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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 08 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

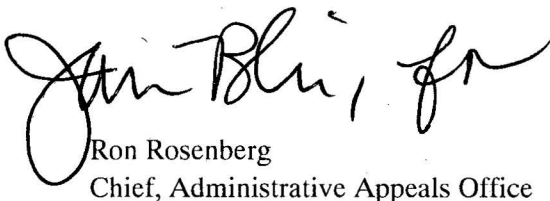
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director (hereinafter "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.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as an international freight forwarding firm established in 1985. In order to employ the beneficiary in what it designates as a logistics analyst position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Logistics Analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1199, Business Operations Specialists, All Other from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a master's degree in Supply Chain Management from the [REDACTED] at Dallas. In a letter dated March 25, 2013, counsel asserted that the beneficiary also has a bachelor's degree in Business English from [REDACTED] but provided no evidence in support of that assertion and no evidence pertinent to that degree's equivalence in terms of a degree awarded by a United States college or university.

Counsel stated that, in the proffered position, the beneficiary would perform the following duties:

- Perform quantitative analysis of monthly freight costs for both global and domestic transportation and warehousing. She will spend approximately 20% of her time to do that part of job.
- Summarize the profit/lost [sic] situation between the company and overseas agents. She will spend approximately 15% of her time to do that part of job.
- Prepare proposal to revise the profit sharing relationship with overseas agents to maximize business revenue. She will spend approximately 10% of her time to do that part of job.

- Review performance against contractual commitments, and analyze the risks of different shipments and schedules in terms of cost. She will spend approximately 10% of her time to do that part of job.
- Maintain and update [Non Vessel Operating Common Carrier (NVOCC)] tariff system to comply with [Federal Maritime Commission (FMC)] regulations. She will spend approximately 10% of her time to do that part of job.
- Review orders and contracts to prepare accurate and timely [Automated Manifest Systems (AMS)] filings. She will spend approximately 15% of her time to do that part of job.
- Work with IT personnel to develop and maintain customer database. She will spend approximately 10% of her time to do that part of job.
- Analyze inbound/outbound information for traffic of ocean, air and inland and prepare report on performance evaluation and proposal for management review. She will spend approximately 10% of her time to do that part of job.

Counsel further stated: "The [proffered] position requires that the incumbent must possess at minimum a Bachelor degree with emphasis of business administration with adequate database skills."

On May 1, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted (1) evidence pertinent to H-1B visa petitions previously approved; (2) an organizational chart of the petitioner's operations; and (3) counsel's own letter, dated June 25, 2013.

The evidence pertinent to the petitioner's previous visa petitions shows that H-1B visas were approved for [REDACTED] on May 14, 2008 for employment from October 1, 2008 to September 18, 2011, and for [REDACTED] on June 26, 2012 for employment from October 1, 2012 to September 14, 2015.

In his June 25, 2013 letter, counsel provided the following additional description of the duties of the proffered position:

1. Pull out all data from freight costs, recent cost changes, available ships, type of ship trips (cost will be significantly different for over loaded or half loaded, and shipping rout [sic]). She will spend approximately 20% of her time to do that part of job.
2. Analyze all data by using logistics solution software. She will spend approximately 15% of her time to do that part of job.
3. Since connections with overseas shipping or logistics company is [sic] required in many transactions, she needs to summarize the profit/lost [sic] situation between

the company and overseas agents. Prepare proposal to revise the profit sharing relationship with overseas agents to maximize business revenue[.] She will spend approximately 15% of her time to do that part of job.

4. Adjust research results by reviewing contractual commitments, and customers' satisfactions, as well as the change of shipping schedules. She will spend approximately 10% of her time to do that part of job.
5. Maintain and update NVOCC tariff system to comply with FMC regulations. She will spend approximately 10% of her time to do that part of job.
6. Review orders and contracts to prepare accurate and timely AMS filings for document processors. She will spend approximately 15% of her time to do that part of job.
7. Work with IT personnel to develop and maintain customer database. She will spend approximately 10% of her time to do that part of job.
8. Analyze inbound/outbound information for traffic of ocean, air and inland and prepare report on performance evaluation and proposal for management review. She will spend approximately 10% of her time to do that part of job.

