U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

DATE: FEB 0 6 2012 Office: CALIFORNIA SERVICE CENTER File: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Michael T. Kelley

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and, in response, the petitioner filed a combined motion to reopen and motion to reconsider. The director subsequently granted the motion but issued a decision affirming her earlier decision to deny the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2009. At Part 5 of the Form I-129, the petitioner describes its type of business as "Soccer Loading, Coaching Training [(sic)]" with approximately 600 employees and a gross annual income of approximately $10 million and a net annual income of approximately $965,000.

Seeking to employ the beneficiary in what it designates as a regional director position, the petitioner filed this H-1B petition in an endeavor 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 on September 23, 2009, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Upon granting the petitioner's subsequently filed motion to reopen and motion to reconsider, the director affirmed her earlier decision to deny the petition.

On appeal, the petitioner and counsel assert that the director's basis for denial was erroneous and contend that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the director's denial letter; (5) the petitioner's Motion to Reopen and Reconsider; (6) the director's Dismissal of the Motion to Reopen and Reconsider; and (7) the Form I-290B and documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO concurs with the director that the petitioner has not established that the proffered position qualifies as a specialty occupation within the meaning of the controlling statutory and regulatory provisions. Accordingly, the appeal will be dismissed, and the petition will be denied.

The primary issue before the AAO is whether the position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

(A) theoretical and practical application of a body of highly specialized knowledge, and

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The term "specialty occupation" is further defined at 8 C.F.R. § 214.2(h)(4)(ii) as the following:

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

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

(1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

(2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

(3) The employer normally requires a degree or its equivalent for the position; or

(4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. 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, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

The March 31, 2009 cover letter from the petitioner's counsel, which accompanied the Form I-129 at filing, includes the following information about the petitioner and its business operations:

> [T]he petitioner provides training and coaching services to soccer leagues, and operates clinics, and indoor and outdoor soccer camps. Total Petitioner's staff includes approximately 600 full- and part-time employees. The Petitioner's soccer program offering is quite varied and involves a high level of complexity, as indicated by the enclosed brochures. The petitioner offers programs to develop permanent soccer coaching and referee staff and to increase soccer leagues and clinics at its facility. Soccer leagues, as well as a variety of boys' and girls' and men's and women's novice to more advanced leagues as well as co-educational soccer leagues presently use the Petitioner's facilities.

The petitioner indicates on the Form I-129 and supporting documentation that it seeks the beneficiary's services as a regional director. That same March 31, 2009 letter from counsel states that the beneficiary will be employed to perform the following duties:

- Responsible for maintaining and expanding the Petitioner's activities in the State of California and neighboring states, which include performing instructional soccer clinics for players ages 4-18;
- Setting up adult soccer clinics;
- Setting up and performing free promotional soccer clinics for schools;
- Setting up and performing pre-school soccer activities;
- Setting up summer camps for [the petitioner];
- Organizing European sports/educational exchange programs for local teams and groups;

- Responsible for all of the soccer players enrolled in the Petitioner's various soccer programs, including all aspects of soccer play, as well as adequate coaching programs, competent referees, first-line decisions on sports injuries, and counseling on sports development;
- In charge of a broad range of regional areas, supervise middle level of supervisors within the organization and responsible for substantially high level of administrative functions of each group;
- Directly responsible for the programs, safety and education of approximately 4,000 children;
- Responsible for the management of approximately 40 coaches during summer seasons, for selecting approximately 10 of his senior coaches, and training about 30 to 40 coaches;
- Responsible for recruitment, training and guiding leaders within the group, and ultimately responsible for recordkeeping and assessing the yearly goals of the group;
- Assume a broad range of supervisory duties.

In the same letter, counsel asserts that the proffered position is a "higher level administrator's job" and that an individual serving in the position of regional director "devotes the vast majority of his or her time to supervisory, managerial and staff (coach) training functions." Counsel provides the following information regarding the percentage of time spent performing the duties of the proffered position:

- Directly responsible for the management of 40 coaches throughout the period from June-September, and will select 10 of his or her senior coaches to report to him or her on a daily basis on the summer camp programs (35% of position);
- Responsible for the training of coaches, many of whom hold the FA Preliminary Award, which is regarded as the highest coaching aware (sic) in the world (10% of position);
- Responsible for meeting with Soccer Associates and providing Coaching development with Volunteer parents and trained professionals. Other aspects of this responsibility include:
  (a) Age appropriate teaching/coaching, this is based on the development stages of children;
  (b) Psychological awareness of creating a positive and caring environment for all children;
  (c) Awareness of physiological factors and instructing coaches on such factors, including the awareness of potential dangers of physical activity if the environment is not a safe one, and the awareness of symptoms of overexertion, especially in cases of morbidly obese children potentially involved in the soccer programs;
  (d) Medical and First Aid training;
  (e) Organizational factors while on the field, including provisions for

organizing soccer clubs in the best interests of all children;
(f) Assisting soccer clubs in the ability to run their meetings in the most effective manner possible, and assisting clubs in the formulation of vision, mission and belief statements;
(g) Teaching parents, coaches and professionals the guidelines and rules of the game of soccer.
(30% of position)

- Prepare promotional materials and teaching aids (10% of position);
- Responsible for specific recruitment, training and guiding of leaders and volunteers within the group (2.5% of position);
- In specific cases, set up working committees for fundraising (2.5% of position);
- Represents youth soccer clubs at larger area meetings (2.5% of position);
- Helps in interpreting organizational policies and procedures (2.5% of position);
- Responsible for record keeping and assessment of yearly goals (2.5% of position);
- Ensures maximum use of Petitioner's financial and other resources (2.5% of position).

Counsel stated that the beneficiary would spend approximately 35% of his time directly responsible for the management of 40 coaches throughout the period from June-September (approximately four months of the year). However, no information was provided regarding the allocation of the beneficiary's time from October to May (the remaining eight months of the year). The petitioner requested the beneficiary be granted H-1B status for a period of three years.

With the Form I-129 petition, the petitioner submitted a document entitled "Evaluation of Professional Status of the Regional Director of Soccer" that was written by two professors based upon their experience as "consultants, researchers, educators and . . . soccer coaching."

