

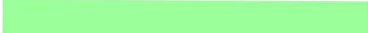



U.S. Citizenship  
and Immigration  
Services

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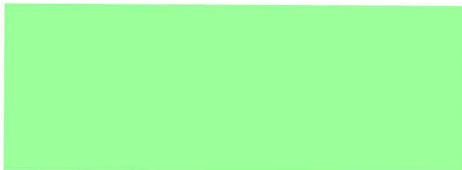


DATE: **SEP 11 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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 (hereinafter "director") denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed. The petition will be denied.

## I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a charter aircraft and air ambulance services firm established in 1984. In order to employ the beneficiary in what it designates as a "Risk Management Specialist (Aviation)" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

As will be discussed below, we have determined that the director did not err in her decision to deny the petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

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

## II. THE LAW

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

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

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

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

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

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

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

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

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



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

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

### III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a "Risk Management Specialist (Aviation)" position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2099, Financial Specialists, All Other from the Occupational Information Network (O\*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a degree in business administration from [REDACTED] in Turkey. An evaluation in the record states that the beneficiary's degree is equivalent to a U.S. bachelor's degree in business administration.

Counsel also submitted pamphlets and printouts of web content pertinent to the petitioner's operations, and a letter, dated April 2, 2013, from the petitioner's president, that contains the following description of the duties of the proffered position:

- Utilize the [petitioner's Safety Management System (SMS)] to assess the company's operation safety issues, analyze data and specific events to present reports addressing risk assessment.
- Apply various methodologies to quantify risk.
- Compare internal safety procedures to external industry standards to insure company's [SMS] . . . meets and/or exceeds industry standards.
- Maintain a proactive approach to the identification and implementation of [the petitioner's SMS].



- Communicate and collaborate with various Federal agencies including the Federal Aviation Administration on matters relating to safety, including oversight and implementation of regulation compliances.
- Oversee the continuous compliance with the Department of Defense Air Carrier Certification inspections.
- Oversee and respond to the site surveys required by the Commission on Accreditation of Medical Transport Services.
- Verify that [the petitioner's SMS] complies with all regulatory requirements both in the manual and in the day-to-day operation of the company.

As to the educational requirement of the proffered position, the petitioner's president stated:

A minimum of a Bachelor's degree is [the petitioner's] normal entry requirement for this sort of safety and risk management position in which we wish to employ [the beneficiary].

He also stated:

Furthermore, the specific duties of this position are so complex and specialized that the knowledge required to perform the duties is usually associated with obtaining a degree, or its equivalent.

The pamphlets and web content pertinent to the petitioner's operations indicate that the petitioner is very concerned with safety. They do not directly address whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

On September 19, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements.

In response, counsel submitted (1) 15 vacancy announcements; (2) an organizational chart of the petitioner's operations; (3) the résumé and other evidence pertinent to [REDACTED], one of the petitioner's other employees; (4) evidence pertinent to Federal Aviation Administration (FAA) recommendations and proposed requirements pertinent to Airline SMSs, and (5) a letter, dated December 10, 2013, from the petitioner's president. The vacancy announcements will be addressed below.

The petitioner's organizational chart shows that the proffered position reports directly to the petitioner's Director of Safety.

The résumé of [REDACTED] states that he is the petitioner's Director of Safety and that he has a bachelor's degree in industrial engineering and a master's degree in business administration. Other evidence in the record indicates that he has a master's degree in business administration.

The evidence pertinent to SMS recommendations and proposed requirements from the FAA demonstrates that the FAA is very concerned about airline safety, but does not directly address whether the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

The December 10, 2013 letter from the petitioner's president reiterates the previously provided duty description. It also states that [REDACTED] has worked for the petitioner since 2000 and has performed the duties of the proffered position for the petitioner.

The petitioner's president further stated that the proffered position requires a bachelor's degree because it "is complicated and must be performed in a highly complex regulatory environment where safety compliance is a life and death matter." He further stated that the evidence submitted demonstrates the complexity of the proffered position and that its duties cannot be performed by anyone without at least a bachelor's degree.

