



U.S. Citizenship
and Immigration
Services

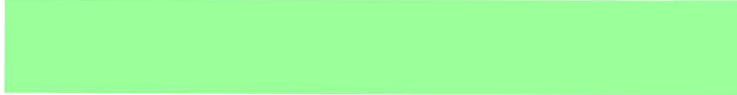
(b)(6)



DATE: **MAY 28 2014**

OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

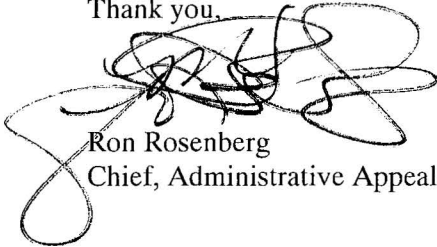


INSTRUCTIONS:

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.



Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2013. In the Form I-129 visa petition, the petitioner describes itself as an export trading company that was established in 1995. In order to employ the beneficiary in what it designates as an international logistics coordinator 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 on September 4, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the appeal will be dismissed. Furthermore, later in the decision, the AAO will also address several additional, independent grounds, not identified by the director's decision, that also preclude approval of this petition. Thus, the petition cannot be approved for these reasons as well.¹

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as an international logistics coordinator on a full-time basis. The petitioner provided the following description of the proffered position:

[The petitioner] requires the professional services of an International Logistics Coordinator. Because this is a professional position involving sophisticated business knowledge and techniques, the person filling the position of International Logistics Coordinator with our company must possess at least a bachelor's degree or its equivalent in any business, science or social science field.

* * *

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The International Logistics coordinator at [the petitioner's] will be responsible for the following:

- Direct the international logistics of [redacted] products
- Act as liaison between our company, manufacturers and overseas clients, and manage the logistical aspects of product life cycles, including coordination of samples, and the minimization of obsolescence
- Research new products and evaluate existing ones in the company's portfolio, prepare pricing and product information and analyze market conditions of foreign countries to match the products with customers and countries corresponding market needs and capacities
- Address special requests for developing new packaging, labeling and product formulation in close coordination with our partner manufacturers
- Direct international freight transport activities for our clients, and ensure the proper preparation of necessary documentation to facilitate the export transaction
- Redesign the movement of goods in order to maximize value and minimize costs, as necessary
- Prepare Automated Export System (AES) reports and export requirements pursuant to governmental regulations
- Explain proposed solutions to customers, management, or other interested parties through written proposals and oral presentations
- Review logistics performance with customers, management, or other interested parties through written proposals and oral presentations
- Review logistics performance with customers against targets, benchmarks and service agreements
- Collaborate with other departments as necessary to meet customer requirements, to take advantage of sales opportunities or, in the case of shortages, to minimize negative impacts on a business
- Maintain and develop positive business relationships with a customer's key personnel involved in or directly relevant to a logistics activity
- Perform system life-cycle cost analysis, and develop component studies
- Negotiate new and maintain existing transportation contracts based on analysis of shipping rates
- Utilize computerized network tracking systems to provide our clients with information regarding up to date information on transactions and estimations of export costs, and resolve customer issues as necessary
- Stay informed of logistics technology advances, and apply appropriate technology in order to improve logistics processes

The offered job is very complex and will require the services of a professional who has skills and knowledge in various business disciplines.

The petitioner submitted an educational evaluation report indicating that the beneficiary's education in Brazil is the equivalent of the U.S. degree of Bachelor of Business Administration. In addition, the petitioner provided the beneficiary's (1) diploma and transcript from the [REDACTED] in Brazil issued in 2008 (along with an English translation); and (2) certificate from the UCLA Extension program issued in 2012.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational category "Business Operations Specialists, All Other" – SOC (ONET/OES Code) 13-1199, at a Level I (entry level) wage.

With the petition, the petitioner provided (1) a letter dated April 4, 2011 from the Internal Revenue Service, providing the petitioner's Employment Identification Number; and (2) three printouts from the petitioner's website.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 21, 2013. The director outlined the evidence to be submitted. Thereafter, the petitioner and counsel responded to the RFE. In a letter dated July 9, 2013, the petitioner stated the following:

With capabilities in three languages, [the petitioner] is able to utilize [the beneficiary] especially in Portuguese which is her native language and essential for developing business in Brazil, one of [its] key markets in Latin America with a remarkable growth potential. [The beneficiary] has the cultural awareness and business background necessary in order to find the most suitable products for the Brazilian market, reach out to prospect and current customers, and also follow up with past customers to bring the business back.

Given [the beneficiary's] experience with the Latin American markets, [the beneficiary] serves an important role in preparing export documentation pursuant to governmental regulations, and acts as a liaison between our company and our overseas clients in these regions. Based on complex calculation, analysis, and comparison of all-in shipping rates and ground drayage/rail transport costs, [the beneficiary] negotiates new and maintains existing transportation contracts. [The beneficiary] coordinates International freight transport activities for our clients, and ensures proper preparation of necessary documentation such as certificates, lab reports, product analysis, ingredient statements to facilitate the export transaction. [The beneficiary] utilizes computerized network tracking systems to provide our clients with information regarding up to date information on transactions and estimations of export costs, as well as resolve problems as necessary.