The evaluation is dated November 28, 2004 (over 4 ½ years prior to the filing of the Form I-129 petition). The AAO questions the accuracy of an evaluation dated in 2004 to establish industry standards in 2009 (when the Form I-129 petition was filed). Furthermore, it must be noted that multiple sections of the evaluation and supporting documentation are illegible due to the poor quality of the photocopies provided by the petitioner.

The professors rely on several sources regarding their opinion that the position of regional director is a specialty occupation. The professors spend a considerable amount of time reciting information from the U.S. Department of Labor's *Dictionary of Occupational Titles* (*DOT*). However, the AAO observes that the *DOT* was last published in 1991 and was replaced by the *Occupational Information Network* (*O*NET*) under the sponsorship of DOL's Employment and Training Administration.[1] Furthermore, the AAO does not consider the *DOT* to be a persuasive

[1] *O*NET OnLine* is accessible at *http://www.onetonline.org/*. As stated on the Home Page of this Internet site, *O*NET OnLine* is created for the U.S. Department of Labor's Employment & Training

source of information as to whether a job requires the attainment of a baccalaureate or higher degree (or its equivalent) in a specific specialty. The *DOT* provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Moreover, a petitioner may not establish a position as a specialty occupation by repeating a general description of duties generic to a particular occupation, unless, of course, the evidence in the record of proceeding establishes that the proffered position belongs to an occupation which categorically requires for entry at least a bachelor's degree, or the equivalent, in a specific specialty – which is not the case here.

Furthermore, the AAO finds the information provided by the professors regarding the Specialized Vocational Preparation (SVP) rating unconvincing. Again, USCIS 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. With regard to the Specialized Vocational Preparation (SVP) rating, the AAO notes that an SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Thus, the excerpt submitted by the professors regarding SVP ratings is of little evidentiary value to the issue presented on appeal, and it is not probative evidence that the proffered position is a specialty occupation.

The professors also provided job postings (including for an athletic trainer, personal trainer and coach) in support of their evaluation. The advertisements with legible dates were posted in 2002, 2003 and 2004. The photocopies of the job postings are of such poor quality that many sections cannot be deciphered. Furthermore, the AAO notes that the professors cited job postings that are approximately five (5) to seven (7) years old to establish industry standards, and the AAO finds that this chronological element materially diminishes the evidentiary value of the posting as indications of current practices in the industry. Moreover, a review of the job postings indicates that several of the advertisements are for dissimilar positions (including Head Coach, Personal Trainer and Athletic Trainer) and for organizations dissimilar to the petitioner (including universities and commercial operators of fitness centers). Furthermore, none of the documents (with the exception of the Personal Trainer position with Bally's Total Fitness) indicates that a bachelor's degree in a *specific specialty* is required for the position. The job advertisements establish, at best, that a bachelor's degree is generally required, but not at least a bachelor's degree or the equivalent in a *specific specialty*.[2] Thus, a review of the documents provided does not demonstrate that organizations similar in size and scope to the petitioner routinely employ

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Administration by the National Center for *O*NET* Development.

[2] With regard to the Personal Trainer position with Bally's Total Fitness, it is noted that the job advertisement is for a different position (Personal Trainer), for a dissimilar business (commercial operator of fitness centers).

individuals with degrees in a specific specialty (or its equivalent) as a minimum for entry into parallel positions.

The professors claim that "in these advertisements we see the full spectrum of sports-related positions from personal trainers to state-wide director of coaching – all of which require a bachelor's degree." The AAO finds it questionable that the evaluators attribute a degree requirement to such a generalized list of occupations based upon job postings - some of which were even outdated when the professors wrote the evaluation. Furthermore, the postings appear to have been carefully selected, considering the dates of the postings range from 2002 to 2004, rather than randomly selected.

The AAO observes that the conclusion provided by the professors does not comport with the observations in the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook)* and the professors do not establish that their opinion is based on formal surveys, research, or any other objective quantifying information to substantiate their opinion and effectively rebut the contrary information provided in the *Handbook* (which this decision will later address in greater detail.).[3]

Next, the AAO notes that the professors indicate that the evaluation is "based upon the position description, organizational chart, information forwarded to [the professors by counsel], and [the petitioner] as well as USCIS and DOL documents." The AAO finds that the professors do not establish, or even claim that they have directly observed and studied the petitioner's particular business operations or the proffered position as performed in the actual context of those operations. In fact, the professor's do not even claim such a factual basis for their evaluation and ultimate conclusion. As such, the AAO finds that the professors do not provide a sufficient factual foundation for ascribing any significant evidentiary value to their evaluation.

Aside from the insufficient factual foundation of the evaluation, the AAO also finds that the professors have not established that their opinion should be afforded any deference as having been provided by authorities in the area in which they opined. The evaluation references the professors' full resumes or curriculum vitae; however, the evaluation does not include these documents, it only includes their brief biographies. Although the professors provide brief descriptions regarding their accomplishments, a review of the record of proceeding does not establish that they are authorities in the area in which they pronounce their opinions, namely, the hiring requirements for regional director positions (or parallel positions) with for-profit enterprises engaged in the business of soccer loading, coaching and training (or similar organizations).

A review of the credentials and background of the professors as provided in the brief biographies indicates that one of the professors is a professor of accounting with extensive experience as a soccer coach at a university, and that the other professor is a professor of operations management

[3] The AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.

and his expertise appears to be primarily in design of forecasting and inventory management. The petitioner in this case makes it clear that the proffered position is not a coaching position. Thus, the professor's coaching experience is in a dissimilar position (coach) for a dissimilar organization (university). Moreover, the expertise of the professors does not appear to adequately correspond with the issue here to establish them as authoritative sources. While the professors may, in fact, be recognized authorities on various topics outside the scope of the issue on appeal, the petitioner has failed to provide sufficient information and documentation regarding the professors to establish their expertise on this issue, the academic requirements for regional director positions (or parallel positions) with for-profit enterprises engaged in the business of soccer loading, coaching and training (or similar organizations).