The director denied the petition on January 10, 2014, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the brief submitted on appeal, counsel asserted that the proffered position requires the theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's degree as a minimum requirement for entry. Counsel stated that the proffered position has been correctly characterized as a financial specialist position and observed that the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* states that a bachelor's degree in finance, accounting, economics, or business administration is often the minimum requirement for such positions. Counsel cited the *Handbook*, the evidence submitted pertinent to the petitioner's operations, and the evidence pertinent to FAA SMS recommendations and proposed requirements as evidence that the proffered position normally requires a bachelor's degree. Counsel stated, "This Risk Management position is a specialty occupation requiring at least a bachelor's degree in business administration, finance, or a related field."

In that brief, counsel also stated: "[I]n instances where the [*Handbook*] simply does not have an entry for a specific occupation, [USCIS] should consider other [*Handbook*] listings that are most similar to the proffered position."



#### IV. SPECIALTY OCCUPATION ANALYSIS

Preliminarily, we observe that the petitioner has not asserted that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

More specifically, in his April 2, 2013 letter, the petitioner's president stated that the proffered position requires a minimum of a bachelor's degree, but not that the degree must be in any specific specialty. In his December 10, 2013 letter, the petitioner's president reiterated that the proffered position requires a bachelor's degree, but did not indicate that it requires a degree in any specific specialty. On appeal, counsel asserted that the proffered position requires a bachelor's degree in business administration, finance, or a related field.

None of those assertions suggest that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertions in the letters provided by the petitioner's president do not indicate that the requisite degree must be in any specific specialty. Further, counsel appeared to indicate that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position. A degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The assertion that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the proffered position is tantamount to an admission that the proffered position does not require a minimum of a bachelor's degree in a specific specialty or its equivalent and does not, therefore, qualify as a specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, we turn next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook* on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).



We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup>

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-2099, Financial Specialists, All Other, and that of the positions described in the *Handbook*, it corresponds most closely to positions described in the Financial Managers chapter. We reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Financial Managers," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of Financial Managers:

### **What Financial Managers Do**

Financial managers are responsible for the financial health of an organization. They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization.

### **Duties**

Financial managers typically do the following:

- Prepare financial statements, business activity reports, and forecasts
- Monitor financial details to ensure that legal requirements are met
- Supervise employees who do financial reporting and budgeting
- Review company financial reports and seek ways to reduce costs
- Analyze market trends to find opportunities for expansion or for acquiring other companies
- Help management make financial decisions

The role of the financial manager, particularly in business, is changing in response to technological advances that have substantially reduced the amount of time it takes to produce financial reports. Financial managers' main responsibility used to be monitoring a company's finances, but they now do more data analysis and advise senior managers on ideas as to how to maximize profits. They often work on teams, acting as business advisors to top executives.

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

Financial managers also do tasks that are specific to their organization or industry. For example, government financial managers must be experts on government appropriations and budgeting processes, and healthcare financial managers must know about issues in healthcare finance. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry. For more information on chief financial officers, see the profile on top executives.

The following are examples of types of financial managers:

**Controllers** direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by governmental agencies that regulate businesses. Often, controllers oversee the accounting, audit, and budget departments of their organization.

**Treasurers** and **finance officers** direct their organization's budgets to meet its financial goals. They oversee the investment of funds and carry out strategies to raise capital (such as issuing stocks or bonds) to support the firm's expansion. They also develop financial plans for mergers (two companies joining together) and acquisitions (one company buying another).

**Credit managers** oversee their firm's credit business. They set credit-rating criteria, determine credit ceilings, and monitor the collections of past-due accounts.

**Cash managers** monitor and control the flow of cash that comes in and goes out of the company to meet the company's business and investment needs. For example, they must project cash flow (amounts coming in and going out) to determine whether the company will not have enough cash and will need a loan or will have more cash than needed and so can invest some of its money.

**Risk managers** control financial risk by using hedging and other strategies to limit or offset the probability of a financial loss or a company's exposure to financial uncertainty. Among the risks they try to limit are those due to currency or commodity price changes.

**Insurance managers** decide how best to limit a company's losses by obtaining insurance against risks such as the need to make disability payments for an employee who gets hurt on the job and costs imposed by a lawsuit against the company.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Managers," <http://www.bls.gov/ooh/management/financial-managers.htm#tab-2> (last visited Sept. 10, 2014).