Furthermore, [the beneficiary] directly assists our clients from the Latin American markets specifically by consulting special shipping needs such as issues related to freight handling and deadlines for reaching the destination, and advise them on packing methods and procedures to ensure compliance with international shipping

specifications and governmental regulations. [The beneficiary] will conduct meetings with clients at trade shows and trade missions in order to negotiate and optimize shipping requirements for food and beverage products to clients in these regions. [The beneficiary] will continue to address the logistical needs for transporting goods given new and existing client requirements as well as applying her knowledge of the importing country's regulations.

In addition, [the beneficiary] manages and coordinates complex consolidation orders (performs analysis of efficient consolidation locations, combination of transportation types, routes, types of moves to be combined in a comprehensive profit and loss analysis). She applies her knowledge of principles of accounting and finance to understand and conduct Efficiency and Profit and Loss Analysis based on the shipping/logistical arrangements. She is also required to use her knowledge of business ethic and practices in foreign countries and knowledge of business law, and business negotiation to resolve issues and claims.

A Bachelor's degree in business or a related science is normally the minimum requirement for entry into this position.² The nature of the duties of an International Logistics Coordinator requires the theoretical and practical application of highly specialized knowledge related to international shipping and trade transactions, business and markets. This requires an understanding of international trade and economic principles that are normally associated with the attainment of a bachelor's degree.

The record also contains a document entitled "International Logistics Coordinator, Additional Job Duties," which provides the information:³

1) Preparing, Managing, and Overseeing Movement of Goods (20%)

- Negotiation with shipping lines, securing contracts directly with shipping lines, calculating rates, creating all-in rate charts
- Managing and coordination of complex consolidation orders (analysis of efficient consolidation locations, combination of transportation types to use, routes, types of moves, etc.)
- Strategic planning of all movements
- Creatively solving logistical problems, rerouting shipments
- Analyzing logistical problems and producing new solutions
- Develop customer-specific consolidation strategies to deliver products

² In the initial submission the petitioner stated that "the person filling the position of International Logistics Coordinator with our company must possess at least a bachelor's degree or its equivalent in **any** business, science or social science field (emphasis added)."

³ The document is not on the petitioner's letterhead, nor has it been endorsed by the petitioner. The record does not indicate the source of the duties.

from multiple domestic manufacturers to overseas customers.

2) Development of private labels for overseas customers (10%)

- Coordinate development of new products and new brands and identify private label opportunities and collaborate with key accounts to develop them.
- Familiarity with international trade regulations, customs requirements for labels, products, and shipping materials.
- Coordinating and collaborating with printer companies and customers on printing customized labels/packaging, negotiating rates, complex rate quotes for product reworking services, control of compliance with customer's and country requirements and regulations
- Strategic planning and managing label inventory with every manufacturer for every item/SKU, timely recorders or the labels.

3) Products Reworking for compliance with import regulations (10%)

- Monitor overseas regulations and coordinate compliance initiatives with domestic manufacturers
- Date stamping requirements, stickering products with required information in foreign language to comply with foreign standards, complex work order forms for product reworking services, etc.

4) Claims Handling, Resolving Issues (20%)

- Knowledge of Foreign Countries business ethics and practices, knowledge of principles of business law, business negotiation, etc.
- Ability to create proper documentation i.e. credit notes, claim reports, etc.
- Arbitrage and mitigation of possible losses, liaising and negotiating with customers and suppliers

5) Price & Profitability Analysis (10%)

- Use analytical skills to set prices and track profitability. Ability to apply knowledge of container shipping specifications to creating automatic delivered price lists through the use of complex formulas in Excel spreadsheet. Ability to apply principles of Accounting and Finance to understand and conduct Efficiency and Profit & Loss Analysis based on the shipping/logistical arrangements.

6) Assortment Planning and forecasting (5%)

- Coordinating and controlling the order cycle and associated information systems;
- Supply chain planning
- Guide customer product selection based on customer needs and manufacturer capabilities

7) International Marketing, Representation (15%)

- Application and management of USDA funds through Market Access Program to support US products in foreign countries and increase sales of US products.
- Travel to overseas food and beverage tradeshow/visit customers to present products and services, address complaints and solve existing problems with new and existing customers

8) Identify new customers/markets, identify new suppliers (10%)

- Utilize market knowledge, language skills and knowledge of foreign regulations to identify and establish business relationship with customers in Europe and other parts of the world. Establish and build relationships with suppliers of both new and existing products. Identify new business opportunities-Monitor and analyze current trends in foods and beverage industry.

In response to the RFE, the petitioner provided additional evidence, including the following: (1) documentation regarding the petitioner's business operations; (2) printouts from the U.S. Department of Labor's (DOL) resources regarding the occupational category "Logisticians"; (3) job announcements posted by other employers; (4) a letter (dated June 28, 2013) from [REDACTED]; (5) job announcements posted in 2012 by the petitioner; and (6) documentation regarding the petitioner's employees.

The director reviewed the record of proceeding, and determined that the petitioner failed to establish eligibility for the benefit sought. The director denied the petition. Thereafter, the petitioner and counsel submitted an appeal of the denial of the H-1B petition.