In summary, and for each and all of the reasons discussed above, the AAO concludes that the evaluation rendered by the professors is not probative. The conclusions reached by the professors lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which they reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

The petitioner also provided letters from [redacted] dated November 4, 2000; Play Soccer (date illegible); and Noga Soccer dated November 8, 2000. The AAO notes that the petitioner relies on documentation that was produced 8+ years prior to the submission of the Form I-129 petition. The quality of the photocopies is extremely poor and many sections of the letters are entirely illegible and cannot be deciphered. While petitioners are permitted to submit photocopies (unless the original document is required by the applicable regulation or form instructions), all photocopies should be legible. The AAO is not in a position to make assumptions regarding the content of the illegible information. As a result, these documents do not have any probative value and will not be addressed in any further detail.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a request for evidence (RFE) on August 15, 2009. The director requested additional information from the petitioner to demonstrate that the proffered position is a specialty occupation, including evidence pertaining to proffered position and the petitioner.

In response to the RFE, the petitioner submitted a statement describing the duties and responsibilities of the proffered position, which included the following information:

- Managing from 50-70 local camp coordinators who are normally professionals in their own right [redacted] on military bases, executive members of soccer clubs);
- Managing regional sales, finances and budgets;

- Promoting the mission and core values of [the petitioner] through all the programs offered;
- Selecting, training, monitoring, mentoring as many as 40 coaching staff under their direct supervision, most of whom are either studying for a Bachelor's degree or have already attained a degree;
- Liaising with approximately 10 camp directors to ensure that the coaching staff under their direction are following the policies and procedures of the company;
- Providing training modules for volunteer coaches which are administered by the coaching staff under their directors;
- Creating a coaching/leadership environment amongst their team of coaches;
- Training and teaching the staff under their direction in the physiological and psychological factors that are of a paramount importance when this staff are in control of the young athlete's environment;
- Training our coaching staff first aid and medical procedures;
- Organizing coaching programs (not doing them) for soccer associations to maximize the contact time of our coaches with the players;
- Assisting soccer organizations in many facets of the delivery of a soccer program: coaches training, scheduling of games and practices, formation of coaching aids, etc.;
- Financial management of the company's resources in the field.

The petitioner also provided additional evidence including company documents (operations manual, presentation slides, organizational chart, brochures), as well as an opinion letter regarding the proffered position prepared by [redacted] (the evaluator) on September 8, 2009. (The petitioner later submitted another document by [redacted] entitled "addenda et corrigenda" that is dated October 23, 2009. The AAO reviewed all of the documents in their entirety.) The evaluator stated that her opinion letter was "based on the description, information provided by [counsel], and [the petitioner] as well as the Department of Labor and U.S. Bureau of Labor Statistics."

In the opinion letter, the evaluator provides some general statements about various courses and a brief description of two university programs in the United States. She then describes the responsibilities and duties of the proffered position as follows:

- Regional sales of products offered by [the petitioner];
- Manage 50-70 professional camp coordinators;
- Manage [r]egional finances and budgets;
- Promote [the] mission of [the petitioner];
- Select, train, monitor, mentor [a] minimum of 40 coaching staff who hold or are completing bachelor degrees;
- Assist in creation of, assess and analyze educational tools to instruct coaches;
- Ability to work with both individuals and large groups;

- Work with diverse populations, culturally sensitive and open to working with people of varied backgrounds.

The evaluator opines that "the position is one that requires extraordinary depth and breath (sic) of knowledge" and that the "complexity and sophistication of the job duties justify a university degree." The AAO observes that given the job duties are generic and do not specifically explain what the beneficiary will do on a day-to-day basis, it is not clear how the evaluator came to this conclusion.

The evaluator claims that her opinion letter is "based on over 25 years as a business owner, consultant, educator, and researcher" and her "expertise as a business owner and knowledge and expertise of U.S. and international post-secondary education."

A review of the evaluator's resume indicates that in her current position she is an office manager for a speech language hearing clinic. She described her duties as the following: provided administrative support to the clinic director and clinic faculty; coordinated application and the registration process and facilitated activities for Summer Communication Camp; and provided administrative support to the Clinic's teaching mission. She also currently serves as an international credential evaluator. She described her duties for this position as the following: analyzed and evaluated academic international credentials to establish United States education equivalency; planned and developed workshops to train State Directors of Teacher Education and Certification; and provided expertise relating to fraudulent documents from Nigeria.

Previously, the evaluator served as a [redacted] (2000 to 2002), an [redacted] (1992 to 2000), an Office Manager for the Student Assistance Center (1998 to 1993), and an [redacted] (1987 to 1989). She possesses a Master of Science in Management and a Bachelor of Arts in History. There is no specific information in the record regarding the evaluator's claimed expertise on the issue here, the hiring practices and recruitment of regional directors (or parallel positions) with for-profit enterprises engaged in the business of soccer loading, coaching and training (or similar organizations).

The evaluator does not identify the specific elements of her knowledge and experience that she may have applied in reaching her conclusion. Without further information, it appears that the evaluator's experience and background are irrelevant to the issue of whether the proffered position is a specialty occupation. The AAO finds that neither the evaluation nor any other evidence in the record of proceeding establishes that the evaluator is an authority in the area in which she pronounces her opinion on this matter. Furthermore, the record does not indicate that the evaluator has adequate knowledge of the particular position at issue here. She does not provide any information regarding her experience giving opinions on such matters, not does she cite specific instances in which her past opinions have been accepted or recognized as authoritative. The opinion letter suggests that the evaluator's knowledge of the regional director position is limited to the description of the duties provided by the petitioner and counsel. She does not demonstrate, nor even assert, in-depth knowledge of the petitioner's business operations or how

the list of asserted duties presented would actually be performed in the context of the petitioner's business enterprise.

The evaluator concludes the opinion letter by stating the following regarding the proffered position:

> Many universities in the United Kingdom and the United States offer undergraduate and graduate degree options to gain the skill, knowledge and theory required of this position; however, the additional skills and intimate knowledge of soccer can not (sic) always be obtained in this society. In summary, it is concluded that the position of Regional Director is clearly a professional one requiring specialty knowledge that requires at least a Bachelor's degree or its equivalent for those who received degrees from outside the United States . . . . If I was to hire for this position, I would list the minimum educational requirement as a Master's degree.

