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



U.S. Citizenship  
and Immigration  
Services

DATE: MAY 30 2014

OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner:  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*For Michael T. Kelly*  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner is a university. It filed this H-1B petition to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b), in order to employ the beneficiary in what it designates as a Track Coach position.<sup>1</sup> The director denied the petition on the basis of her determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

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

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 director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

## I. FACTUAL AND PROCEDURAL BACKGROUND

In the petition, signed on June 19, 2013, the petitioner indicates that it is seeking to continue the beneficiary's services as Track Coach on a full-time basis at the rate of pay of \$23,600 per year. In the June 18, 2013 letter of support, the petitioner states that it is a four-year, Christian university of the liberal arts and sciences, and it describes itself "as a recognized leader in the [redacted] and beyond."

The petitioner describes the proffered Track Coach position as follows:

The position of Track Coach will work under the supervision of the Director of Athletics to expand our track program. The Track Coach's responsibilities include but are not limited to the following:

- Recruit athletes interested in track
- Responsible for tracking and submitting all statistical data as it pertains to track
- Verifies and pays travel expense reports

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<sup>1</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O\*NET/OES) Code 27-2022, the associated Occupational Classification of "Coaches and Scouts," and a Level I (entry-level) prevailing-wage rate.

- Maintains and updates Sports Information within the athletic department
- Schedule all games and practices as related to track
- Schedule and make travel accommodations for track team
- Monitor the academic progress of track athletes
- Sponsor and promotes activities to grow community support
- Track student scholarships on an annual basis
- Play a role in the student athlete's spiritual growth
- Operate the track program within the framework laid out by [the petitioner]
- Understand and comply with NCCAA [(National Christian College Athletic Association)]/NAIA [(National Association of Intercollegiate Athletics)] rules and regulations
- Operate program under the guidelines of NAIA , NCCAA, and the Midlands Collegiate Athletic Conference

This position requires an individual familiar with the principles and processes involved in coaching.

The petitioner concluded by stating that the position of Track Coach is a professional position requiring a bachelor's degree.

We see that the Labor Condition Application (LCA) which the petitioner submitted in support of the petition was one that had been certified for a job prospect within the "Coaches and Scouts" - SOC (ONET/OES Code) 27-2022, at a Level I (entry level) wage.

The petitioner also submitted: (1) an excerpt from the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* pertaining to the occupation of Coaches and Scouts; (2) an excerpt from O\*Net Online (O\*Net) pertaining to the Coaches and Scouts occupational group; (3) copies of the beneficiary's academic transcripts; and (4) a copy of the beneficiary's resume.

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on July 5, 2013. The petitioner was asked to submit probative evidence to establish that a specialty occupation position exists for the beneficiary, such as additional information with regard to the nature of the proffered position and the petitioner's hiring practices for the proffered position. The petitioner was also asked to submit additional evidence establishing that the beneficiary was



qualified to perform the duties of the proffered position. Specifically, the director noted that the beneficiary's master's degree in business administration did not appear to relate to the duties of a track coach, and additional evidence was requested to clarify this issue.

On August 28, 2013, counsel for the petitioner responded to the RFE. Included in the response was a letter from the petitioner, dated August 30, 2013, which supplemented the aforementioned support letter's overview of the proffered position. The petitioner's RFE-reply letter asserted that the specialized duties of the proffered position require an individual with a business-related degree. This RFE-reply letter petitioner expanded upon the earlier letter's statement of duties. The petitioner concluded by stating that the proffered position requires an individual familiar with the principles and processes involved in coaching, and claims that the beneficiary possesses these qualities as he served as head coach while pursuing his master's degree.

Counsel also submitted additional documentary evidence in response to the RFE, including: (1) copies of the resumes of other coaches employed by the petitioner; (2) job vacancy announcements for positions that the petitioner deems similar to the proffered position; and (3) a copy of the Higher Learning Commission's "Assumed Practices" policy.

The director reviewed the information provided by the petitioner and counsel to determine whether the petitioner had established eligibility for the benefit sought. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on September 18, 2013. On appeal, counsel submits a brief and additional evidence, and contends that the director's findings were erroneous.