II. STANDARD OF PROOF

In response to the RFE, counsel states that according to the preponderance of evidence standard, "even if the Director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the Director to believe that the claim is 'probably true' or 'more likely than not,' the applicant or petitioner has satisfied the standard of proof."

With respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states, in pertinent part, the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

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

* * *

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

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Thus, in accordance with the preponderance of the evidence standard, U.S. Citizenship and Immigration Services (USCIS) examines 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. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. 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. As will be discussed, in the instant case, that burden has not been met.

III. BEYOND THE DECISION OF THE DIRECTOR

The AAO reviewed the record of proceeding in its entirety and, as will be discussed below, has identified additional issues that preclude the approval of the H-1B petition that were not identified by the director. Thus, even if the petitioner overcame the grounds for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought. Specifically, the petitioner has not established that it will pay the beneficiary an adequate salary for her work in

accordance with the applicable statutory and regulatory provisions. Additionally, the petitioner did not submit an LCA that supports the instant petition. Accordingly, the petition cannot be approved.

A. Occupational Category

The petitioner submitted an LCA in support of the instant petition that designated the proffered position under the occupational category of "Business Operations Specialist, All Other" – SOC (ONET/OES Code) 13-1199. The petitioner stated in the LCA that the wage level for the proffered position was a Level I (entry) position, with a prevailing wage of \$40,643 per year. The LCA was certified by DOL on March 21, 2013 and signed by the petitioner on March 23, 2012.⁴

In the letter dated April 1, 2013, the petitioner asserted that the section of DOL's Occupational Outlook Handbook (*Handbook*) regarding "Logisticians" SOC (ONET/OES Code) 13-1081 was relevant to this proceeding. The petitioner stated that the proffered position is a "[q]ualifying [p]osition" and claimed that the *Handbook* "indicates that Logisticians require a bachelor's degree." The petitioner quoted an excerpt of the *Handbook* regarding "Logisticians (O*NET 13-1081.00)" and emphasized the sentence regarding the most significant source of postsecondary education or education for these positions.

Further, in a letter dated July 12, 2013, counsel emphasized that the "proffered position is akin to a Logistician as listed in the [*Handbook*]." With the RFE response, the petitioner and counsel provided several DOL printouts regarding logisticians. On appeal, counsel again stated that "the position is akin to that of a Logistician as listed in the Department of Labor's [*Handbook*] and qualifies as a 'specialty occupation' based on the [*Handbook*] entry."

In the instant case, the petitioner and counsel have characterized the duties of the proffered position as pertaining to multiple occupational categories. As previously stated, the petitioner submitted an LCA in support of the instant petition designating the proffered position under the occupational category "Business Operations Specialists, All Other." However, in other documents filed in support of the Form I-129, both counsel and the petitioner asserted that the proffered position falls under the occupational category "Logisticians."

When the duties of a proffered position involve more than one occupational category, DOL provides guidance for selecting the most relevant Occupational Information Network (O*NET) code classification. The "Prevailing Wage Determination Policy Guidance" issued by DOL, states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the

⁴ There is no explanation as to the reason the petitioner's president indicated that he signed the LCA on March 23, 2012 – approximately one year prior to DOL certifying the LCA.

employer's job opportunity has worker requirements described in a combination of O*NET occupations, the [designator] should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the [designator] shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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

The petitioner did not provide an explanation for classifying the position under the occupational category "Business Operations Specialists, All Other" on the LCA, but claiming that the position falls under "Logisticians." DOL guidance indicates that the petitioner should have chosen the relevant occupational code for the highest paying occupation. The petitioner, however, selected the occupational code for a lower paying occupational category, "Business Operations Specialists, All Other."

That is, the AAO reviewed the Occupational Employment Statistics - Foreign Labor Certification Data Center Online Data Center database regarding the prevailing wage for the occupational category "Logisticians" – SOC (ONET/OES) code 13-1081. It indicates that the prevailing wage for a Level I position in Los Angeles-Long Beach-Glendale, CA Metropolitan Division (Los Angeles, CA) was \$53,810 per year at the time the petitioner submitted the LCA.⁵ Thus, the petitioner's offered wage to the beneficiary is below the prevailing wage level for the occupational classification in the area of intended employment by \$13,167 per year.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A).

Upon review, the petitioner's offered wage to the beneficiary for the proffered position is less than the prevailing wage for the occupational category "Logisticians." In the instant case, the petitioner has not demonstrated that it would pay the beneficiary an adequate salary for her work, as required under the Act, if the petition were granted. Accordingly, the petition cannot be approved.

B. Wage Level

⁵ For additional information on the prevailing wage for this occupation in Los Angeles-Long Beach-Glendale, CA Metropolitan Division, see the All Industries Database for 7/2012 - 6/2013 for Logisticians at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatabase.com/OesQuickResults.aspx?code=13-1081&area=31084&year=13&source=1> (last visited May 27, 2014).

