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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: **SEP 19 2014**

OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg

Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center. In the Form I-129 visa petition, the petitioner describes itself as a cotton textiles importer and distributor that was established in [REDACTED]. In order to employ the beneficiary in what it designates as a marketing specialist 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 the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel for the petitioner asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, we agree with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the appeal will be dismissed.¹

I. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as a marketing specialist on a full-time basis. In the letter of support, the petitioner provided the following information regarding the duties of its marketing specialist position:²

In the temporary, professional specialty-occupation of Marketing Specialist, [the beneficiary] will collect and analyze data on customer demographics, preferences, needs and buying habits to identify potential markets and factors affecting product demand, gather data on competitors and analyze their prices, sales and marketing and distribution methods, devise and evaluate methods and procedures for collecting data, monitor industry statistics and follow trends in trade literature, measure and assess customer satisfaction, measure marketing, advertising and communications

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

² We observe that the wording of the duties provided by the petitioner for the proffered position are taken almost verbatim from the Occupational Information Network (O*NET) Code Connector's summary of the tasks associated with a market research analysts and marketing specialists position and a job posting found on the Internet for a regional account manager for employment with a leader in separation equipment for the scrap metal market.

effectiveness, forecast and track marketing and sales trends, and prepare reports of findings. [The beneficiary] will be responsible for the development and performance of sales activities in the government and institutional textile market. He will establish plans and strategies to expand the customer base in the marketing area and contribute to the development of training and educational programs for clients and account executives. Further, he will actively respond to government bidding opportunities, staff and direct a sales team, and provide leadership towards the achievement of maximum profitability and growth in line with the company vision and values. Specifically, [the beneficiary's] role will involve developing a business plan and sales strategy supporting the company's sales and profitability goals; preparing action plans for effective search for sales leads and prospects; preparing pricing and bid responses; initiating and coordinating development of action plans for new markets penetration; assisting in the development and implementation of marketing plans; maintaining accurate records of pricings, sales and activity reports submitted by account executives; creating and conducting proposal presentations and RFP responses; providing timely, accurate, and competitive pricing on all completed prospect applications while striving to maintain maximum profit margin, and providing timely feedback to senior management.

Given the complexities of the above described duties, a minimum of a Bachelor's degree in Business Administration (or the foreign equivalent), with coursework in marketing or a closely related field is required for this position.

The petitioner submitted a copy of the beneficiary's foreign academic credentials, as well as a credential evaluation from the [REDACTED]. The credential evaluation states that the beneficiary's combined foreign academic credentials amount to the "equivalent to the degree, Bachelor of Arts in Economics and in Business Administration/Marketing, from a regionally accredited university in the United States."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The director noted that the evidence submitted was insufficient to establish eligibility for the benefit sought. The director further outlined the specific evidence to be submitted.

The petitioner and its counsel responded to the RFE. In a letter dated August 29, 2013, the petitioner stated that "[t]he Marketing Specialist's duties require a minimum of a Bachelor's degree, *preferably* including coursework in Marketing, Supply Chain Management, Brand Management, Economics, and Business [emphasis added]."³ In addition, the petitioner provided a revised job description of the proffered position, along with the approximate percentage of time the beneficiary will spend performing each duty, as follows:

➤ **Research and develop new products or upgrade existing one. Coordinate**

³ Obviously, a *preference* for a degree in marketing, supply chain management, brand management, economics or business is not an indication of a *requirement* of a degree in one of these disciplines.

with sourcing department in getting the samples done and introducing to the customers. (10%)