The evaluator does not provide sufficient evidence in support of her opinion regarding the educational requirements for the proffered position (e.g. cite studies, surveys, empirical evidence).[4] For example, the evaluation contains no evidence that it was based on scholarly research conducted by the evaluator in the specific area upon which she is opining. There is no evidence that she has visited the petitioner's business, observed the petitioner's regional directors, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. There is no indication that she has published any work pertinent to the industry's educational requirements for regional directors (or parallel positions), and no indication of recognition by professional organizations as an authority on those requirements. As the evaluator has not established her credentials as a recognized authority on industry hiring standards, her opinion in this area merits no special weight.

The evaluator focuses on a generic and generalized description of the duties for the proffered position, which, the AAO finds, does not distinguish the position from those jobs that do not require the application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Moreover, the very fact that the evaluator attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of her opinion. The evaluator has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. The evaluator makes vague and generic references to the *DOT*, *O*NET Online*, SVP ratings and the *Handbook*; however, the information contained in these sources do not support her opinions and ultimate conclusions. The evaluator does not provide sufficiently substantive and analytical bases for her opinion.

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[4] The document entitled "addenda et corrigenda" references a survey conducted by [redacted] however, there is no indication that the evaluator relied on the survey to reach her conclusions.

The evaluator has not provided sufficient factual and analytical bases by which one may reasonably conclude that her opinion is well founded, reliable, and worthy of deference. As noted earlier, the AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International,* 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion the AAO discounts the evaluator's opinion as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

After reviewing the documentation, the director denied the petition, finding that the petitioner had not satisfied the criterion set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A), and therefore had not established that the proposed position qualified for classification as a specialty occupation. On October 26, 2009, the petitioner submitted a motion to reopen and reconsider. The petitioner and counsel asserted that the director's basis for denial was erroneous and submitted a brief and additional evidence. Counsel stated "based on the accompanying documentation, the position of Regional Director meets all four of the criteria for a specialty occupation . . . ." After reviewing the Motion to Reopen and Reconsider, the director determined that the petitioner did not overcome the grounds of the denial.[5]

The AAO notes that on motion the petitioner provided a seven-page document entitled "Statement of Expanded Duties" that, the AAO finds, greatly expanded and added to the beneficiary's duties as previously presented. For example, in this document the petitioner indicated that the regional director would be supervising employees from April 1st to November 15 (almost 8 months). Whereas, previously the petitioner had indicated that the beneficiary would perform this function from June to September (approximately 4 months).

Furthermore, the AAO finds that the petitioner's prior characterization of the duties was altered from the initial petition by the "Statement of Expanded Duties" submitted with the motion. For example, the petitioner indicated under the duty heading "Responsible for the training of coaches" that the regional director would now be responsible for revoking coaching contracts.

With the initial petition, counsel indicated that the regional director "prepares promotional materials and teaching aids (2.5% of position)." In response to the RFE, the petitioner provided a "Regional Director Operations Manual" that instructs regional directors to "[s]peak with

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[5] As a technical matter, the AAO finds that none of the submissions presented on motion actually constitutes new evidence as would have required reopening. The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." The word "new" is defined as "1. having existed or been made for only a short time . . . 3. Just discovered, found, or learned *<new* evidence> . . . ." *Webster's II New Riverside University Dictionary* 792 (1984)(emphasis in original). Based on the plain meaning of "new," a new fact is found to be evidence that was not available and could not have been discovered or presented in the previous proceeding. The AAO further notes that the petitioner submitted evidence on motion that was originally asked for by the director in a request for evidence dated August 15, 2009.

coordinator about placing an article in the local paper about [the petitioner] coming to town to run approximately 2-4 weeks before camp." With the motion, the petitioner provided a brochure "Setting Up for Success" that instructs regional directors to make "the lives of our clients a lot easier and far less time consuming when it comes to running a camp . . . this can be done . . . by going above and beyond for coordinators in doing such things as you contacting local newspapers to organize stories and ad, contacting the webmasters yourself and hence reducing their workload." The document instructs regional directors that marketing involves such things as an ad on the front page of the camp website; glossy color flyers available at registration; color posters (sent by the petitioner) to hang at registration; a free jersey given to the children who register for the camps. In the "Statement of Expanded Duties" the petitioner devotes almost an entire page to this function, and indicates that the regional directors are charged with managing all of the marketing for the region and "exercises enormous discretion over where to invest marketing dollars and this is an everyday function of the position-This marketing plan is devised after consultation with each specific client . . . they are in total control of the function of marketing programs to maximize revenue for [the petitioner] and their partners."

The AAO notes that the purpose of the request for evidence was to elicit further information that clarified whether eligibility for the benefit sought had been established. 8 C.F.R. § 103.2(b)(8). When submitting a motion, a petitioner cannot offer a new position to the beneficiary, or materially change a position's level of authority within the organizational hierarchy, or its associated job responsibilities. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 ('Reg. Comm'r 1978). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The information provided by the petitioner with its motion did not simply clarify or provide more specificity to the original duties of the position, but rather added new duties and greatly expanded the job description. Therefore, the AAO notes that the analysis of the appeal will be based on the job description submitted with the initial petition. That being said, the AAO further finds, however, that even if considered, the submissions materially expanding the nature and scope of the position do not include any evidence establishing that actual performance of the proffered position, even as so expanded, would require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required by the specialty occupation provisions of the Act and the related USCIS regulations.

With the motion to reopen and reconsider, the petitioner also provided a letter from [redacted], [redacted] of [redacted] The letter and supporting documentation do not provide any information regarding the background, qualifications and/or expertise of [redacted] (the author). The letter indicates that [redacted] is a business and financial advisory firm and that its professionals are qualified to perform compensation valuations.