Moreover, even if the petitioner had selected the proper occupational category for the LCA, the LCA was certified at a Level I (entry level) wage. Wage levels should be determined only after selecting the most relevant O*NET code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.⁶

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.⁷ DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

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

⁶ For additional information on wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

⁷ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for special skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses supervisory duties, with a "1" entered unless supervision is generally required by the occupation.

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 the instant case, the petitioner emphasized the importance of the beneficiary's foreign language skills. In response to the RFE, the petitioner stated, "With capabilities in three languages, [the petitioner] is able to utilize [the beneficiary] especially in Portuguese which is her native language and essential for developing business in Brazil, one of our key markets in Latin America with a remarkable growth potential." The petitioner further indicated that "[the beneficiary] has the cultural awareness and business background necessary in order to find the most suitable products for the Brazilian market, reach out to prospect and current customers, and also follow up with past customers to bring the business back."

In accordance with the guidance provided by DOL, a language requirement other than English in a petitioner's job offer generally is considered a special skill for all occupations, with the exception of "Foreign Language Teachers and Instructors," "Interpreters," and "Caption Writers." *Id.* In the instant case, the petitioner designated the proffered position under the occupational category "Business Operations Specialists, All Other" at a Level I (the lowest of four assignable wage levels), and it has not established that the foreign language requirement was reflected in the wage-level for the proffered position.

Moreover, throughout the record of proceeding, the petitioner and counsel claim that the proffered position involves complex, unique and/or specialized duties. For example, in the letter dated April 1, 2013, the petitioner states that the proffered position is a "professional position involving sophisticated business knowledge and techniques." Further, according to the petitioner the "offered job is very complex and will require the services of a professional who has skills and knowledge in various business disciplines."

Additionally, in response to the RFE, the petitioner indicated that "[the beneficiary] performs specialized professional service for our company, coordinating international logistics and exports to our clients with concentration on South America, and other regions." The petitioner further stated that "[the beneficiary] manages and coordinates complex consolidation orders."

In response to the RFE and in the appeal, counsel asserted that the duties of the proffered position are more unique, complex and specialized than other positions by repeatedly stating:

While most Logistician jobs merely require analysis and coordination within a company's supply chain, the company's business model and the proffered position are unique and complex because the added requirement that the International Logistics Coordinator be familiar with international trade, international laws pertaining to distribution of products in foreign countries, and the business environment of the different countries where the petitioner is exporting products to.

Upon review, it appears that the claimed level of education, experience, knowledge and special skills required to perform the duties of the proffered position as stated by the petitioner and counsel

is at odds with the wage-rate selected by the petitioner on the LCA. The AAO must question the stated requirements for the proffered position, as well as the level of complexity, independent judgment and understanding that are actually needed for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties, responsibilities and requirements as described in the record of proceeding conflict with the wage-rate element of the LCA selected by the petitioner, which is indicative of a comparatively low, entry-level position relative to others within the same occupation.

As previously discussed, under the H-1B program, the petitioner must pay the beneficiary at least the same wage rate as that paid to other employees with similar experience and qualifications or the local prevailing wage for the occupation in the area of employment, whichever is higher. In the instant case, the petitioner designated the proffered position as a Level I position. Notably, if the proffered position had been designated at a higher level, the prevailing wage at that time (for the claimed occupational category "Business Operations Specialists, All Other") would have been \$55,390 per year for a Level II position, \$70,158 per year for a Level III position, and \$84,906 per year for a Level IV position.⁸

The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. Therefore, if the proffered position were found to qualify as a specialty occupation on the basis that it was a higher-level and more complex position, as claimed elsewhere in the petition, the petition could still not be approved as the petitioner has failed to establish that it would pay the wage required for that level of work as required under the Act.

This aspect of the LCA undermines the credibility of the petition and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered 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).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if

⁸ Again, when a petitioner's job opportunity is a combination of occupations, the petitioner should select the relevant occupational category for the highest paying occupation. 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 application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, provided the proffered position was in fact found to be a higher-level and more complex position (which requires special skills) as asserted by the petitioner and counsel elsewhere in the petition, the petitioner would have failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position; that is, specifically, the LCA submitted in support of the petition would then fail to correspond to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance section 212(n)(1)(A) of the Act and the pertinent LCA regulations.

As such, a review of the enclosed LCA indicates that the information provided therein does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements, which if accepted as accurate would result in the beneficiary being paid a salary below that required by law. As a result, even if it were determined that the proffered position were a higher-level and more complex position as described and claimed elsewhere in the petition in support of the petitioner's assertions that this position qualifies as a specialty occupation, the petition could still not be approved for this additional reason.⁹

⁹ Fundamentally, it appears that (1) the petitioner previously claimed to DOL that the proffered position is a Level I, entry-level position to obtain a lower prevailing wage; and (2) the petitioner is now claiming to USCIS that the position is a higher-level and more complex position (which requires special skills) in order to support its claim that the position qualifies as a specialty occupation. Either the position is a more senior and complex position that involves special skills (based on a comparison of the petitioner's job requirements to the standard occupational requirements) and thereby necessitates a higher required wage, or it is an entry-level position for which a lower wage would be acceptable. To permit otherwise would be directly contrary to the U.S. worker protection provisions contained in section 212(n)(1)(A) of the Act and its implementing regulations.