## II. LAW

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

As will be discussed below, to qualify a proffered position as a specialty occupation the evidence of record must establish that the position's performance would require at least a bachelor's degree, or the equivalent, in a specific specialty. Put another way, for any bachelor's or higher degree that the petitioner presents as necessary for the proffered position, the evidence of record must show that attainment of at least that level of education in the field in which the degree was awarded is necessary to equip the beneficiary with a body of highly specialized knowledge in a specific specialty that he or she will have to apply, both theoretically and practically, in order to perform the position.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184(i)(1) defines the term "specialty occupation" as one 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 term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as:

An occupation which requires [(1)] 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 requires [(2)] 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, the position must also meet one of the following criteria:

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

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

or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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

### III. ANALYSIS

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

At Part 5 of the Form I-129, the petitioner stated that it was a university established in 1959 that currently employed 100 persons.

As a preliminary matter, the petitioner's claim that a bachelor's degree in "business" or a business-related field is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a



specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).<sup>2</sup>

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>3</sup>

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<sup>2</sup> The AAO notes another discrepancy in the petitioner's requirement for a business degree. In its response to the RFE, the petitioner claims that the beneficiary was qualified to perform the duties of the proffered position because he previously held the position of head coach while he was pursuing his graduate degree in business at the petitioner's university. It is noted that, while the initial letter of support simply required a bachelor's degree, this requirement was narrowed in response to the RFE to specifically mandate the necessity of a business background to perform the functions of the proffered position.

If the beneficiary was performing the duties of the proffered position prior to earning his business degree (the record indicates that the beneficiary's undergraduate degree, which he held at the time of coaching in this position, was in communications/digital media/digital photography), that scenario would conflict materially with the petitioner's claim that the position required a degree in business. 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).

<sup>3</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*



Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone. However, we will continue to analyze the record of proceeding in order to discuss why - aside from the petitioner's acceptance of a general-purpose degree - the evidence of record does not otherwise satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Before discussing the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding, we will first discuss why we find that the record's descriptions of the proffered position and its constituent duties do not establish that their performance would require the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as would be required to satisfy the definitions of "specialty occupation" at section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii).

As noted earlier, the petitioner's letter of support, filed with the Form I-129, described the proffered Tarck Coach position as follows:

The position of Track Coach will work under the supervision of the Director of Athletics to expand our track program. The Track Coach's responsibilities include but are not limited to the following:

- Recruit athletes interested in track
- Responsible for tracking and submitting all statistical data as it pertains to track
- Verifies and pays travel expense reports
- Maintains and updates Sports Information within the athletic department
- Schedule all games and practices as related to track
- Schedule and make travel accommodations for track team
- Monitor the academic progress of track athletes
- Sponsor and promotes activities to grow community support
- Track student scholarships on an annual basis
- Play a role in the student athlete's spiritual growth
- Operate the track program within the framework laid out by [the petitioner]

- Understand and comply with NCCAA [(National Christian College Athletic Association)]/NAIA [(National Association of Intercollegiate Athletics)] rules and regulations
- Operate program under the guidelines of NAIA , NCCAA, and the Midlands Collegiate Athletic Conference

In its RFE-reply letter, the petitioner supplemented the above descriptions with the following statement of the duties and responsibilities of the proffered Track Coach position:

***Recruit athletes interested in Track:*** As Track Coach [the beneficiary] will be responsible for identifying athletes interested in Track. [The beneficiary] will be responsible for going to track meets, camps and games to look out for potential athletes. Recruiting requires the knowledge of principles and methods for promoting, managing and selling services to include marketing strategy tactics, sales techniques, control systems and service orientation. Organization budgeting is a substantial part of recruiting it requires the knowledge from such classes as marketing, management, accounting, strategic planning, financial planning and control. Budgeting involves establishing a planned level of expenditures, usually at a fairly detailed level. The greatly depends on a person with business knowledge. The knowledge and skills developed in obtaining a university degree in business area or similar degree are essential to perform these duties. This particular duty comprises 25% of an average day.

Schedule all games and practices as related to track: It is one of the responsibilities of [the beneficiary] to schedule all games and practices for the athletes, schedule and make travel accommodations for the track team following the University rules and regulations. [The beneficiary] will also be responsible for verifying and making travel expense reports for the team. As track coach, [the beneficiary] will ensure that athletes are practicing under the appropriate conditions, track team expenses are in line with the budget provided by the Director of Athletics.

Statistics (and statistical analysis) management principles involved in strategic planning, resource allocation, human resources modeling, leadership technique and coordination of people and resources are skills and knowledge obtained through completion of a business degree. This particular duty comprises 25% of an average day.