- **Perform analysis of customer performance metrics and work with operations and sourcing to develop strategy to improve sales. (3%)**
- **Recognize repeated market needs that current products do not meet, and make recommendations on how to adapt appropriately. (2%)**
- **Prepare high-quality written responses to standard and customized proposals (RFPs, RFIs, RFQs, Finalist Presentations), adhering to strict deadlines. Prepare other responses including standard proposals, executive summaries, questionnaires and other documents for institutional clients. Research, write and edit technical proposal sections including but not limited to, company background, targeted past performance citations, financial and technical qualification statements. Compile bid responses, marketing material and resumes creating a comprehensive, organized, compliant package presented to potential and existing institutional retirement plan clients. (20%)**
- **Identify procurement opportunities with federal, state, local government agencies by doing [the] following. (7%)**
 - Search [REDACTED]
 - Subscribe to a bid-matching service
 - Networking
 - Work with a [REDACTED]
- **Help with government forms, registration and certification applications. Register and update [REDACTED] Supply Schedule. Obtain federal and military specifications, drawings and standards necessary to complete a bid package. Ensure compliance with government contracting regulations. (7%)**
- **Research on procurement histories from potential agencies for company products. Marketing company products to potential prime contractors. Match company products with government sales leads. Check [REDACTED] through government agencies. Research past bids or get debriefing on bids from procurement officers. Use data analysis tools and techniques to target those contracts that company has the highest likelihood of winning. (15%)**
- **Attend information seminars, get educated about the market development potential, the opportunities and the possible pitfalls of the government contracting process. Coordinate and outreach to increase participation in government contracts. Examine each agency's five-year strategic plan to learn about its upcoming priorities. Anticipate future business opportunities by**

tracking bills as they work their way through Congress and by monitoring the priorities of the administration. (5%)

- Attend traditional trade-shows.
 - Attend agency events.
 - Attend pre-bid conferences.
- Correspond with bid agencies to query bid related questions such as state specific compliance requirements, last bid price, average order quantity etc. (7%)
 - Correspond with bid agencies to query bid related questions such as state specific compliance requirements, last bid price, average order quantity etc. (7%) [sic]
 - Establish a system of documentation, communication and review of internal and external comparative price data, including wins and losses due to price. (4%)
 - Organize baseline price information, analyze and report on inconsistencies, and identify opportunities to optimize sales and profitability through price strategies. Develop pricing level for different customers, defining price and terms and conditions and enter into contract with customers. (6%)
 - Build and enhance strong customer relationship with key decision makers with new and existing customers. Negotiate pricing and terms and conditions and enter into contract with customers. (6%)
 - Manage customer product file with respect to the product specification, quantity and pricing of the items customer agrees to buy. Share the information with operations and sourcing department so that the goods are procured and maintained in inventory as per customer requirement. (4%)
 - Manage the handling of any quality issues or customer complaints about product or untimely shipment, coordinate with sourcing to find resolution of the problem in light of technicalities of product. (3%)
 - Coordinate the development and enhancement of the marketing material like catalog, brochure, website enhancements, development, & content etc. (2%)

[Emphasis in the original.]

In addition, the petitioner and counsel submitted: (1) the petitioner's 2012 income tax return; (2) an organizational chart; (3) [REDACTED] Form W-2, Wage and Tax Statement, and Bachelor of Science in Business Administration from [REDACTED] (4) a letter from [REDACTED] Senior Sales Manager for [REDACTED] (5) a letter from [REDACTED] Vice President of [REDACTED] (6) a letter from [REDACTED] President of [REDACTED] (7) job vacancy announcements; (8) copies of the petitioner's contracts and invoices; (9) a catalog of

the petitioner's products; and (10) a credential evaluation from the [REDACTED] which indicates that the beneficiary's combined foreign academic credentials amount to the "equivalent to the degree, Bachelor of Arts in Economics, and to the degree, Bachelor of Business Administration in Marketing Management, from a regionally accredited university in the United States."

The petitioner and counsel also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition.⁴ The LCA designation for the proffered position corresponds to the occupational category "Marketing Research Analysts and Marketing Specialists" – SOC (ONET/OES Code) 13-1161, at a Level I (entry level) wage.

The director reviewed the information provided by the petitioner and counsel. 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 November 25, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

II. PREPONDERANCE OF THE EVIDENCE STANDARD

In light of counsel's references to the requirement that U.S. Citizenship and Immigration Services (USCIS) apply the "preponderance of the evidence" standard, we affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

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

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative

⁴ It must be noted for the record that with the initial petition, the petitioner submitted an LCA for the position of "VP, [REDACTED]" In response to the RFE, counsel stated that "[w]e regretfully included the wrong LCA with our original H-1B petition."

value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

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

Id.