For the reasons discussed above, the petitioner has failed (1) to establish that it will pay the beneficiary an adequate salary for her work in accordance with the applicable statutory and regulatory provisions; and (2) to submit an LCA that supports the instant petition.¹⁰ These grounds for denial of the petition render the remaining issues in this proceeding moot. Nevertheless, the AAO will discuss the director's basis for denying the petition.

IV. THE DIRECTOR'S DECISION

A. Statutory and Regulatory Provisions for Specialty Occupation

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

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

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

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

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

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

¹⁰ The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978). Moreover, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). The regulations at 8 C.F.R. § 214.2(h)(2)(i)(E) instead require that the petitioner "file an amended or new petition, with fee, with the service center where the original petition was filed to reflect any material changes in the terms and conditions of employment"

- (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), 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.

B. The Proffered Position

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.

As a preliminary matter, the petitioner's statements regarding the requirements for the position are inadequate to establish that the proposed position qualifies as a specialty occupation. The petitioner stated that "[b]ecause this is a professional position involving sophisticated business knowledge and techniques, the person filling the position of International Logistics Coordinator with our company must possess at least a bachelor's degree or its equivalent in any business, science or social science field."¹¹

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also

¹¹ Throughout the record, the petitioner and its counsel provided varying requirements for the proffered position. Initially, the petitioner stated that it required "at least a bachelor's degree or its equivalent in **any** business, science or social science field" for the proffered position (emphasis added). In a letter dated May 21, 2013, the petitioner stated that a bachelor's degree in "business or a related science is normally the minimum requirement for entry into this position." In response to the RFE, the petitioner submitted two job postings for the proffered position indicating that a bachelor's degree (no specific specialty) was required for the proffered position. In the appeal brief, counsel claims that "the employer normally requires a degree in business for the proffered position." No explanation for the variances was provided. A petitioner (or its counsel) cannot materially change the requirements for a position. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification for the benefit sought.

includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner claims that the duties of the proffered position can be performed by an individual with a bachelor's degree in any business, science or social science field.¹² The issue here is that, based on the evidence presented, it is not readily apparent that these fields of study are closely related or that any and all "business, science and/or social science" fields are directly related to the duties and responsibilities of the particular position proffered in this matter. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position, it does not support the proffered position as qualifying a specialty occupation.

Nevertheless, the AAO will now review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

The AAO recognizes DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹³ As previously discussed, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Business Operations Specialists, All Other." However, within the record of proceeding, the petitioner and its counsel claim that the proffered position is most akin to occupational category "Logisticians."¹⁴ The AAO reviewed the chapter of the *Handbook* entitled "Logisticians" including the sections regarding the typical duties and requirements for this occupational category.¹⁵

¹² The word "business" is defined as "1. The occupation, work, or trade in which one is engaged. . . . 2. Commercial, industrial, or professional dealings. 3. A commercial enterprise or establishment." WEBSTER'S II NEW COLLEGE DICTIONARY 153 (2008). A degree in "a business field" may include a range of disciplines, some of which may not directly relate to the duties of the proffered position. For instance, U.S. News and World Report publishes a guide for colleges. The entry for Harvard University indicates that its business school offers concentrations in a range of disciplines, including arts administration, e-commerce, health care administration, human resources management, manufacturing and technology management, marketing, not-for-profit management, public administration, public policy, real estate, as well as many others. See U.S. News and World Report on the Internet at http://www.usnewsuniversitydirectory.com/graduate-schools/business/harvard-university_01110.aspx (last visited May 27, 2014).

¹³ All of the AAO's references are to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

¹⁴ No explanation was provided by the petitioner and its counsel for selecting the occupational category "Business Operations Specialists, All Other" on the LCA, but claiming that the proffered position falls under the occupational category "Logisticians."

¹⁵ For additional information on the occupational category "Logisticians," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Logisticians, on the Internet at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-1> (last visited May 27, 2014).

However, the *Handbook* does not indicate that "Logisticians" 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.

The subchapter of the *Handbook* entitled "How to Become a Logistician" states the following about this occupation:

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).

* * *

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.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-14 ed.*, Logisticians, on the Internet at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited May 27, 2014).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the occupation accommodates other paths for entry, including less than a bachelor's degree in a specific specialty. The *Handbook* specifically states that logisticians can qualify for positions with an associate's degree. According to the *Handbook*, some firms allow applicants to substitute several years of work experience for a degree. The *Handbook* does not report that the years of work experience must be the equivalent of a bachelor's degree in a specific specialty. The *Handbook* indicates that more companies prefer to hire workers who have at least a bachelor's degree. Obviously a *preference* for a degreed individual is not an indication that at least a bachelor's degree in a specific specialty is normally a *minimum requirement* for entry. Moreover, while the *Handbook* indicates many logisticians have a bachelor's degree, the *Handbook* identifies degrees in

divergent fields such as business, industrial engineering, process engineering or supply chain management as acceptable for this occupation. The *Handbook* does not conclude that normally the minimum requirement for entry into logistician positions is a baccalaureate (or higher degree) in a specific specialty, or its equivalent.