***Track Instruction:***

[The beneficiary] will identify the areas for continuous improvement in the Track & Field Sphere, with specific attention to curriculum content, coach training and delivery of coaching. [The beneficiary] will meet with the Director of Athletics and



teammates to discuss ideas for improvement and implementation solutions as needed. [The beneficiary] will then continue to look for ways of working to enhance the quality and scale of program delivery, find the weak areas and correct them. With the technological advancements, track and field athletes can be analyzed from a statistical standpoint to improve performance. Relying upon statistical analysis, however, requires coaches to have knowledge of statistics and be able to draw relevant [data] for input and interpret statistical outputs.

***Direct and Coordinate Camps and Clinics:***

[The beneficiary] will plan, organize and coordinate the activities for summer track clinics, which will include the oversight of the program's initiatives and policies regarding participant involvement and program direction and requirements. He must communicate and meet other Universities and organizations in order to promote the clinics to interested participants. [The beneficiary] will develop relationships with marketing partners to sponsor these camps and clinics. Prior to the clinics, [the beneficiary] will prepare and conduct in-service training for camp assistants. He will conduct exit interviews and surveys to effectively evaluate all programs, operations, staff, and facilities and report his findings to the athletic director.

These job duties require knowledge of principles and processes for providing participant and personal services, including needs assessment, meeting quality standards for services, and evaluation of customer satisfaction. [The beneficiary] will ensure camps and clinics effectiveness, prioritize goals and formulate plans. It is essential [the beneficiary] possess knowledge of principles and methods for management, marketing, budgeting, curriculum and training design, and performance measurement to successfully complete these duties. Because of the extensive use of management, marketing forecasting, performance measurement and program coordination involved in this task, the knowledge and skills developed in obtaining a Master's degree in business with specific course work in Marketing, Management, Finance, and Accounting or similar degree are essential to perform these duties. This particular duty comprises about 25% of an average day for the Track coach.

***Monitor the academic progress of track athletes***

[The petitioner] prides itself with athletes who are also academically sound. [The petitioner] ensures that the athletes maintain a grade point average depending on their areas of study in compliance with University rules. It is one of the responsibilities of [the beneficiary] to ensure athletes are attending classes regularly, getting necessary tutoring and counseling as needed. [The beneficiary] will monitor the academics of the track team. He will arrange tutoring lessons with appropriate professors and assistants to provide support for student-athletes, when needed. [The beneficiary] will develop guidelines for student-athlete study session and tutoring and provide reports to the athletics director and department and make suggestions for



modification. Monitoring academics involves a great deal of management, coordination, and reporting.

Further, [the beneficiary] will assist in the organization of community service events and provide help to local community. Providing assistance to the local community and providing student-athletes a venue to contribute to those efforts is an important outreach of [the petitioner's] athletic department. [The beneficiary] will not only be responsible for organizing community service events, but also promoting through responsible marketing efforts, the achievements of those events. Coordinating community services involves budgeting events, writing press releases, arranging all the details for the events and marketing those affairs to university and community. [The beneficiary] will utilize the skills he obtained when completing his business degree to complete the community service coordination and academic monitoring duties of his position. Courses in marketing, management, accounting, finance, and similar business courses have provided him with the knowledge and skills necessary to complete the duties.

While the petitioner ascribes a multitude of duties to the proffered position, neither the descriptions themselves nor any other evidence within the record of proceeding establish that, even as whole group, their performance would require a particular level of education or education-equivalency in any particular specialty.

We note, for instance, that, while the petitioner asserts that the Track Coach position would involve "[o]rganization budgeting" that "would require the knowledge from such classes as marketing, management, accounting, strategic planning, financial planning and control," the evidence of record does not provide any particulars about the amounts involved, the elements of the budgeting, or any substantive aspects of the position's budgeting responsibilities that would require the coursework that the petitioner claims. Likewise, the petitioner asserts that the position's Track Instruction component involves "statistical analysis" that "requires coaches to have knowledge of statistics and be able to draw relevant [data] for input and interpret statistical outputs," but nothing in the record conveys the nature and extent of that "statistical analysis" or any particular level of knowledge of statistics that would have to be applied. As another representative example, we point to the petitioner's comments that the "community services coordination and academic monitoring" aspects of the Track Coach position involve "budgeting events, writing press releases, arranging all the details for the events and marketing those affairs to university and community and academic monitoring duties of the position" for which the beneficiary would "utilize the skills he obtained when completing his business degree" and apply "necessary" knowledge and skills that he gained from "[c]ourses in marketing, management, accounting, finance, and similar business courses." With regard to this example, we note first, of course, that specialty occupation classification depends upon the actual performance requirements of the position – and not upon a beneficiary's credentials for the position. Further, the evidence of record does not support any suggestion that the beneficiary's business courses would be necessary for performance of the community services coordination and academic monitoring aspects of the position, as the evidence does not provide any

substantive explanation of those aspects and how in fact they would be performed at a level requiring the coursework in question.