The *Handbook* states, as the central duties of financial managers positions, that they are responsible for the financial health of an organization. "They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization."

The proffered position, on the other hand, involves assessing operations safety issues, quantifying risk, comparing the petitioner's safety procedures to those of other organizations in the industry and to salient Federal regulations, implementing the petitioner's SMS, etc. The duties of the proffered position bear almost no similarity to the duties of positions described in the Financial Managers chapter of the *Handbook*. The proffered position is not a financial manager position.<sup>2</sup>

However, the *Handbook* describes the duties of an Occupational Health and Safety Specialist as follows:

### **What Occupational Health and Safety Specialists Do**

Occupational health and safety specialists analyze many types of work environments and work procedures. Specialists inspect workplaces for adherence to regulations on safety, health, and the environment. They also design programs to prevent disease or injury to workers and damage to the environment.

### **Duties**

Occupational health and safety specialists typically do the following:

- Identify hazards in the workplace
- Collect samples of potentially toxic materials for analysis

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<sup>2</sup> We observe that if the petitioner had demonstrated the proffered position to be a financial manager position, it would have been unlikely to qualify as a specialty occupation position, as the *Handbook* indicates that an otherwise unspecified degree in business administration is a sufficient educational qualification for some such positions. Because a requirement of an otherwise unspecified degree in business administration is not, as was explained above, a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, a requirement that may be satisfied by an otherwise unspecified bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and does not mark a position as a specialty occupation position. Further, the petitioner designated the proffered position to be a Level I Financial Manager position. A Level I position is an entry-level position for an employee who has only basic understanding of 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). As such, a Level I Financial Manager position is even less likely to qualify as a specialty occupation position than other Financial Manager positions.



- Inspect and evaluate workplace environments, equipment, and practices for compliance with corporate and government health and safety standards and regulations
- Design and implement workplace processes and procedures that help protect workers from potentially hazardous work conditions
- Investigate accidents and incidents to identify their causes and to determine how they might be prevented in the future
- Conduct training on a variety of topics such as emergency preparedness

Occupational health and safety specialists examine lighting, equipment, ventilation, and other conditions and materials in the workplace that could affect employee health, safety, comfort, and performance. Specialists seek to increase worker productivity by reducing absenteeism and equipment downtime. They also seek to save money by lowering insurance premiums and workers' compensation payments and by preventing government fines.

Some specialists develop and conduct employee safety and training programs. These programs cover a range of topics, such as how to use safety equipment correctly and how to respond in an emergency.

In addition to protecting workers, specialists also work to prevent harm to property, the environment, and the public by inspecting workplaces for chemical, physical, radiological, and biological hazards. Specialists who work for governments conduct safety inspections and can impose fines.

Occupational health and safety specialists work with engineers and physicians to control or fix potentially hazardous conditions or equipment. They also work closely with occupational health and safety technicians to collect and analyze data in the workplace.

The tasks of occupational health and safety specialists vary by industry, workplace, and types of hazards affecting employees. The following are examples of types of occupational health and safety specialists:

**Ergonomists** consider the design of industrial, office, and other equipment to maximize workers' comfort, safety, and productivity.

**Health physicists** work in locations that use radiation and radioactive material. They help to protect people and the environment from hazardous radiation exposure that may be caused by medical treatments or come from nuclear plants, among other sources.

***Industrial or occupational hygienists*** identify workplace health hazards, such as lead, asbestos, noise, pesticides, and communicable diseases.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Occupational Health and Safety Specialists," <http://www.bls.gov/ooh/healthcare/occupational-health-and-safety-specialists.htm#tab-2> (last visited Sept. 10, 2014).

The duties the petitioner's president attributed to the proffered position are entirely consistent with the duties of Occupational Health and Safety Specialists as described in the *Handbook*. We find that the proffered position is an Occupational Health and Safety Specialist position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of Occupational Health and Safety Specialists positions:

#### **How to Become an Occupational Health and Safety Specialist**

Occupational health and safety specialists typically need a bachelor's degree. Specialists usually receive on-the-job training in inspection procedures and regulations.

#### **Education**

Occupational health and safety specialists typically need a bachelor's degree in occupational health, safety, or a related scientific or technical field, such as engineering, biology, or chemistry. For some positions, a master's degree is required in industrial hygiene, health physics, or a related subject.