As noted above, we conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon our review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

III. MATERIAL FINDINGS – BEYOND THE DIRECTOR'S DECISION

The primary issue in this matter is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

Requirements for the Proffered Position

To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

Upon review of the record of proceeding, we note that the petitioner and counsel have provided inconsistent information regarding the academic requirements of the proffered position. For example, in the letter of support, the petitioner stated that "a Bachelor's degree in Business Administration (or the foreign equivalent), with coursework in marketing or a closely related field is required for this position." However, in response to the director's RFE, the petitioner stated that the proffered position requires a "Bachelor's degree, preferably including coursework in Marketing, Supply Chain Management, Brand Management, Economics, and Business." On appeal, counsel states that "the position of Marketing Specialist in a \$14.5 million company, requires the services of an individuals [*sic*] with a bachelor's degree in business preferably with a focus in marketing." No explanation for the variances was provided.

The petitioner initially claimed that a bachelor's degree in business administration with coursework in marketing or a closely related field is sufficient for the proffered position. The claimed requirement of a degree in business administration, with some coursework in marketing for the proffered position, without further specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation.⁵ 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, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The petitioner claimed, in response to the RFE, that a bachelor's degree in marketing, supply chain management, brand management, economics or business is required for the position. We note that to demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study, or its equivalent. The petitioner's *preference* for a degree in marketing, supply chain management, brand management, economics and/or business is not an indication of a *requirement* of a degree in one of these disciplines. Thus, the petitioner's assertion in response to the RFE is also insufficient to establish the proffered position as qualifying as a specialty occupation.

Furthermore, even assuming for the sake of argument that the petitioner required a bachelor's degree in marketing, supply chain management, brand management, economics and/or business for the proffered position, the statement is inadequate to establish that the proposed position qualifies as a specialty occupation. 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" 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 disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the

⁵ Requiring coursework in a particular field is not synonymous with requiring a degree in that particular field.

petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner notes its preference of a degree in marketing, supply chain management, brand management, economics and/or business. The issue here is that it is not readily apparent that these fields of study are closely related or that all of the fields are directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, simply fails to establish either (1) that all of these disciplines are closely related fields, or (2) that all of the fields are directly related to the duties and responsibilities of the proffered position. As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge in a specific specialty, or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a degree in any of these fields suggests that the proffered position is not in fact a specialty occupation. Therefore, absent probative evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires at least a bachelor's degree in a specific specialty, or its equivalent.

Again, to demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed above, 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).⁶

⁶ 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

Upon review of the record of proceeding, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion. The petitioner's assertions regarding its requirements for the proffered position are tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the petitioner had overcome the ground for the director's denial of the petition (which it did not do) the instant petition could not be approved for this reason.

IV. THE ISSUE ON APPEAL

As noted above, the director determined that the petitioner had not established that the position proffered here is a specialty occupation. Accordingly, the issue on appeal is whether the petitioner provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

A. The Law

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

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.

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), the 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.

B. Analysis

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

We recognize DOL's *Occupational Outlook Handbook* (hereafter the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses. As previously discussed, the petitioner attested in the LCA that the proffered position falls under the occupational category "Marketing Research Analysts and Marketing Specialists."

We reviewed the chapter of the *Handbook* entitled "Market Research Analysts," including the sections regarding the typical duties and requirements for this occupational category.⁷ However, the *Handbook* does not indicate that "Market Research Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Market Research Analyst" states the following about this occupational category:

Most market research analysts need at least a bachelor's degree. Top research positions often require a master's degree. Strong math and analytical skills are essential.

⁷ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Market Research Analysts."

Education

Market research analysts typically need a bachelor's degree in market research or a related field. Many have degrees in fields such as statistics, math, and computer science. Others have backgrounds in business administration, the social sciences, or communications.

Courses in statistics, research methods, and marketing are essential for these workers. Courses in communications and social sciences, such as economics, psychology, and sociology, are also important.

Some market research analyst jobs require a master's degree. Several schools offer graduate programs in marketing research, but many analysts complete degrees in other fields, such as statistics and marketing, and/or earn a Master of Business Administration (MBA). A master's degree is often required for leadership positions or positions that perform more technical research.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Market Research Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/market-research-analysts.htm#tab-4> (last visited September 8, 2014).