In short, we find that, as evident in the passages quoted above from the petitioner's letters, the record of proceeding presents the proffered position and each of its itemized duties in terms of generic functions that do not relate either the substantive nature of the actual work that their performance would involve or how such work would require the application of any particular educational or education-equivalent level of a body of highly specialized knowledge in any specific specialty.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

As a corollary to the generalized level at which the record presents the proffered position and its duties, we also find that the evidence of record does not provide substantive details sufficient to establish that the position or its duties are more complex, specialized, and/or unique than coaching positions and associated duties that neither require the services of a person with at least a bachelor's degree in a specific specialty nor are usually associated with knowledge attained by at least a bachelor's degree or the equivalent in a specific specialty.

We hereby incorporate the above comments and findings about the record's evidentiary deficiencies into the following analysis of each of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (*Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.<sup>4</sup> We agree with the petitioner that the generally described duties of the proffered position align with those of coaches and scouts as outlined in the *Handbook*.

The *Handbook* states the following with regard to the duties of coaches and scouts:

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<sup>4</sup> The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2014-15 edition available online.



Coaches teach amateur and professional athletes the skills they need to succeed at their sport. Scouts look for new players, evaluating their skills and likelihood for success at the college, amateur, or professional level. Many coaches are also involved in scouting.

### **Duties**

Coaches typically do the following:

- Plan, organize, and conduct practice sessions
- Analyze the strengths and weaknesses of individual athletes and opposing teams
- Plan strategies and choose team members for each game
- Provide direction, encouragement, and motivation to prepare athletes for games
- Call plays and make decisions about strategy and player substitutions during games
- Plan and direct physical conditioning programs that enable athletes to achieve maximum performance
- Instruct athletes on proper techniques, game strategies, sportsmanship, and the rules of the sport
- Keep records of athletes' and opponents' performance
- Identify and recruit potential athletes
- Arrange for and offer incentives to prospective players

Scouts typically do the following:

- Read newspapers and other news sources to find athletes to consider
- Attend games, view videotapes of the athletes' performances, and study statistics about the athletes to determine talent and potential
- Talk to the athlete and the coaches to see if the athlete has what it takes to succeed
- Report to the coach, manager, or owner of the team for which he or she is scouting
- Arrange for and offer incentives to prospective players

**Coaches** teach professional and amateur athletes the fundamental skills of individual and team sports. They hold training and practice sessions to improve the athletes' form, technique, skills, and stamina. Along with refining athletes' individual skills, coaches are also responsible for instilling in their players the importance of good sportsmanship, a competitive spirit, and teamwork.

Many coaches evaluate their opponents to determine game strategies and to establish specific plays to practice. During competition, coaches call specific plays intended to



surprise or overpower the opponent, and they may substitute players for optimum team chemistry and success.

Many high school coaches are primarily academic teachers who supplement their income by coaching part time.

**Sports instructors** differ from coaches in their approaches to athletes because of the focus of their work. For example, coaches manage the team during a game to optimize its chance for victory, but sports instructors are often not permitted to instruct their athletes during competition.

Like coaches, though, sports instructors hold practice sessions, assign specific drills, and correct athletes' techniques. They spend more of their time working one-on-one with athletes, designing customized training programs for each individual.

Sports instructors typically specialize in teaching athletes the skills of an individual sport, such as tennis, golf, or karate. Some sports instructors, such as pitching instructors in baseball, may teach individual athletes involved in team sports.

**Scouts** evaluate the skills of both amateur and professional athletes. Scouts seek out top athletic candidates for colleges or professional teams and evaluate their likelihood of success at a higher competitive level.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Coaches and Scouts," <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-2> (accessed May 12, 2014).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into the field:

Coaches and scouts typically need a bachelor's degree. They must also have extensive knowledge of the sport. Coaches typically gain this knowledge through their own experiences playing the sport at some level. Although previous playing experience may be beneficial, it is not required for most scouting jobs.