In that letter, counsel did not directly address whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent or, if it does, what that specific specialty would be. Counsel did state, "[I]n the past the [petitioner] only hired persons with a baccalaureate degree or higher to fill the position of Logistic Analyst," but did not state whether the petitioner's previous logistics analysts were required to have a degree in any specific specialty.

The director denied the petition on September 16, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director found that the proffered position is a logistician position as discussed in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel provided (1) an evaluation of the proffered position; (2) a printout of a vacancy announcement placed by the petitioner on its website; (3) evidence pertinent to another H-1B visa approval; (4) evidence pertinent to the education of [REDACTED] the beneficiary of one of one of the petitioner's previous H-1B visa petitions; and (5) a brief.

The evaluation of the proffered position is dated October 10, 2013 and was prepared by an associate dean and director of Supply Chain Management programs. It contains the following description of the duties of the proffered position:

- Performing quantitative analysis of monthly freight costs for both global and domestic transportation and warehousing.
- Analyzing data while utilizing logistics solution software.

- Summarizing overall profit/lost [sic] status between the company and overseas agents.
- Preparing proposals to revise the profit sharing with overseas agents to maximize revenue.
- Reviewing performance against contractual commitments, and analyzing the risks of different shipments and schedules in terms of cost.
- Maintaining and updating the NVOCC tariff system to comply with FMC regulations.
- Working with IT personnel to develop and maintain customer database.
- Analyzing inbound/outbound information for traffic (ocean, air and inland) and preparing reports on performance evaluation and proposal for management review.

The evaluator stated, "A bachelor [sic] or higher degree in a specific field of study (Supply Chain Management) is a requirement for entry into this particular position for companies that are comparable in size and are similarly situated."

The petitioner's vacancy announcement states that the proffered position requires a "Bachelor's degree in Logistics, Economics, Transportation or related field with at least 5 years experience." In contrast, the position evaluator stated that the position requires a bachelor's degree in Supply Chain Management.

The evidence pertinent to the petitioner's previous visa petition shows that an H-1B visa was approved for [REDACTED] on August 21, 2013 for employment lasting from October 1, 2013 to September 2, 2016. The evidence pertinent to the education of [REDACTED] beneficiary of another previous H-1B visa petition filed by the petitioner, consists of a transcript and a diploma showing that [REDACTED] has a master's degree in business administration.

In his appeal brief, counsel provided a description of the duties of a generic logistician position. Counsel reiterated the list of duties contained in his June 25, 2013 letter and asserted that they, and especially the first three duties, demonstrate that the proffered position is more unique and complex than the duties of a typical logistician position.

Counsel also stated that all three of the approved H-1B visa petitions for which evidence was submitted were filed for logistics analyst positions. Counsel did not contest the director's finding that the proffered position in the instant case is also a logistician position.

IV. ANALYSIS

To determine whether the proffered position qualifies as a specialty occupation position, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in

parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. 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

The petitioner claims in the LCA that the proffered position corresponds to 13-1199, Business Operations Specialist, All Other from O*NET. As to such positions, O*NET states, "All Other" titles represent occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations." As the director observed, however, the duties of the proffered position appear to be within the scope of the duties of Logisticians as described in the *Handbook*. The *Handbook* describes the occupation of "Logisticians" as follows:

What Logisticians Do

Logisticians analyze and coordinate an organization's supply chain—the system that moves a product from supplier to consumer. They manage the entire life cycle of a product, which includes how a product is acquired, distributed, allocated, and delivered.

Duties

Logisticians typically do the following:

- Direct the allocation of materials, supplies, and finished products
- Develop business relationships with suppliers and customers
- Work to understand customers' needs and how to meet them
- Design strategies to minimize the cost or time required to move goods

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

- Review the success of logistical functions and identify areas for improvement
- Propose improvements to management and customers

Logisticians oversee activities that include purchasing, transportation, inventory, and warehousing. They may direct the movement of a range of goods, people, or supplies, from common consumer goods to military supplies and personnel.

Logisticians use sophisticated software systems to plan and track the movement of goods. They operate software programs tailored specifically to manage logistical functions, such as procurement, inventory management, and other supply chain planning and management systems.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-2> (last visited Apr. 9, 2014).