In response to the RFE, counsel refers to the O*NET to state that "the job of Logisticians falls within **Job Zone Four 'Considerable Preparation Needed,'** meaning that most such occupations require a four-year bachelor's degree." However, contrary to counsel's assertion, the O*NET Summary Report does not establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in a specific specialty, or its equivalent. Under the subsection entitled "Education," O*NET states that "[m]ost of these occupations require a four-year bachelor's degree, but some do not." Further the term "most" is not indicative that a particular position within the wide spectrum of logisticians jobs normally requires at least a bachelor's degree.¹⁶ Further, O*NET does not state that a degree must be in a *specific specialty*. The term "most" is not indicative that this particular position normally requires at least a bachelor's degree in a specific specialty, or its equivalent. Thus, a designation of Job Zone Four does not demonstrate that at least a bachelor's degree in a *specific specialty* is normally the minimum requirement for entry, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

Counsel also asserts that DOL, Bureau of Labor Statistics, Office of Occupational Statistics and Employment Projections, provides that in California, 43.4% of logisticians had at least a bachelor's degree or higher. For the reasons discussed above, the statement that 43.4% of logisticians in the state of California possesses at least a bachelor's degree or higher does not establish that the proffered position normally requires at least a bachelor's degree in a specific specialty, or its equivalent.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

¹⁶ For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree in a specific specialty, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which as noted above is designated as a Level I entry position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

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

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

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard, industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. Further, the petitioner did not submit documentation from the industry's professional association indicating that it has made a degree a minimum entry requirement.

In support of the H-1B petition, the petitioner provided multiple job announcements. However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcement is misplaced.

In the Form I-129, the petitioner stated that it is an export trading company with 29 employees. The petitioner also reported its gross annual income as approximately \$30 million. Although specifically requested, the petitioner did not provide its net income. In a letter of support, the petitioner stated that it services the needs of food and beverage importers. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 522293.¹⁷ This NAICS code is designated for "International Trade Financing." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This U.S. industry comprises establishments primarily engaged in providing one or more of the following: (1) working capital funds to U.S. exporters; (2) lending funds to foreign buyers of U.S. goods; and/or (3) lending funds to domestic buyers of imported goods.

¹⁷ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and, each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed May 27, 2014).

See U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 522293-International Trade Financing, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last viewed May 27, 2014).

For the petitioner to establish that an organization is similar under this criterion of the regulations, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such information, evidence submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). In the appeal brief, counsel states that most of the advertised positions are either in companies similar to the petitioner or within departments of manufacturers that would perform the same services if such services were contracted out. However, it is not sufficient for the petitioner or its counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

Upon review of the documents, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is (1) common to the industry (2) in parallel positions (3) among similar organizations.

For example, the advertisements include positions with the following employers:

- Soho House New York: hospitality services;
- Iriso: "a Tier II Automotive Supplier";
- Mentor Graphics: "a technology leader in Electronic Design Automation, providing software and hardware design solutions that help engineers around the world innovate";
- Liquidation.com: "mission is to provide business and government clients and buying customers the world's most transparent, innovative and effective online marketplaces and integrated services for surplus assets";
- Image Associates, Inc.: "global manufacturing organization";
- Forest Laboratories, Inc.: biotechnology/pharmaceuticals;
- DMX: audiovisual manufacturer;
- CNH: agricultural and construction equipment manufacturer;
- Mayrock Group: export of automobiles; and
- Interplace: large international logistics (management of oversized cargo)/transportation company.

Without further information, the advertisements appear to be for organizations that are not similar to the petitioner (and in the same industry), and the petitioner has not provided probative evidence to

suggest otherwise. That is, the petitioner did not provide sufficient information to establish that the advertising companies and the petitioner share the same general characteristics, as well as information regarding which aspects or traits (if any) it shares with the advertising organizations.

Further, several postings are from staffing companies, such as Ajilon and Adecco Group, provide limited information regarding its clients. For example: Ajilon describes its client as "a growing pharmaceutical developer," and Adecco Group indicates that its client is "a busy manufacturer located in Erie." Moreover, the petitioner also submitted several confidential listings which do not provide any information about the advertising employers except their location. The postings lack sufficient information regarding the clients' business operations to conduct a legitimate comparison of the organizations to the petitioner.

Contrary to the purpose for which the advertisements were submitted, some postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent is required for the position. For example, the postings for Iriso, Interplace, Ajilon, Mayrock, Mentor Graphics and a confidential employer indicate that a bachelor's degree is preferred or desirable, but not required. As previously discussed, a *preference* for a degreed individual is not an indication that at least a bachelor's degree in a specific specialty, or its equivalent, is *required* for the position.

While some employers require a bachelor's degree, they do not require a bachelor's degree in a specific specialty (or its equivalent). Interchez, CNH, and DMX (as well as others) indicate that the required educational level is a bachelor's degree, but they do not indicate that a bachelor's degree in a specific specialty that is directly related to the occupation is required. As discussed, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the position. Although a general-purpose bachelor's degree 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.*, 484 F.3d at 147.