When reviewing the *Handbook*, we must note that the petitioner designated the proffered position under this occupational category at a Level I on the LCA.⁸ This designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and will perform routine tasks that require limited, if any, exercise of judgment. In accordance with the relevant DOL explanatory information on wage levels, the beneficiary will be closely supervised and his work closely monitored and reviewed for accuracy. Furthermore, he will receive specific instructions on required tasks and expected results. DOL guidance indicates that a Level I

⁸ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

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

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.

designation is appropriate for a research fellow, a worker in training, or an internship. This designation suggests that the beneficiary will not serve in a high-level or leadership position relative to others within the occupational category.

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. This passage of the *Handbook* reports that market research analysts have degrees and backgrounds in a wide-variety of disparate fields. The *Handbook* states that employees typically need a bachelor's degree in market research or a related field, but the *Handbook* continues by indicating that many market research analysts have degrees in fields such as statistics, math, or computer science. According to the *Handbook*, other market research analysts have a background in fields such as business administration, one of the social sciences, or communications. The *Handbook* notes that various courses are essential to this occupation, including statistics, research methods, and marketing and reports that courses in communications and social sciences (such as economics, psychology, and sociology) are also important. Again, however, since there must be a close correlation between the required "body of highly specialized knowledge" and the position, a minimum entry requirement of a degree in disparate fields, such as math and communications, 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).

Here, although the *Handbook* indicates that an advanced degree is typically needed for these positions, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields and backgrounds (i.e., social science and computer science) as acceptable for entry into this occupation, the *Handbook* also states that "others have a background in business administration." As previously discussed, 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 at 147. Therefore, the *Handbook's* recognition that a general, non-specialty "background" in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a market research analyst does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as qualifying as a specialty occupation.

The director reviewed the job descriptions provided by the petitioner and found that the proffered position falls under the occupational classification of "Purchasing Managers, Buyer, and Purchasing Agents."⁹ For thoroughness we will also review this additional occupational classification. The

⁹ On appeal, counsel asserts that the proffered position is not a purchasing agent position. In addition, counsel claims that the petitioner "has a purchasing agent – [REDACTED] – whose job it is to do all of the buying and purchasing, which is NOT what the Marketing Specialist has been assigned to do." Notably, the

subchapter of the *Handbook* entitled "How to Become a Purchasing Manager, Buyer, or Purchasing Agent" states the following about this occupational category:

Education

Educational requirements usually vary with the size of the organization. A high school diploma is enough at many organizations for entry into the purchasing agent occupation, although large stores and distributors may prefer applicants who have completed a bachelor's degree program and have taken some business or accounting classes. Many manufacturing firms put an even greater emphasis on formal training, preferring applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences.

Purchasing managers usually have at least a bachelor's degree and some work experience in the field. A master's degree may be required for advancement to some top-level purchasing manager jobs.

Training

Buyers and purchasing agents typically get on-the-job training for more than 1 year. During this time, they learn how to perform their basic duties, including monitoring inventory levels and negotiating with suppliers.

Work Experience in a Related Occupation

Purchasing managers typically must have at least 5 years of experience as a buyer or purchasing agent. At the top levels, purchasing manager duties may overlap with other management functions, such as production, planning, logistics, and marketing.

Advancement

An experienced purchasing agent or buyer may become an assistant purchasing manager before advancing to purchasing manager, supply manager, or director of materials management.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Purchasing Managers, Buyers and Purchasing Agents, on the Internet at <http://www.bls.gov/ooh/business-and-financial/purchasing-managers-buyers-and-purchasing-agents.htm#tab-4> (last visited September 8, 2014).

The *Handbook* does not state that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into these positions. The narrative of

position of purchasing agent was not listed on the petitioner's organizational chart submitted in response to the director's RFE. 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).

the *Handbook* indicates that the educational requirements usually vary with the size of the organization. It continues by stating that at many organizations, a high school diploma is sufficient for entry into purchasing agent positions. The *Handbook* also reports that an experienced purchasing agent or buyer may become an assistant purchasing manager before advancing to purchasing manager, supply manager, or director of materials management.