### **Education**

College and professional coaches must usually have a bachelor's degree. This degree can typically be in any subject. However, some coaches may decide to study exercise and sports science, physiology, kinesiology, nutrition and fitness, physical education, and sports medicine.

Scouts must also typically have a bachelor's degree. Some scouts decide to get a degree in business, marketing, sales, or sports management.

### Other Experience

College and professional coaching jobs also typically require experience playing the sport at some level.

However, scouting jobs typically do not require experience playing a sport at the college or professional level. Employers look for applicants with a passion for sports and an ability to spot young players who have exceptional athletic ability and skills.

*Id.* at <http://www.bls.gov/ooh/entertainment-and-sports/coaches-and-scouts.htm#tab-4>.

The *Handbook's* information regarding entrance into this occupational category does not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. Although the *Handbook* indicates that coaches and scouts *typically* need a bachelor's degree, it also indicates that the degree can be in any subject for college and professional coaches, and further indicates that scouts may choose to get a degree in business, marketing, sales, or sports management. These disparate fields do not constitute a specific specialty; such a wide range of acceptable majors or academic concentrations is not indicative of a position requiring the theoretical and practical application of a distinct body of highly specialized knowledge in a specific specialty, as required by section 214(i)(1) of the Act and its implementing regulation at 8 C.F.R. § 214.2(h). Therefore, the proffered position's inclusion in the Coaches and Scouts occupational group is not sufficient to establish that the position is one which normally requires for entry at least a bachelor's degree or the equivalent in a specific specialty.

Additionally, and as discussed briefly above, although a general-purpose bachelor's degree, including a degree in business administration, may be a legitimate prerequisite for entry into the occupation of Coaches and Scouts, 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. Therefore, the *Handbook's* recognition that a general, non-specialty degree, or in the case of scouts, the recognition for a preference in business-related degrees, is sufficient for entry into the occupation indicates that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that entry into the Coaches and Scouts occupational group does not normally require at least a bachelor's degree in a specific specialty or its equivalent, the *Handbook* does not support the proffered position as being a specialty occupation.

We acknowledge counsel's assertions on appeal that the Higher Learning Commission of the North Central Association of Colleges and Schools, which is the accrediting body for the petitioner's university, requires that all instructors have a minimum of a bachelor's degree. However, the proffered position in this matter, while necessarily incorporating some "instruction" in track and field, is not inherently that of an instructor, but rather that of a coach or scout as demonstrated by the petitioner's selection of this occupational classification on the LCA submitted with this petition. Further, counsel's contention is inconsistent with the section of the policy document which counsel partially quotes, which is paragraph 2, "Faculty Roles and Qualifications," of Part B, "Teaching and Learning: Quality, Resources, and Support" of the Higher Learning Commission's "Assumed



Practices" Policy document that was submitted as Exhibit 5 of the petitioner's RFE response. The clear import of that section is that "instructors" within the meaning of the Policy are persons employed as teachers. We note, for example, the statement at paragraph 2a that "instructors . . . possess an academic degree relevant to what they are teaching and at least one level above which they teach. . . ." We also refer counsel to the fact that the context from which his quote is taken is a discussion – as paragraph 2's title states – of "Faculty Roles and Qualifications." Further, we note the following subparagraphs of the Policy document's section "C. Teaching and Learning: Evaluation and Improvement," which is not consistent with counsel's suggestion that the Higher Learning Commission includes track coaches as instructors required to have at least a bachelor's degree.

1. Instructors . . . have the authority for the assignment of grades. (This requirement allows for collective responsibility, as when a faculty committee has the authority to override a grade on appeal.)

\* \* \*

5. Instructors communicate course requirements to students in writing and in a timely manner. 2.

Finally, the AAO notes that the petitioner designated the proffered position as a Level I position on the LCA. That wage-level designation is appropriate for a comparatively low, entry-level position relative to others within its occupation group, and it signifies that the petitioner is attesting that the beneficiary is only expected to possess a basic understanding of the occupation.<sup>5</sup>

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<sup>5</sup> The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

**Level 1** (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered [emphasis in original].

[http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) (accessed May 12, 2014).

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and occupational understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. By submitting an LCA in support of the petition that has

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in the Coaches and Scouts occupational category would be sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent.