The issue in this appeal is whether the proffered position is a specialty occupation under the controlling statutory and regulatory requirements. As such, the matter before the AAO does not involve any issues related to compensation valuations; and the petitioner's basis for requesting the writer's opinion on the matter is unclear, as the author does not appear to have any

specialized knowledge on the subject. There is no evidence provided that, by virtue of the author's education, training, skills or experience, or any other measure, he possesses expertise and specialized knowledge of the subject beyond the average person, sufficient that the AAO should rely upon his opinion. Moreover, no further information regarding the company was submitted. Thus, the petitioner did not submit any documentation to establish that provides professional or expert advice on this issue before the AAO or that it has ever provided employees to serve as advisors or consultants in this or similar matters.

The AAO finds that neither the letter nor any other evidence in the record of proceeding establishes that the writer is an authority in the area in which he pronounces its opinion on this matter. The letter does not provided any information regarding the author's experience giving opinions on such matters, nor does the author cite specific instances in which his past opinions have been accepted or recognized as authoritative regarding this issue. The letter suggests that the author's knowledge of the regional director position is limited to the description of the duties provided by the petitioner, an interview that was held with one of the petitioner's vice-presidents (no information is provided regarding the length of the interview) and his own survey (consisting of five questions).

The author does not indicate that he relied on any other evidence in support of his assertions. Repeating the description of duties of the proffered position does not provide an analysis of the duties. The author does not include the results of outside formal surveys, research, statistics, or any other objective quantifying information to substantiate his opinion, other than his own survey which is discussed in more detail below. There is no evidence that he has visited the petitioner's business, observed the petitioner's regional directors, interviewed the regional directors about the nature of their work, or documented the knowledge that they apply on the job. There is no indication that he has published any work pertinent to the industry's educational requirements for regional directors (or parallel positions), and no indication of recognition by professional organizations as an authority on those requirements. As the author has not established his credentials as a recognized authority on relevant industry-hiring standards, his opinion in this area merits no special weight and does not constitute probative evidence on the specialty occupation issue that is the subject of this appeal.

The author indicates in his letter that he reviewed a comprehensive nine-page description of the position, conducted an interview with a vice-president at the petitioner's business to ascertain additional information regarding the duties and qualifications of the position and reviewed the results of his own survey. The letter repeatedly indicates that additional information regarding the proffered position was obtained through its interview with the executive. However, it is unclear why this "additional information regarding the duties of the position" was not provided to USCIS with the petition or in response to the RFE. In any event, the author's evaluation is incomplete, as not accompanied by documentation of the interview that was partly a basis of the evaluation, and, for this reason also, does not merit any significant evidentiary weight. Furthermore, the job summary and description of the duties and responsibilities are significantly expanded and go beyond the scope of the duties of the proffered position as initially depicted in the H-1B petition. Accordingly, the evaluation does not establish its relevance to the position that is the subject of this petition.

The AAO notes that the opinion letter is accorded little evidentiary weight as the description of the job duties is not in accord with the description provided to USCIS in connection with the Form I-129 petition. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 ('Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

The director affirmed the denial of the Form I-129 petition because the petitioner failed to establish that the proposed position qualifies as specialty occupation. On December 14, 2009, the petitioner filed an appeal, which included a brief from counsel and additional evidence.

The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would employ the beneficiary in a specialty occupation position. To make its determination whether the proffered position qualifies as a specialty occupation, the AAO turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first consider the criteria 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 the normal minimum requirement for entry into the particular position.

The petitioner indicated that the beneficiary would be employed as a regional director. However, 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 (5th Cir. 2000). 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.

The description of the duties of the proffered position indicates generally that the individual in the proffered position will be primarily involved in maintaining and expanding the petitioner's activities in California and neighboring states, which includes managing and coordinating soccer camps/clinics.

As previously mentioned, the AAO recognizes the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[6] The section of the *Handbook*

[6] Unless otherwise noted, all of the AAO's references are to the 2010-2011 edition of the *Handbook*, which may be accessed at the Internet site *http://www.bls.gov/OCO/*.

most relevant to this proceeding is the chapter "Recreation Workers."[7] The section "Nature of the Duties" of the chapter on "Recreation Workers" in the *Handbook* states the following:

> As participation in organized recreational activities grows, *recreation workers* will be needed to plan, organize, and direct these activities in local playgrounds and recreation areas, parks, community and senior centers, nursing homes and other senior housing, camps, and tourist attractions. These workers lead groups in activities such as arts and crafts, sports, performing arts, camping, and other special interests. They make sure that participants abide by the rules of the camps and recreational facilities and that safety practices are adhered to so that no one gets injured. Recreation workers also are found in some businesses or business groups, where they direct leisure activities for employees, such as softball or bowling, and organize sports leagues.
>
> Recreation workers hold a variety of positions at different levels of responsibility. Those who work directly with children in residential or day camps are called *camp counselors*. These workers lead and instruct children and teenagers in a variety of outdoor recreation activities, such as swimming, hiking, horseback riding, and camping. In addition, counselors who specialize may teach campers special subjects, such as archery, boating, music, drama, gymnastics, tennis, and computers. In residential camps, counselors also provide guidance and supervise daily living and socialization. *Camp directors* typically supervise camp counselors, plan camp activities or programs, and perform the various administrative functions of a camp.
>
> * * *
>
> *Recreation leaders* are responsible for a recreation program's daily operation. They primarily organize and direct participants, schedule the use of facilities, keep records of equipment use, and ensure that recreation facilities and equipment are used properly. In addition, they may lead classes and provide instruction in a recreational activity.
>
> *Recreation supervisors* oversee recreation leaders and plan, organize, and manage recreational activities to meet the needs of a variety of populations. These workers often serve as liaisons between the director of the park or recreation center and the recreation leaders. Recreation supervisors with more specialized responsibilities also may direct special activities or events or oversee a major activity, such as aquatics, gymnastics, or one or more performing arts.

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[7] For this chapter, *see* Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2010-11 Edition*, Recreation Workers, on the Internet at *http://www.bls.gov/oco/ocos058.htm* (visited January 25, 2012).

> *Directors of recreation and parks* develop and manage comprehensive recreation programs in parks, playgrounds, and other settings. Directors usually serve as technical advisors to State and local recreation and park commissions and may be responsible for recreation and park budgets.