The *Handbook* states that large stores and distributors may *prefer* applicants who have completed a bachelor's degree program and have taken some business or accounting classes. According to the *Handbook*, many manufacturing firms put an even greater emphasis on formal training, *preferring* applicants who have a bachelor's or master's degree in engineering, business, economics, or one of the applied sciences. However, as previously discussed, a *preference* is not a minimum degree requirement.

According to the *Handbook*, purchasing managers usually have at least a bachelor's degree and some work experience in the field. The *Handbook* does not indicate, however, that any particular field of study or discipline is required for purchasing manager positions.¹⁰ The *Handbook* continues by stating that purchasing managers typically must have at least five years of experience as a buyer or purchasing agent.

Upon review, the *Handbook* does not support a finding that normally the minimum requirement for entry into these purchasing positions is at least a bachelor's degree in a specific specialty, or its equivalent.

We observe that on appeal, counsel refers to an unpublished decision in which we determined that the position of marketing research analyst qualified as a specialty occupation position. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. While 8 C.F.R. § 103.3(c) provides that this office's precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary

¹⁰ To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish in part that the position requires the attainment of a bachelor's or higher degree in a specific specialty or its equivalent. As discussed *supra*, USCIS has consistently interpreted 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. Again, although a general-purpose bachelor's degree may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, we were not required to request and/or obtain a copy of the unpublished decision cited by counsel.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

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

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

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted copies of job advertisements. However, upon review of the evidence, we find that the petitioner's reliance on the job announcements is misplaced.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may

be considered). It is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

In the Form I-129 and supporting documentation, the petitioner stated that it is a cotton textiles importer and distributor established in 2004, with eight employees. The petitioner stated its gross annual income is \$877,564 and net income as \$149,000. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 424310 – "Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers."¹¹ The U.S. Department of Commerce, Census Bureau website describes this NAICS code as follows:

This industry comprises establishments primarily engaged in the merchant wholesale distribution of piece goods, fabrics, knitting yarns (except industrial), thread and other notions, and/or hair accessories.

See U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 424310 – Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited September 8, 2014).

Upon review of the advertisements submitted, we find that they do not establish that a requirement for a bachelor's degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.¹²

For example, the petitioner has submitted advertisements for organizations that do not appear to be similar to the petitioner. More specifically, the advertisements include positions with [REDACTED] (a company in the internet services, and advertising and PR services industries), [REDACTED] (a company in the telecommunications industry), and [REDACTED] (a company in the corporate business services industry). The petitioner did not state which aspects or traits (if any) it shares with these advertising organizations. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it.

Further, the petitioner has not established that the advertisements are for parallel positions. For example, the contract pricing analyst position with [REDACTED] requires a degree and "3-5 years [of] experience in Business/Sales Program Management experience." Another submission is for a long term/healthcare project coordinator position with [REDACTED]

¹¹ NAICS is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. See U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at <http://www.census.gov/eos/www/naics/> (last visited September 8, 2014).

¹² Moreover, the petitioner did not provide any independent evidence of how representative the job postings are of the particular advertising employers' recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the actual hiring practices of these employers.

which requires a candidate to possess a degree and "4 plus years of experience in sales, marketing, and project management in contract textiles or field with similar specialties." In addition, the petitioner and counsel submitted a job posting by [REDACTED] which requires candidates to possess a degree and "at least 7 years [of] experience within industry (Non-Government and Government (Local, State and Federal))." As previously discussed, the petitioner designated the proffered position on the LCA a low, entry-level position when assigning the wage level as a Level I (entry level) position relative to others within the occupation. Based upon the information provided in the job postings, the advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, some job postings do not indicate that a bachelor's degree in a directly related specific specialty is required. For example, [REDACTED] require a bachelor's degree, but do not indicate a specific specialty.¹³ In addition, the petitioner and counsel submitted advertisements ([REDACTED]) that state that degrees in disparate fields are acceptable.¹⁴

As the advertisements do not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, as the evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty, or its equivalent, for parallel positions, not every deficit of every job posting has been addressed.

The petitioner and counsel also submitted letters from [REDACTED] in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. We reviewed the letters in their entirety. However, contrary to the purpose for which the letters were submitted, they are not persuasive in establishing the proffered position as a specialty occupation position under any of the criteria at § 214.2(h)(4)(iii)(A).