Some of the positions do not appear to be for parallel positions. For instance, an export logistics manager position at CNH requires a degree and "8-10 years business experience" and "5-7 years of import/export logistics management experience." Likewise, a director position at DMX also requires 5+ years of experience and Spanish fluency. A confidential listing for an employer in Charleston, SC indicates that its logistics manager position requires a degree, 5-7 years of logistics experience, and prior managerial/supervisory experience. Another position for a senior operations specialist at Forest Pharmaceuticals requires a degree and 5+ years of experience in transportation, distribution, and supply chain management. As previously discussed, the petitioner designated the proffered position on the LCA as a Level I (entry) position in comparison to others within the occupation. The advertised positions appear to be for more senior positions than the proffered position.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary.¹⁸ That is, not every deficit of every job posting has been addressed.¹⁹

In response to the RFE, the petitioner and counsel provided a letter from [REDACTED] from [REDACTED] Inc. The letter is dated June 28, 2013. The petitioner and counsel rely heavily on this letter to support their assertions. The AAO reviewed the opinion letter in its entirety. However, as discussed below, the letter from Ms. [REDACTED] is not persuasive in establishing the proffered position qualifies as a specialty occupation position.

In the letter, Ms. [REDACTED] provides a summary of her qualifications, including her educational credentials and professional experience. She claims that she is a "recognized authority."²⁰ In addition, she attached a copy of her curriculum vitae. The vast majority of Ms. [REDACTED]'s experience has been in the academic setting.

Based upon a complete review of Ms. [REDACTED]'s letter and curriculum vitae, the AAO notes that Ms. [REDACTED] may, in fact, be a recognized authority on various topics; however, she has failed to provide sufficient information regarding the basis of her claimed expertise on this particular issue. Without further clarification, it is not apparent how her education, training, skills or experience would translate to expertise or specialized knowledge regarding the current recruiting and hiring practices of companies engaged "export trading" industry (as designated by the petitioner with the NAICS code) for international logistics coordinator positions (or parallel positions).

¹⁸ Notably, the petitioner and counsel 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.

¹⁹ It must be noted that even if all of the job postings indicated that a requirement of a bachelor's degree in a specific specialty (or its equivalent) is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

²⁰ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. *Id.*

Ms. [REDACTED]'s letter does not cite specific instances in which her past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that she has published any work or conducted any research or studies pertinent to the educational requirements for international logistics coordinator (or related issues).²¹ Further, there is no indication of recognition by professional organizations that she is an authority on those specific requirements.

Ms. [REDACTED] recites the job duties as stated by petitioner in its initial submission, but does not discuss the duties of the proffered position in any substantive detail. As a result, it is not evident that she analyzed the duties prior to formulating her letter. Ms. [REDACTED] makes various statements about the complexity of the position and the academic requirements needed to perform the duties; however, it must be noted that there is no indication that the petitioner and counsel advised Ms. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level position, for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA).²² It appears that Ms. [REDACTED] would have found this information relevant for the opinion letter. Moreover, without this information, the petitioner has not demonstrated that Ms. [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon the job duties and responsibilities.

In the letter, Ms. [REDACTED] provides a brief description of the petitioner's business. Upon review of Ms. [REDACTED]'s opinion letter, there is no indication that she possesses any knowledge of the petitioner's operations beyond this information. She does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. For instance, there is no evidence that Ms. [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Her opinion does not relate her conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue.

Ms. [REDACTED] asserts that she "conduct[ed] a thorough review of employment websites including www.monster.com, www.jobs.com and www.careerbuidr.com." She briefly describes five job postings that claims she encountered in her research. Ms. [REDACTED] provides the job title, name of the company, and location. She also states that all of the postings require a bachelor's degree in a related field of work. However, she did not submit printouts of the job postings. If Ms. [REDACTED] wished for the director and the AAO to make a determination on the job postings, she should have

²¹ Ms. [REDACTED]'s resume has one entry under the heading "Research" which states: "A Comparison of Grade Equivalency Gain of English as a Second Language and English as a Native Language Speaking Students."

²² As previously discussed, the wage rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

provided the printouts.²³ Here, Ms. [REDACTED] did not provide any information about the advertising employers' businesses operations or the job duties of the advertised positions. Thus, she has not provided documentation in support of the assertion that a requirement of at least a bachelor's degree in a specific specialty, or its equivalent, is (1) common to the industry (2) in parallel positions (3) among similar organizations.

Ms. [REDACTED] claims that as "Full-Time Faculty Member at [REDACTED], I am in contact with various recruiters throughout the United States regarding numerous employment opportunities for students at the university." Ms. [REDACTED] asserts that "[t]hese recruiters have consistently indicated that a Bachelor's degree or its equivalent in a business, science or social science field is the requisite background required for this particular position." Thus, Ms. [REDACTED] acknowledges that any knowledge she has gained from recruiters is in connection with a limited pool of people – current college students at [REDACTED]. She does not provide further substantive information or documentation regarding these "recruiters" and "employment opportunities." She does not reference or discuss any studies, surveys, industry publications, authoritative publications, or other sources of empirical information which she may have consulted in the course of whatever evaluative process she may have followed. Upon review, Ms. [REDACTED] did not submit sufficient evidence to substantiate her assertions.