The three duty descriptions provided are all consistent with the duties of logisticians as described in the *Handbook*. On the balance, the AAO finds that the proffered position is a logistician analyst position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of logistician positions:

How to Become a Logistician

Although an associate's degree may be sufficient for some logistician jobs, a bachelor's degree is typically required for most positions. Work experience in a related field is helpful for jobseekers.

Education

Logisticians may qualify for positions with an associate's degree. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's degree in business, industrial engineering, process engineering, or supply chain management.

Bachelor's degree programs often include coursework in operations and database management, decisionmaking, and system dynamics. In addition, most programs offer courses that train students on software and technologies commonly used by logisticians, such as radio-frequency identification (RFID).

Licenses, Certifications, and Registrations

Logisticians can obtain certification through the American Society of Transportation and Logistics (ASTL) or the International Society of Logistics (SOLE). The certification offered by each of these organizations typically requires a combination of education, experience, and passing an exam. Although not required, certification can demonstrate professional competence and a broad knowledge of logistics.

Other Experience

Prospective logisticians can benefit from previous work experience in a field related to logistics or business. Because military operations require a large amount of logistics, some logisticians gain work experience while serving in the military. Some firms allow applicants to substitute several years of work experience for a degree.

Important Qualities

Communication skills. Logisticians need strong communication skills in order to collaborate with colleagues and do business with suppliers and customers.

Critical-thinking skills. Logisticians must develop, adjust, and successfully carry out logistical plans, and they often must find ways to cut costs and improve efficiency.

Organizational skills. Logisticians must be able to perform several tasks at one time, keep detailed records, and simultaneously manage several projects in a fast-paced environment.

Problem-solving skills. Logisticians must handle unforeseen issues, such as delivery problems, and adjust plans as needed to resolve the issues.

Id. at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Apr. 9, 2014).

The *Handbook* makes clear that logistician positions do not, as a category, require a minimum of a bachelor's degree in a specific specialty or its equivalent. First, it states that some logistician positions are available to people with only an associate's degree. Second, it states that, even among those logistician positions that may require a bachelor's degree, an otherwise undifferentiated degree in business may suffice. As was explained above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates, supra.* As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. For both reasons, the *Handbook* does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for logistician positions.

The petitioner did submit the October 10, 2013 evaluation described above, in which the evaluator stated that the performance of the duties of the proffered position requires a bachelor's degree in supply chain management. The evaluator did not reconcile his statement with the information in the *Handbook*, which indicates that logistician duties can be performed by people with a variety of degrees, including associate's degrees and degrees that are not in any specific specialty directly related to the position. He did not reconcile it with counsel's assertion that a bachelor's degree with a concentration in business administration is a sufficient educational qualification for the proffered position. He did not address the assertion in the petitioner's vacancy announcement that a bachelor's degree in logistics, economics, transportation or any related field is a sufficient qualification for the proffered position.

Further, the evaluation submitted in response to the RFE does not list any reference materials on which the evaluator relied as a basis for his conclusion pertinent to the educational requirements of the proffered position. The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment.

Further still, the record contains no indication that the evaluator has any familiarity with the petitioner's operations. As such, he has not been shown to have a sufficient basis for asserting that any particular level of education is required to perform, within the context of those operations, the duties attributed to the proffered position.

For instance, performing quantitative analysis of monthly freight costs and analyzing data with logistics solution software cannot be shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent without reference to the specific data to be analyzed and why that analysis, or the use of that specific software, would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, preparing proposals to revise the profit sharing with overseas agents to maximize revenue cannot be demonstrated to require a minimum of a bachelor's degree in a specific specialty or its equivalent absent reference to the intellectual rigor demanded by that duty in the context of the petitioner's operations. Preparing proposals to revise the profit sharing with overseas agents may or may not be require a minimum of a bachelor's degree in a specific specialty or its equivalent, depending upon the complexity of preparing those proposals to meet the petitioner's business needs. The evaluator has no apparent basis for a determination that, in the context of the petitioner's business operations, preparing those proposals would require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Furthermore, the evaluator's 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 that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as discussed above, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. In any event, the evaluator 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 the professor's ultimate conclusion as to the educational requirements of the position upon which he opines.

