are performed by persons without at least a bachelor's degree, or the equivalent, in a specific specialty.

We have reached this conclusion upon consideration of all of the evidence and assertions in the record bearing upon the nature of the position and the duties comprising it. We find that the record of proceeding presents the proffered position and the associated duties in various but still generalized and relatively abstract terms. They are neither sufficiently detailed nor sufficiently explained to show such complexity or uniqueness as to elevate this particular position's substantive performance requirements to a level necessitating the services of a person with at least a bachelor's degree level of highly specialized knowledge in any specific specialty.

We also find that the credibility of any claim to sufficient complexity or uniqueness to satisfy this petition would be undermined by the fact that, even now at the temporal stage where the petitioner is seeking to extend a position where the beneficiary apparently has been serving for a substantial time, the petitioner still submits an LCA that was certified for only a Level I wage-rate.

We note, for example, that counsel for the petitioner asserted that the credit analyst will perform complex job duties with little supervision and her "responsibilities require comprehensive knowledge of financing structures, income statistics, demographic measurement and analysis, and data analysis." In stark contrast, however, there is the petitioner's attestation that the Level I wage-rate classification is appropriate for the proffered position. Here we refer the petitioner to the discussion of wage levels in this decision's later analysis of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which we also incorporate into the present analysis.

The evidence of record does not establish that this position is significantly different from other credit analyst positions that do not require a person with a bachelor's degree in a specific specialty to perform the attendant responsibilities. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than credit analyst positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the evidence of record does not demonstrate how the proffered position is more complex or unique than other credit analyst positions that do not require the services of a person with at least a least a baccalaureate degree in a specific specialty or its equivalent, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Turning to the third criterion, the AAO observes that the petitioner has not stated that it previously employed anyone, other than the beneficiary, to perform the duties of the proffered position.¹¹ The record does not identify any other employees that held the position, or contain evidence of their degrees, duties, and wages paid. Accordingly, the petitioner's recruiting and hiring history is insufficient to establish this element.

We also observe that while a petitioner may believe and assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish

¹¹ The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. If the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, it would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. See *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

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

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the evidence of the nature of the proposed duties do not show that nature as more specialized and complex than the nature of the specific duties of credit analyst positions whose performance does not require knowledge usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Aside from and in addition to the lack of sufficient specificity to distinguish the proffered position from other credit analyst positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties, the petitioner has designated the proffered position as a Level I position on the submitted LCA, thereby presenting the proffered position an entry-level position for an employee who has only basic understanding of the occupation.¹²

By submitting an LCA certified for a job prospect at a Level I wage-rate the petitioner attests that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific instructions on required tasks and expected results; and that her work will be reviewed for accuracy. *See* DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf. Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a wage-level I, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

¹² *See* U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The *Prevailing Wage Determination Policy Guidance* issued by DOL states the following with regard to Level I wage-rates:

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

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

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

Id.

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

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

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

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They

perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

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

Id.

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

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

Id.

By virtue of the petitioner's LCA submission at the lowest possible wage-level, the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

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

Additionally, given that a typical credit analyst position does not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry into the occupation, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* merit such a requirement.¹³

¹³ It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. The LCA lists the prevailing annual wage in the San Antonio, TX MSA at the Level I wage rate as \$41,101. However, in order to offer employment to the beneficiary at a Level II (qualified)

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

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position and its duties for us to conclude that it requires a baccalaureate or higher degree in a specific specialty or its equivalent.

As observed above, absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Thus, we do not reach the question of the beneficiary's qualifications and whether her coursework in obtaining her degree qualifies her to perform the duties of the position because the record does not establish that the proffered position is a specialty occupation. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

III. CONCLUSION

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

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

wage-level, which would involve only "moderately complex tasks that require limited judgment," the petitioner would have been required to raise her salary to at least \$ \$53,248 per year. The Level III (experienced) prevailing wage was \$65,395 per year, and the Level IV (fully competent) prevailing wage was \$77,542 per year. U.S. Dep't of Labor, Foreign Labor Certification Data Center, OnLine Wage Library, FLC Quick Search, "Credit Analysts," accessed on the Internet at <http://flcdatcenter.com/OesQuickResults.aspx?code=13-2041&area=41700&year=13&source=1> (last visited Jan. 24, 2014).