Typical courses include radiation science, hazardous material management and control, risk communications, and respiratory protection. These courses may vary, depending on the specialty in which a student wants to work. For example, courses in health physics focus on topics that differ from those in industrial hygiene.

Internships are not required, but employers may prefer to hire candidates who have participated in one.

High school students interested in becoming occupational health and safety specialists should take courses in English, math, chemistry, biology, and physics.

#### **Training**

Although occupational health and safety specialists learn standard laws and procedures in their formal education, they also need some on-the-job training for

specific work environments. For example, a specialist who will inspect offices needs different on-the-job training than a specialist inspecting factories.

### **Important Qualities**

***Ability to use technology.*** Occupational health and safety specialists must be able to use advanced technology. They often work with complex testing equipment.

***Communication skills.*** Occupational health and safety specialists must be able to communicate safety instructions and concerns to employees and managers. They need to be able to work with technicians to collect and test samples of possible hazards, such as dust or vapors, in the workplace.

***Detail oriented.*** Occupational health and safety specialists must pay attention to details. They need to recognize and adhere to specific safety standards and government regulations.

***Physical stamina.*** Occupational health and safety specialists must be able to stand for long periods and be able to travel regularly. Some specialists work in environments that can be uncomfortable, such as tunnels or mines.

***Problem-solving skills.*** Occupational health and safety specialists must be able to solve problems. They need to be able to find solutions to unsafe working conditions and environmental concerns in the workplace.

### **Licenses, Certifications, and Registrations**

Although certification is voluntary, many employers encourage it. Certification is available through several organizations, depending on the field in which the specialists work. Specialists must have graduated from an accredited educational program and have work experience to be eligible to take most certification exams. To keep their certification, specialists are usually required to complete periodic continuing education.

*Id.* at <http://www.bls.gov/ooh/healthcare/occupational-health-and-safety-specialists.htm#tab-4> (last visited Sept. 10, 2014).

The *Handbook* makes clear that Occupational Health and Safety Specialist positions do not, as a category, require a minimum of a bachelor's degree or the equivalent, as it indicates that an otherwise undifferentiated degree in engineering is a sufficient qualification for some such positions.

The requirement of a bachelor's degree in engineering, without further specification, is inadequate to establish that a 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 to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of degrees with generalized titles, such as engineering,<sup>3</sup> 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).

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of airline safety, including FAA regulations, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, we find 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

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<sup>3</sup> The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, a requirement that may be satisfied by a degree in any branch of engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

(1) to the petitioner's industry; and (2) for positions within that industry that are both: (a) parallel to the proffered position, and (b) located in organizations that are similar to the petitioner.

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

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

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

As was noted above, the petitioner did submit 15 vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations.

Some of the vacancy announcements are for positions that are outside of the United States. We observe that 8 C.F.R. § 214.2(h)(4)(ii) defines Specialty Occupation by reference to the minimum requirements for entry into the occupation in the United States. The announcements of foreign vacancies are not directly relevant to whether the proffered position qualifies as a specialty occupation pursuant to the salient definition at 8 C.F.R. § 214.2(h)(4)(ii).

Some of the vacancy announcements provided were placed by a humanitarian agency; a state aviation administration; a county airport authority; [REDACTED]; the [REDACTED]; an engineering and technology applications firm; an aerospace engineering firm; a healthcare, manufacturing, and construction company; a theme park; a food distributor; and a staff leasing and placement company. Those organizations have not been shown by the petitioner to be in the petitioner's industry. The criterion of the first alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) can be satisfied only by reference to positions within the petitioner's industry. Vacancy announcements pertinent to positions outside of the petitioner's industry are of no direct relevance to this criterion.

Some of the vacancy announcements indicate a preference for a bachelor's degree in a particular subject. We observe that a preference is not a minimum requirement. Those vacancy announcements do not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and are of little evidentiary weight in demonstrating that similar



organizations in the petitioner's industry require a minimum of a bachelor's degree in a specific specialty or its equivalent for positions parallel to the proffered position.