Thus, the AAO finds that, as described in this petition, the proffered position closely comports with the Recreation Workers occupation as discussed in the *Handbook*.

Despite the assumption to the contrary by the petitioner, the occupational classification of recreation workers (including recreation supervisors and camp directors) does not comprise an occupational group that categorically requires at least a bachelor's degree, or the equivalent, in a specific specialty.[8] Thus, even if the generic statements that comprise the information about the proposed position and its duties were sufficient to demonstrate that the proposed position is that of a recreational supervisor or camp director, the *Handbook* does not indicate that entry into these positions of the occupation normally requires at least a bachelor's degree, or its equivalent, in a specific specialty.

The introduction to the "Training, Other Qualifications, and Advancement" section of the chapter on "Recreation Workers" in the *Handbook* states the following:

> The educational and training requirements for recreation workers vary widely with the type of job. Full-time career positions usually require a college degree. Many jobs, however, require demonstrated knowledge of the activity or can be learned with only a short period of on-the-job training.
>
> ***Education and training.*** The educational needs for people entering into this occupational field vary widely depending on the job and level of responsibility. For activity specialists, it is more important to have experience and demonstrated competence in a particular activity, such as art or kayaking, than to have a degree.
>
> * * *
>
> Those working in administrative positions for large organizations or public recreation systems may need a bachelor's degree or higher. Full-time career professional positions usually require a college degree with a major in parks and recreation or leisure studies, but a bachelor's degree in any liberal arts field may be sufficient for some jobs in the private sector. In industrial recreation, or "employee services" as it is more commonly called, companies that offer recreational activities for their employees prefer to hire those with a bachelor's degree in recreation or leisure studies and a background in business administration.

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[8] The AAO notes that the petitioner provided an evaluation submitted by [redacted] that states "[f]rom personal experience I know that university students compete with university graduates for similar positions [as recreation supervisors] at the [redacted]

> Employers seeking candidates for some administrative positions favor those with at least a master's degree in parks and recreation, business administration, or public administration. Most require at least an associate's degree in recreation studies or a related field.
>
> An associate's or bachelor's degree in a recreation-related discipline, along with experience, is preferred for most recreation supervisor jobs and is required for most higher level administrative jobs. Graduates of associate's degree programs in parks and recreation, social work, and other human services disciplines also can enter some career recreation positions. High school graduates occasionally enter career positions, but doing so is not common.

The *Handbook* indicates that an associate's or a bachelor's degree in a recreation-related discipline may be preferred for most supervisory jobs and is required for most higher level administrative jobs. While the *Handbook* states that employers often seek individuals with at least an associate's or bachelor's degree level of education for particular positions, this merely indicates a preference for a certain degree, not a normal minimum requirement. Furthermore, the term "most" is not indicative that a particular position within the wide spectrum of jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*)), or that a particular position is so specialized and complex as to require knowledge usually associated with attainment of a baccalaureate or higher degree in a specific specialty (the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*)).[9] The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty is required for the occupation. Rather, the occupation accommodates a wide spectrum of educational credentials, including less than a bachelor's degree in a specific specialty.

In this context, the fact that a person may be employed in a position designated as a recreation worker (including a recreation supervisor or a camp director) is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers 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. To make this determination, the AAO turns to the record for information regarding the duties and the nature of the petitioner's business operations.

The AAO turns to the "Regional Director Operations Manual" (Manual) submitted by the petitioner. Counsel claims that the Manual was provided "to illustrate the level of sophistication and breadth and complexity of the job duties of the Regional Directors."

A review of the Manual indicates that it appears to provide information regarding the specific implementation/execution of the responsibilities and duties of the proffered position. For

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[9] For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree."

example, the Manual provides instructions and guidance for performing the duties for the proffered position for the months of March and April as summarized below:

- Ensure database is loaded with all information;
- Arrange local hotel;
- Tell coaches that they should not use the phones or rent movies in the hotel room;
- Arrange with the hotel to be centrally billed by having the bill mailed directly to you;
- Confirm hotel bill is correct and forward it to the corporate office with your signature to indicate that it has been approved by you;
- Set up your own email system;
- Check out car rental location;
- Set up UPS account;
- Ensure all coordinator addresses are up-to-date;
- Access database for the coaches biographies for you to mail to the camps in your region;
- Access database for flight arrivals and departures;
- In May, you will receive coach's uniform, ring binder, cones, bibs, ball pump, copy of curriculum and bank cards;
- You will be responsible for purchasing one map per car; one Directors (sic) kit per car (including calculator, stapler, etc.; one black marker; one mini ball pump and spare needles for each car);
- In the database, you will monitor and track camp numbers in your excel spreadsheet document, request equipment and record late fees on the account reconciliation form;
- Send the coordinators their unique codes that can be used to register their child on-line;
- Ensure that coaches give vouchers to the host families during the week of camp;
- With regard to [redacted], ensure you know the system inside and out and encourage your coordinators to use it.

The job duties for the month of May are summarized below:

- Make up coaches bags (which includes jerseys, shorts, ball pump, water bottle, etc.);
- Check that you receive a bank card for all coaches;
- Confirm hotel rooms for incoming/outgoing weekends;
- Speak with coordinator about placing an article in the local paper about [the petitioner] coming to town to run approximately 2-4 weeks before camp;
- Dry run for airport pickups, car rentals and transport to hotels;
- Print a report from the database of all coaches in the region. Use this report to note whether you see these coaches at camp, or in a social situation, or you

speak to them on the phone. You should interact with every coach in your region at least once;

- Ensure you understand how to use the report template for Payroll/Car Usage/ Hotel/UPS Tracking of Packs;
- While preparing the above, you will also be doing tasks (e.g. ball and shirt orders for early June camps) from your regular summer schedule;
- Corporate will mail out no commit letters to prospective clients during May. We will confirm with RD's [regional directors] the clubs to mail to. RD to supply names and addresses for mailing.

The Manual also includes a "Regional Director Schedule" which the Manual indicates should be used as a weekly checklist by regional directors. The schedule is provided below:

- Sunday - Meet with staff (check on cars every chance); 10-8-6-4-2-10 [week] club calls; camp director calls or leaves message after arrival at housing – compulsory; camp director provides contact number for all coaches.