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). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The AAO will next consider the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which is satisfied if the petitioner shows that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty or its equivalent.

As discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for the proffered position. Rather a degree in a range of disciplines (i.e., business, science or social science) is acceptable for the proffered position.

²³ The director and the AAO are not required to attempt to locate the various job postings by searching the Internet for these advertisements. Notably, the content of the websites may have changed since Ms. [REDACTED] accessed the sites. Furthermore, the director and the AAO are not required to access unknown sites, which may inadvertently result in computer security risks or viruses.

Although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, it has not demonstrated that the duties require the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent).

The petitioner provided (1) information regarding the proffered position, (2) evidence regarding its business operations, and (3) documentation regarding its employees.²⁴ The AAO reviewed the record in its entirety and notes that while the petitioner provides some insights into the proffered position and its business activities, the evidence does not establish that the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Further, it must be noted that it is not the volume of documentation that establishes eligibility for the benefit sought, but rather the relevance, probative value, and credibility of the documentation – both individually and within the context of the totality of the evidence.

In the record of proceeding, counsel repeatedly asserts that "while most Logistician jobs merely require analysis and coordination within a company's supply chain, the company's business model and the proffered position are unique and complex because of the added requirement that the International Logistics Coordinator be familiar with international trade, international laws pertaining to the distribution of products in foreign countries, and the business environment of the different countries where the petitioner is exporting products to."

The LCA indicates, however, a Level I (entry level) wage. As previously mentioned, the wage level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."²⁵

It is further noted the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree

²⁴ The AAO acknowledges that the petitioner submitted an opinion letter from Ms. [REDACTED]. However, the AAO here incorporates its earlier discussion and analysis regarding the opinion letter, and again notes that the letter does not establish that the proffered position qualifies as a specialty occupation under any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

²⁵ For additional information regarding the wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

program in a specific specialty, or its equivalent. The petitioner and counsel did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties that counsel claims are so complex or unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has not demonstrated 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 proffered position.

In summary, the description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position relative to other positions in the occupation, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent.

The petitioner indicates that the beneficiary's academic credentials, experience and language skills qualify her to serve in the proffered position. However, the test to establish a position as a specialty occupation is not the credentials and skills of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge, and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). Upon review of the record of proceeding, the AAO finds that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as any other information provided by the petitioner in support of the petition.

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position qualifies as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the

proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. See § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has approximately 29 employees and that it was established in 1995 (approximately 19 years prior to the H-1B submission). The petitioner indicated that it currently employs five international logistics coordinators, and provided documentation regarding its employees.²⁶

As discussed previously, the petitioner itself does not require at least a baccalaureate degree in a specific specialty, or its equivalent, for the proffered position. Rather, the petitioner stated that an individual with a degree in business, science or social science can perform the duties of the position. Therefore, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree.

Moreover, in support of the petition, the petitioner submitted two job announcements from 2012:

²⁶ To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. There must be a close correlation between the required specialized studies and the position; thus, the mere requirement of a degree, 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) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility.").

Although a general-purpose bachelor's degree (including a 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 a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. 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.

Both job postings indicate that a bachelor's degree is required, without further specification. Thus, the advertisements indicate that a general-purpose degree (in any field) is acceptable for the proffered position.

Upon review of the record, the petitioner has not provided sufficient evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

On appeal, counsel asserted that "the petitioner submitted the examples of the type of paperwork, forms, reports or other documentation that the International Logistics Coordinator must prepare, review or generate in order to perform the job." The AAO reviewed all of the evidence in the record of proceeding, including the job description and evidence regarding the petitioner's business operations. Upon review, the AAO finds that the petitioner's statements and the submitted documentation fail to support the assertion that the proffered position qualifies as a specialty occupation under this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position.

For example, while the petitioner submitted forms such as certificates and invoices, it did not establish how the duty of preparing, managing and overseeing the movement of goods through such forms is so specialized and complex that the knowledge required to perform the duty is the attainment of at least a bachelor's degree in a specific specialty, or its equivalent. Similarly, submitting copies of foreign product labels does not establish developing private labels for overseas customers is so specialized and complex that the knowledge required to perform the duties is usually associated with attainment of a bachelor's or higher degree. Therefore, the AAO finds that the documentation submitted is insufficient to satisfy this criterion of the regulations.²⁷

Moreover, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing

²⁷ The AAO acknowledges that the petitioner submitted an opinion letter from Ms. [REDACTED]. However, the AAO here incorporates its earlier discussion and analysis regarding the opinion letter, and again notes that the letter does not establish that the proffered position qualifies as a specialty occupation under any of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

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

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

V. BENEFICIARY'S QUALIFICATIONS

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has failed to establish that the proffered position requires a baccalaureate or higher degree in a specific specialty or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications.

VI. PRIOR APPROVALS

The petitioner noted that USCIS approved other petitions that had been previously filed on behalf of other employees. The AAO notes that if the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals 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). 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 the nonimmigrant petitions, 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).

VII. CONCLUSION

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 145 (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.

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

ORDER: The appeal is dismissed.