Some of the vacancy announcements indicate that an otherwise unspecified bachelor's degree in engineering would be a sufficient educational preparation for the position announced. As was explained above, an educational requirement that may be satisfied by an otherwise unspecified bachelor's degree in engineering is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Most of the vacancy announcements provided indicate that an otherwise unspecified bachelor's degree in business administration would be a sufficient educational qualification for the position announced. As was explained above, an educational requirement that may be satisfied by an otherwise unspecified bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

The position offered in one vacancy announcement is Aviation Business Analyst. One is for a "Senior Analyst – IT Adm – Host System Analysis." Three are for a Safety and Risk Manager, a Senior Manager, Safety Services & Operational Risk Protection, and a Risk/Safety Manager in organizations unrelated to the airline industry. The duty descriptions in those vacancy announcements make clear that the positions announced are not directly related to airline safety. As such, those positions are not similar to the proffered position.

Almost all of the vacancy announcements indicate that the positions announced require experience. Some indicate a requirement of a considerable amount of very specialized experience. As was explained above, the petitioner's assertion that the proffered position is a Level I position indicates that it is an entry-level position for an employee who has only basic understanding of the occupation. The positions that require experience appear not to be Level I positions and appear, therefore, not to be positions parallel to the proffered position.

None of the vacancy announcements provided have been demonstrated to be for positions that are parallel to the proffered position, in the petitioner's industry, in organizations otherwise similar to the petitioner, and require a minimum of a bachelor's degree in a specific specialty or its equivalent. Further, even if all of the vacancy announcements provided were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 15 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>4</sup>

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<sup>4</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. 369, 376 (AAO 2010). 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



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

The evidence of record also does not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner 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 of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.<sup>5</sup>

The December 10, 2013 letter from the petitioner's president states that [REDACTED] has worked for the petitioner since 2000 and has performed the duties of the proffered position for the petitioner. However, the visa petition states that the petitioner was established in 1984. The petitioner provided no evidence pertinent to anyone who performed the duties of the proffered position prior to 2000, and no evidence that [REDACTED] is the only person who has performed those duties for the petitioner. For this reason alone, the petitioner has failed to demonstrate that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further, however, the evidence pertinent to [REDACTED] indicates that he has a bachelor's degree in industrial engineering and an otherwise unspecified master's degree in business administration. The record contains no evidence that a bachelor's degree in industrial engineering is a degree in a specific specialty closely and directly related to the proffered position. Further, as was explained above, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates, supra*. That [REDACTED] has worked in the proffered position does not support the assertion that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

Further still, the petitioner has indicated that it intends to employ the beneficiary in the proffered position. The beneficiary, however, has not been shown to have any degree other than an otherwise unspecified bachelor's degree in business administration. As was explained above, that is not a degree in a specific specialty. The petitioner's willingness to hire the beneficiary to fill the proffered position also suggests that the petitioner does not normally require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

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

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<sup>5</sup> While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").



Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The duties of the proffered position, such as assessing the petitioner's safety issues, quantifying risk, comparing the petitioner's safety procedures to those of other companies and those required by Federal regulations, etc., have not been shown to be of a nature so specialized and complex that they require knowledge usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of occupational health and safety specialist positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The evidence of record does not, therefore, satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. ADDITIONAL ISSUES

The record suggests additional issues that were not addressed in the decision of denial.

### A. BENEFICIARY QUALIFICATIONS

As noted above, the beneficiary has the equivalent of a U.S. bachelor's degree in business administration. The record contains no indication that the beneficiary has any other degree or degree equivalent.

As explained above, an otherwise unspecified degree in business administration is not a degree in a specific specialty. As such, the beneficiary has not been shown to have a minimum of a bachelor's degree in a specific specialty or its equivalent and has not been shown to be qualified to work in any specialty occupation position.

### B. NON-CORRESPONDING LCA

As was also noted above, the LCA provided was certified for employment of position described at SOC Code and Title 13-2099, Financial Specialists, All Other in O\*NET. However, we have found that the proffered position is not such a position, but is an occupational health and safety specialist position. Those positions are described in O\*NET at SOC Code and Title 29-9011.00, Occupational Health and Safety Specialists.

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

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a



labor condition application in the occupational specialty in which the alien(s) will be employed.

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

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

[Italics added]

The instant visa petition was submitted without a corresponding LCA. The visa petition must be denied for this additional reason.

## VI. CONCLUSION

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

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

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

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