The petitioner provided numerous copies of job vacancy announcements in support of the contention that a common degree requirement exists in parallel positions within organizations that are similar to the petitioner.

First, the petitioner submitted a ten-page document from the National Christian College Athletic Association (NCCAA), which contained all athletic-related job posting within the NCCAA posted

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been certified only for use with a Level I wage-level job opportunity, the petitioner conveys that it evaluates the position as actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate is to be used when the beneficiary would only be required to possess a basic understanding of the occupation; would be expected to perform routine tasks requiring limited, if any, exercise of judgment; would be closely supervised and would have his or her work closely monitored and reviewed for accuracy; and would receive specific instructions on required tasks and expected results.



and available between May 2013 and August 2013. Since not all job advertisements related to the petitioner's proffered position in this matter, the petitioner highlighted 12 postings, which are listed below:

- Athletic Director for Greenville College
- Baseball Graduate Assistant for the petitioner
- Graduate Assistant Baseball Coach for Corban University
- Assistant Baseball Coach (Pitching) for Corban University
- Head Baseball Coach for Southwestern Assemblies of God University
- Men's Basketball Graduate Assistant Coach for the petitioner
- Head Women's Basketball Coach for Central Christian College of the Bible
- Part-Time Assistant Women's Basketball Coach for Bryan College
- Head Track and Field/Cross Country Coach for Lindsey Wilson College
- Head Men's Golf Coach for Covenant College
- Head Women's Golf Coach for Covenant College
- Graduate Assistant – Softball for Colorado Christina University

These advertisements appear to be posted by similar organizations (i.e. Christian universities within the NCCAA) for similar positions to the one proffered here. However, the AAO notes that, while all of these postings require a bachelor's degree, this requirement is not restricted to a specific specialty. In fact, most postings simply states "bachelor's degree required." It is further noted that the four positions above that are identified "graduate assistant" simply require that the candidate be enrolled in a master's program at the hiring institution, and do not mandate that the master's program, or the individual's undergraduate degree, be in a specific specialty.

Also, in addition to the ten-page document from the NCCAA website, the petitioner submitted five additional postings, set forth below:

- Head Swim Coach for Tabor College
- Head Coach – Softball at Indiana Tech
- Women's Assistant Basketball Coach for the University of the Cumberlands
- Head Men's Volleyball Coach for Clarke University
- Head Coach – Men's Wrestling for Waldorf College

Again, these advertisements also appear to be posted by similar organizations to the petitioner (these postings appear to be by colleges or universities within the National Association of Intercollegiate Athletics (NAIA)) for similar positions to the one proffered here. However, like the postings above, these postings too do not state that a degree in a specific specialty is required for entry into the position. Aside from the posting by Clarke University, all of these postings simply state that a bachelor's degree is required, or that candidates must have their undergraduate degree. The posting by Clarke University states that a "Masters degree and intercollegiate coaching experience" is preferred, yet it does not mandate that a degree is actually required. Aside from a "preference" for a Master's degree, no specific discipline in which a bachelor's degree or master's degree is outlined in this posting.

As discussed previously in this decision, the *Handbook* indicates that a bachelor's degree in any subject is an acceptable prerequisite for entry into this occupational category. These postings, which do not specifically require a degree in a *specific* discipline or specialty, further support the conclusion that degrees in any discipline would qualify a candidate for this occupation, thereby eliminating any necessary nexus between the duties to be performed within the Coaches occupational group and attainment of at least a bachelor's degree, or the equivalent, in a specific specialty closely related to positions in the group.<sup>6</sup>

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

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

For their bearing upon the record's lack of substantive evidence towards distinguishing the proffered position or its duties as particularly complex, specialized and/or unique we refer the petitioner back to our earlier comments and findings with regard to the descriptions of the proffered position and its duties, which we here incorporate into our analysis of this criterion.

In this particular case, the petitioner has not credibly demonstrated that the duties the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. The duties proposed for the beneficiary are similar to those outlined in the *Handbook* as normally performed by coaches and scouts, and the petitioner's description of the duties which collectively constitute the proffered position lacks the detail and specificity required to establish that the proffered position surpasses or exceeds the typical coach or scout positions in terms of complexity or uniqueness. As noted above, the *Handbook* indicates that the performance of duties attributed to

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<sup>6</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).



coaches and scouts do not normally require a person with a bachelor's degree, or the equivalent, in a specific specialty.