- Monday - Camp directors call/email camp report (compulsory); equipment needs; have they mailed last week's packs; 10-8-6-4-2-10 [week] club calls; finalize directors pack info; update new information to comply with [redacted]; staff assignments for next week's camps.

- Tuesday - Email payroll/hotel/car/UPS/expenses tracking spreadsheet by noon; go over camper count form with camp director; mail directors' packs; 10-8-6-4-2-10 [week] club calls; confirm hotel reservations; ship out week of camp (top up) orders.

- Wednesday – Complete account reconciliation and email to coordinator; director pack prep for next week; account rec discussion with coordinator week of camp call; check inventory.

- Thursday - Speak to . . . re staffing; Review final account reconciliation with coordinator if not done on Wednesday; database updated on relevant day and ball/shirt order; directors call (compulsory) – give amount of check to collect from camp coordinator; resign status; confirm weekend travel; week of Camp calls.

- Friday – Visits to camps – resign where possible; finalize account rec/invoice [send] email.

- Saturday – Meet staff at airport/hotel where necessary.

The petitioner also provided a document entitled "Lesson Plans for Regional Directors to Deliver to 40-50 Subordinate Coaches." A review of the document indicates that the coaches are

instructed on the "Role of the Regional Director." Specifically, the regional director's role is described as the following: "Salesman, PR and advertising specialist, Coach and clinician, Man Manager, Logistics controller, Support system, Friend and Colleague."

A review of the additional manuals, handbook and brochures submitted by the petitioner also indicate that the regional director will be performing routine administrative tasks (including making telephone calls and sending emails using scripts provided by the petitioner). Furthermore, the level of management skills and duties required for the position is questionable. For example, the March 2009 "Regional Director Operations Manual" states the following:

> Print a report from the database of all coaches in the region. Use this report to note whether you see these coaches at camp, or in a social situation, or you speak to them on the phone. **You should interact with every coach in your region at least once.**

(Emphasis added.) The December 2008 "Regional Director Operations Manual" states the following:

> We also ask the clubs we work with to evaluate our coaches and liaise with us to obtain feedback . . . . Also, it is encouraged that each RD goes out to at least one CCT practice during the season to provide their own evaluation and make sure our coaches maintain our high standards.

The documentation provided regarding the proffered position provides a litany of generalized functions without providing sufficient information as to how such a broad spectrum of responsibilities along with the beneficiary's day-to-day duties would correlate to a need for at least a bachelor's degree in a specific specialty. In this regard, the AAO further finds that, to the extent that they are described in the record of proceeding, it is not obvious or self-evident that any of the tasks, duties, or functions, or work of any kind that is ascribed to the proffered position would, either individually or in the aggregate, require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. Further, the AAO here incorporates its earlier comments and findings with regard to the insignificant evidentiary value of the evaluations provided in support of the petition, as the AAO here observes that the petitioner has not provided any documentary supplementation that remedies the failure of the described duties themselves to establish the proffered position as a specialty occupation.

The evidence of record on the particular position here does not demonstrate a requirement for the theoretical and practical application of a level of highly specialized knowledge. The duties for the proffered position appear routine and do not elevate the proffered position above that for which no particular educational requirements are demonstrated.

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." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The AAO finds that the generic description of the tasks of the proffered position provided by the petitioner and counsel along with the specific responsibilities and duties of the regional director as indicated the supporting documentation do not relate any dimensions of complexity, uniqueness, and/or specialization that may or may not be inherent in the particular position proffered in this petition.

The AAO finds that, where the job duties are outlined with specificity (as in portions of the Manual), they are indicative of administrative tasks for which no need for particular level of highly specialized knowledge in a specific specialty is apparent. Likewise, the AAO finds that the descriptions of the proffered position in generalized terms of generic functions (as in counsel's March 29, 2009 letter provided at the petition's filing), do not convey either the substantive nature of the specific matters upon which the beneficiary would focus or the practical and theoretical level of knowledge that the beneficiary would have to apply to those matters. The specific duties and responsibilities provided for in the petitioner's documentation for the proffered position indicate that the beneficiary will largely perform routine administrative tasks. The record of proceeding fails to establish that the duties to be performed by the beneficiary would require the practical and theoretical application of a body of highly specialized knowledge attained by at least a bachelor's degree, or the equivalent, in a specific specialty, as required by the Act and its implementing regulations regarding a position's qualification as an H-1B specialty occupation. So, the petitioner has failed to demonstrate how the duties of the proffered position directly relate to a requirement that an individual possess a bachelor's degree, or the equivalent, in a particular concentration.

Furthermore, the AAO observes some material discrepancies, which will now be discussed, that undermine the credibility of the petition by casting doubt on the actual scope and level of duties that would comprise the proffered position if this petition were granted.

The AAO first observes that the petitioner has provided conflicting information regarding the level of sophistication and complexity of the duties and responsibilities of the position. Specifically, the AAO notes that the petitioner provided a Labor Condition Application (LCA) in support of the instant petition that indicates the occupational classification for the position is "Instructional Coordinators" at a Level 1 (entry level) with a prevailing wage of $28,885 per year.

Wage levels should be determined only after selecting the most relevant *O*NET* occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance

in that occupation.[10] Prevailing wage determinations start with an entry level wage and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.[11]

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels.[12] A Level 1 wage rate is described by DOL as follows:

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

In a letter dated September 11, 2009, counsel claims that the "salary information from the FLC Online Data survey for Instructional Coordinators for the Los Angeles area [is] the closest match in the FCL Online Data Survey for the position of Regional Director." The petitioner also provided an opinion letter that states that DOL "also actively decides under what SOC to classify this position. The SOC used in both classifications - self classification and DOL active classification is Instructional Coordinator, SOC 25-9031."[13] However, neither counsel nor the

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[10] DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009), available at *http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.*

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

[12] DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance* (Revised Nov. 2009), available at *http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.*

[13] The AAO notes that when an employer requests a prevailing wage determination (i.e. from the State Workforce Agency, National Processing Centers, National Prevailing Wage and Helpdesk Center) the job

evaluator provided further information regarding the job description that was used to make this determination.