¹³ We observe that the posting by [REDACTED] states that "[a] Business, Marketing/Management degree is preferred. Again, a *preference* for a degree in business or marketing/management is not an indication of a *requirement* of a degree in one of these disciplines.

Further, as discussed, the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a specific specialty that is directly related to the specialty occupation claimed in the petition.

¹⁴ Again, 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 disparate fields would not meet the statutory requirement that the degree be "in *the* specific specialty," 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).

The letter from Mr. [REDACTED] is dated August 26, 2013. Mr. [REDACTED] states that "[i]t is a requirement in our company for the employees in this [marketing specialist] position to hold a minimum of [a] Bachelor [sic] degree in a business related field." The letter from Mr. [REDACTED] is dated August 26, 2013. Mr. [REDACTED] states that "[f]or our Marketing and Sales positions, we require a Bachelors [sic] degree from an accredited College or University." The letter from Mr. [REDACTED] is dated August 26, 2013. Mr. [REDACTED] states that "[w]e require [a] minimum of [a] bachelor's degree in any major business coursework for the position of Marketing manager/Specialist." We observe that the statements fail to establish that the organizations require at least a bachelor's degree *in a specific specialty*, or its equivalent. The letters do not establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the authors' industry in parallel positions among similar organizations to the petitioner.

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

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

The petitioner and counsel claim that the proffered position involves complex and/or unique duties. In support of the petition, the petitioner provided information regarding the proffered position and evidence regarding its business operations, including printouts from its website, its 2012 income tax return, an organizational chart, copies of its invoices and contracts, and its catalog of products. However, upon review of the record of proceeding, we find that the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. That is, we reviewed the record in its entirety and find that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the duties of the position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. 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 related courses may be beneficial, or even essential, 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 proffered.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Marketing Research Analysts and Marketing Specialists" at a Level I (entry level) wage. The wage-level of the proffered position indicates that, relative to others within the occupation, the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. Without further evidence, it is not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."¹⁵

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

The petitioner claims that the beneficiary's academic background will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area (or its equivalent). The petitioner does not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, we find that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance

¹⁵ For additional information regarding the wage levels, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree that opinion alone without corroborating evidence cannot establish the position qualifies as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has eight employees and that it was established in 2004 (approximately nine years prior to the H-1B submission). On appeal, counsel asserts that the petitioner's sales and marketing manager has been performing the duties of the proffered position and that he has a bachelor's degree in business administration, a general-purpose degree. However, the petitioner has not submitted any probative evidence to establish that it *normally requires* at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. The petitioner did not provide probative evidence demonstrating that it has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position.

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

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

The petitioner provided information regarding the proffered position and its business operations. While the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, we note that relative specialization and complexity have not been sufficiently

developed by the petitioner as an aspect of the proffered position. We incorporate our earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a Level I position (the lowest out of four assignable wage-levels) relative to others within the occupational category, and hence one not likely distinguishable by relatively specialized and complex duties. Without further evidence, the petitioner has not established that the proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level III (experienced) or Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously noted, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems" and requires a significantly higher wage.

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

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

V. BENEFICIARY QUALIFICATIONS

We do not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty, or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree, or its equivalent. Therefore, we need not and will not address the beneficiary's qualifications further, except to note that, in any event, the combined evaluation of the beneficiary's education submitted by the petitioner is insufficient to establish that the beneficiary possesses the equivalent of a U.S. bachelor's degree in any specific specialty. Specifically, the evaluations equate the beneficiary's "combined" academic achievements to a "Bachelor of Arts in Economics and in Business Administration/Marketing, from a regionally accredited university in the United States." Consequently, the evaluations do not establish that the beneficiary possesses "a foreign degree determined to be equivalent to a United States baccalaureate or higher degree" as required in part by 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). As such, since evidence was not presented that the beneficiary has at least a U.S. bachelor's degree in

any specific specialty, or its equivalent, the petition could not be approved even if eligibility for the benefit sought had been otherwise established.

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 the AAO conducts 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 our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

The petition will be denied and the appeal dismissed 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.