We also incorporate by reference this decision's earlier comments and findings regarding the petitioner's acceptability of a general-purpose degree in business or a related field. We also find that, even outside the context of the *Handbook*, the petitioner has simply not established relative complexity or uniqueness as attributes of the proffered position, let alone as attributes at such a level level as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. Based upon the Level I wage rate specified in the LCA, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have his work reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and with regard to employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated

by the performance requirements of the proffered position.<sup>7</sup> 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, or the equivalent, in a specific specialty.

While a petitioner may believe and assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the actual performance requirements of the position necessitate a petitioner's history of requiring a particular degree in its recruiting and hiring for the position. *See generally Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

In response to the RFE, counsel for the petitioner asserts that the petitioner "mandates that all coaches possess a minimum of a Bachelor's degree." In support of this contention, counsel submitted the resumes of seven individuals as evidence of the petitioner's educational requirements for its coaches. However, out of the seven resumes submitted, only four reference coaching

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<sup>7</sup> Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the occupation.



positions with the petitioner.<sup>8</sup> All four of these resumes demonstrate the possession of bachelor's degrees in disparate fields, as follows:

- [REDACTED] Head Coach, 2013 to Present; Bachelor's Degree in Mathematics; Master's Degree in Education
- [REDACTED] Head Volleyball Coach, 2010 to Current; Bachelor's Degree in Physical Education
- [REDACTED] Assistant Basketball Coach/JV Coach, 2000-2001; Bachelor's Degree in Exercise Science
- [REDACTED] Head Soccer Coach, 2010 to Present; Bachelor's Degree in Physical Education; Master's Degree in Business Administration

While the AAO acknowledges this documentation as suggesting that the petitioner routinely employs degreed individuals in coaching positions, these documents, without more, do not establish that the petitioner has a practice of normally requiring for the proffered position at least a bachelor's degree, or the equivalent, in a specific specialty.

None of the claimed positions held by these individuals is that of the proffered position, which is identified as "Track Coach." Further, aside from the statements in the resumes, there is no independent evidence outlining the nature of these positions and their associated duties, such that we could determine whether these positions require the performance of the same duties as those of the proffered position in this matter.

Further, the aggregate of the resumes reflect a variety of degrees in different fields that include fields that do not appear directly related to any significant extent to the proffered position and its duties as described in the petition. Consequently, the resumes do not establish a routine practice of hiring only specialty-degreed individuals for the proffered position as contemplated by the regulation.

Finally, aside from these resumes, no evidence, such as payroll records evidencing the actual employment of these individuals by the petitioner, or educational transcripts, demonstrating that these individuals actually hold the degrees they claim to hold, has been submitted. Absent additional documentation pertaining to the petitioner's hiring and recruitment practices for the proffered position that is the subject of the instant petition, the evidence discussed above is not sufficient to satisfy this criterion.

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<sup>8</sup> The resumes of [REDACTED] and [REDACTED], although they list coaching experience, do not identify the petitioner as an employer nor is there a claim that they served as coaches for the petitioner. The resume for [REDACTED] does not identify any coaching experience at all, and makes no reference to the petitioner anywhere in the resume. That being said we still note that (1) the [REDACTED] resume cites "complet[ion] of requiremnts for a BA, Business Management"; (2) the [REDACTED] resume references a "B.S. in Exercise Science" and an "M.S. in Sports Pedagogy"; and (3) the [REDACTED] resume references a "B.S. in Business Administration with a concentration in Management" and an "M.S., Sports Adminstration."

As the evidence of record has not demonstrated a history of recruiting and hiring for the proffered position only persons with a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

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

The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved 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. For a more detailed discussion of the lack of substantive evidence towards distinguishing the proffered position or its duties as particularly complex, specialized and/or unique we refer the petitioner back to our earlier comments and findings with regard to the descriptions of the proffered position and its duties, which we here incorporate into our analysis of this criterion.

The AAO observes that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the LCA's Level I wage-level is indicative of duties of relatively low complexity, and, as such is inconsistent with the level of relative complexity required to satisfy this criterion.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

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

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

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level



II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

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

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

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

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

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

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

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

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's

instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

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

Finally, the AAO notes that counsel cites to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." 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). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.<sup>9</sup> The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when

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<sup>9</sup> It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.



it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

#### IV. CONCLUSION

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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

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