As noted earlier, the LCA submitted by the petitioner in support of the instant position was certified for a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels. Again, the above-discussed *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.²

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring 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.

The evaluator's omission of such an important factor as the LCA wage-level significantly diminishes the evidentiary value of his assertions.

For all of the above reasons, the AAO accords very little probative weight to the evaluation of the proffered position. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Further, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of

² 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 (last visited Feb. 6, 2014).

knowledge of shipping, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Where, 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 this criterion by a preponderance of the evidence standard, 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." Again, 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. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, it does not 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 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).

In the instant case, evidence of record does not establish that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

In the October 10, 2013 evaluation described above the evaluator stated that a requirement of a degree in supply chain management is a requirement for entry into this position with companies similar to the petitioner. However, as was explained above, he did not differentiate the proffered position from those positions that the *Handbook* indicates do not require a bachelor's degree, or those that may require a bachelor's degree but do not require a degree in any specific specialty.

Further, as was stated above, the evaluator evinced no familiarity with the petitioner's operations. As such, he has not demonstrated that he can determine whether a given positions is are parallel to the proffered position. Further still, the evaluator cited no authority for his conclusions. For all of those reasons, the evaluation provided is accorded little evidentiary weight for the proposition that a requirement of a minimum of a bachelor's degree in supply chain management or its equivalent is common to positions that are parallel to the proffered position and that are with organizations similar to the petitioner and in the petitioner's industry.

In the conclusion of his appeal brief, counsel stated:

Finally, the petitioner has filed two H-1B petitions for positions of logistics analyst for the period starting October 1, 2014. One has been approved, while the current one was denied on the grounds the proffered position was not in a specialty occupation. We may interpreted the situation as "the degree requirement is common to the industry in parallel positions among similar organization." Please see the I-797 approval notice for [the other beneficiary].

The thrust of counsel's argument is not entirely clear. However, as he quoted from the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), it apparently pertains to the alternative criterion stated in that portion of that regulation.

The AAO observes that the approval of a single visa petition has little persuasive power for the proposition 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.

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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not satisfy 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Again, the AAO observes that claims made in the evaluation discussed above are relevant to whether the particular positions proffered is so complex or unique that it can be performed only by an individual with a degree. Again, however, for reasons discussed above, the conclusions of that evaluation are accorded very little probative weight.

Counsel observed that some of the duties attributed to the proffered position in the *Handbook* are not included within the list of generic duties of a logistician which he provided. From this, counsel argued that the duties of the proffered position are "more unique and complex than duties for a typical logistician."

That some of the duties of the proffered position are not enumerated in the generic description in the *Handbook* does not demonstrate that they are more complex and unique than the duties of a typical logistician position. Further, even if they were shown to be more complex and unique, they have not been shown to be so complex and unique that they can only be performed by a person with a minimum of a bachelor's degree in a specific specialty or its equivalent.³

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. Although the petitioner has demonstrated that degrees in supply chain management exist, and that the beneficiary has one, the petitioner did not demonstrate that the proffered position in the instant case is so complex or unique that such a degree or the equivalent would be indispensable. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

³ Analysis of the duties of the proffered position is complicated not only by the provision of three different versions of those duties, but also by the difficulty in determining what is meant by some of the descriptions. For instance, one duty that appears in one form or another in all of the descriptions is, "Summarize the profit/lost situation between the company and overseas agents." Absent some additional explanation, the meaning of that described duty is unclear.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including associate's degrees and degrees that are not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, 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).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁴

Again, the AAO observes that claims made in the evaluation discussed above may be relevant to whether the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. However, as was explained above, the conclusions of that evaluation are accorded very little probative weight.

The petitioner was established in 1985. Counsel asserted that, "in the past the [petitioner] only hired persons with a baccalaureate degree or higher to fill the position of Logistics Analyst." Counsel did not, however, state that all of the petitioner's Logistics Analysts have had a bachelor's degree or the equivalent *in any specific specialty*. Further, counsel did not state his basis for his assertion that they have all had bachelor's degrees and, as will be explained below, no such basis appears in the record.

Counsel submitted documents evincing approval of three H-1B visa petitions, and asserted that the beneficiary of each worked in the proffered position, although he provided no evidence in support of that assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983);

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a 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 employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*, 201 F. 3d at 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").

Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The positions proffered in those visa petitions have not been demonstrated to be the same as, or similar to, the proffered position.

In any event, one of the approved petitions was for beneficiary [REDACTED] who was authorized to work for the petitioner from October 1, 2008 to September 18, 2011. The record contains no evidence pertinent to [REDACTED]'s educational qualifications. Even if [REDACTED] were shown to work in the proffered position, that would not support the proposition that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Another approved visa petition was for [REDACTED] who is authorized to work for the petitioner from October 1, 2012 to September 14, 2015. [REDACTED] has been shown to have a master's degree in business administration. As was explained above, an otherwise undifferentiated degree in business administration is not a degree in a specific specialty. [REDACTED] has not, therefore, been shown to have a minimum of a bachelor's degree in a specific specialty or its equivalent. As such, the petitioner's employment of [REDACTED] even if [REDACTED] were shown to work in the proffered position, would not be evidence that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

The other approved petition was for [REDACTED] who is authorized to work for the petitioner from October 1, 2013 to September 2, 2016.⁵ The record contains no evidence pertinent to [REDACTED]'s educational qualifications. Even if [REDACTED] were shown to work in the proffered position, that would not support the proposition that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further, as was noted above, the petitioner was established in 1985. Even if all three beneficiaries were shown to have worked in the proffered position and also shown to have worked for the entire period of validity shown on the approval notices to the present date, that would account for less than one-sixth of the time the petitioner has been in business. Who the petitioner employed in the proffered position for the remainder of its existence, approximately 24 ½ years, has not been addressed. Counsel's assertion that the petitioner has only employed people in the proffered position who had a bachelor's degree is not supported by the record, nor is the proposition that the petitioner has ever employed a logistician with a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet further, in his March 25, 2013 letter, counsel stated that the proffered position requires adequate database skills and a minimum of a bachelor's degree with an emphasis on business administration. Again, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise

⁵ As was noted above, counsel also cited the approval of the H-1B visa petition for Mr. [REDACTED] in his argument pertinent to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even if the requirement stated by counsel is considered a requirement of a degree in business administration, that is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, as an otherwise undifferentiated degree in business administration is not degree in a specific specialty. Counsel's letter of March 25, 2013 made clear that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent, which is tantamount to an admission that the proffered position does not qualify as a specialty occupation position.

For the reasons stated above, the evidence of record does not demonstrate that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Assertions made in the evaluation discussed above are relevant to whether the nature of the duties of the proffered position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. Once again, however, for reasons discussed above, the conclusions of that evaluation are accorded very little probative weight.

The duties of the proffered position, such as performing quantitative analysis of monthly freight costs, summarizing the "profit/lost" situation between the company and overseas agents, preparing proposals to revise the profit sharing relationship with overseas agents, reviewing performance against contractual commitments, analyzing the risks of different shipments and schedules, etc., have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of logistician positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

The evidence of record fails to establish that the petitioner has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

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

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

[Italics added]

The LCA provided is approved for employment in a position designated by SOC code and title 13-1199, Business Operations Specialists, All Other from the O*NET. However, as was explained above, the AAO has found, based on the various duty descriptions and the other evidence in the record, that the proffered position is a logistician position, which is designated by SOC code and title 13-1081, Logisticians in O*NET. The LCA is not approved for employment of a logistician and does not, therefore, correspond to the instant visa petition.

Further, even if the LCA corresponded to the visa petition in that regard, the petitioner has designated that proffered position a Level I position, that is, an entry-level position for an employee who has only basic understanding of the occupation. However, the petitioner's vacancy announcement for the position states that it requires "at least five years of progressive experience." In contrast, Level I positions, as was noted above, are entry-level positions. They are positions for beginning level employees who have only a basic understanding of the occupation; who perform routine tasks that require limited, if any, exercise of judgment; who receive specific instructions and work under close supervision; and whose work is closely monitored and reviewed for accuracy. Therefore the proffered position does not appear to be a Level I position. For this additional reason, the LCA does not correspond to the instant visa petition.

For both of the above reasons, the LCA has been found not to correspond to the instant visa petition. The visa petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

V. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.