*O*NET Online* states the general duties of an instructional coordinator are to "develop instructional material, coordinate educational content, and incorporate current technology in specialized fields that provide guidelines to educators and instructors for developing curricula and conducting courses."[14]

However, review of the documentation provided by the petitioner does not indicate that the regional director is primarily, or even substantially, involved in performing the duties associated with the occupation of instructional coordinators. In this regard, the AAO notes that the "Regional Director Operations Manual" provided by the petitioner indicates that the "[b]uild up and make up of the [petitioner's] curriculum comes from many Professional British Academies & the relationship we have built up with the likes of [redacted] etc." The Manual also states that the curriculum was first written in 2007 and "the structure of the program including session plans, code of conduct, players (sic) benchmarks, SAQ's, dietary info and team/ player evaluations had all been taken from Football Associations in the UK and professional clubs. Many of the academy coaches / directors that Challenger staff has met whilst on tour have also provided info and insight into their coaching philosophy." Furthermore, the petitioner indicated that the beneficiary would spend 10% of his time preparing promotional and teaching aids and clarified that "[p]reparation of teaching aids is a function of the role although minor in relation to the promotional/marketing component . . . ." Thus, there appears to be a material difference between the occupational classification identified in the LCA, on the one hand, and the scope of duties asserted in the petition, on the other hand.

Even if the AAO were to accept the occupational classification selected by the petitioner for the proffered position on the LCA, the level of complexity of the position indicated on the LCA is inconsistent with information provided by the petitioner and counsel. The petitioner and counsel

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is analyzed and categorized based on the employer's job description. Enough information must be given so that an analyst can determine the occupational category and the skill level within that category. In defining the job's occupational category, skill level and prevailing wage rate for the labor market area, the analyst considers the following elements of the job (which are provided by the employer): work tasks, work activities, equipment used, work environment, working conditions, complexity of the job duties, level of judgment and understanding required to perform the job, amount and nature of supervision received, and supervisory responsibilities. In this case, the petitioner did not specify to USCIS the job description that it submitted for a prevailing wage determination. However, based upon the wage rate it appears that the employer did not indicate in its request that the duties of the position are unique, complex, sophisticated and highly advanced that require "extraordinary depth and breadth of knowledge" and that the position is a higher level administrator's position that is "directly responsible for the programs, safety and education of approximately 4,000 children" as well as managing 40 coaches and 50 to 70 local camp coordinators (as the petitioner described the proffered position in its appeal to the AAO).

[14]For this section, *see O*NET OnLine*, Instructional Coordinators, on the Internet at *http://www.onetonline.org/link/summary/25-9031.00* (visited January 25, 2012).

repeatedly claim that the proffered position is unique, complex, sophisticated and highly advanced that requires "extraordinary depth and breadth of knowledge" and is a higher level administrator's position that is "directly responsible for the programs, safety and education of approximately 4,000 children" as well as managing 40 coaches and 50 to 70 local camp coordinators.

However, a review of the LCA, which is certified for an entry-level position, is at odds with the petitioner's claimed duties and responsibilities for the proffered position. As discussed above, the wage level specified in the LCA indicates the position is actually a low-level, entry position relative to others within the occupation. Thus it appears that petitioner failed to submit an LCA that corresponds to the claimed duties and responsibilities of the proffered position and that is certified for the correct wage level and proper job classification.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether 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 regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, it is even questionable whether the petitioner has submitted a LCA that corresponds to the claimed duties of the proffered position.

The AAO further observes that, despite classifying the position as an instructional coordinator on the LCA, the petitioner and counsel repeatedly indicated that the proffered position falls under the occupational classification "Recreation Worker" in the supporting documents provided in connection with the Form I-129 petition. For example, the petitioner included a printout of the chapter on the occupation "Recreation and Fitness Workers" from the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 Edition. The petitioner marked a section of the printout that states "[a] bachelor's degree and experience are preferred for most recreation supervisor jobs and required for most higher level administrator jobs." [15] Counsel

[15] No explanation was provided by counsel or the petitioner for submitting documentation from an edition of the *Handbook* that was approximately six years old, rather than from the 2008-2009 Edition, which was current when the Form I-129 petition was filed with USCIS. The AAO observes that the 2008-2009 Edition of the *Handbook* indicates that "**[a]n associate** or bachelor's degree in a recreation-related discipline and

references this section of the *Handbook* in his letter of support regarding the proffered position. Additionally, the petitioner provided an evaluation in which two professors classified the position under the occupational category of recreation and fitness workers in the *Handbook*. Furthermore, based upon a review of the job duties of the proffered position it is unclear why the petitioner chose the occupational classification of instructional coordinator for the LCA.

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In summary, as the *Handbook* indicates that the proffered position does not belong to an occupational classification for which there is a categorical requirement for at least a bachelor's degree in a specific specialty, and as the duties of the proffered position as described in the record of proceeding do not indicate that the proffered position in this petition is one for which a baccalaureate or higher degree or its equivalent in a specific specialty is normally the minimum requirement for entry, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong requires a petitioner to establish that a bachelor's degree, in a specific specialty, 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. at 1102).

As reflected in the discussion above, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Furthermore, the petitioner has not provided any documentation to indicate that the industry's professional association has made a degree a minimum entry requirement.

As previously mentioned, the petitioner is a for-profit enterprise engaged in the business of "soccer loading, coaching training" with approximately 600 employees and a gross annual income of approximately $10 million. In support of its assertion that the degree requirement is

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experience are preferred for most recreation supervisor jobs and required for most higher level administrator jobs." (Emphasis added.)

common to the petitioner's industry in parallel positions among similar organizations, the petitioner provided evaluations, job announcements and letters from firms.[16] However, upon review of the documents, the petitioner fails to establish that organizations similar in size and scope to the petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions.

In response to the RFE, the petitioner provided additional job postings to support its claim that a degree is common in the industry in parallel positions among similar organizations. Specifically, the petitioner provided vacancy announcements from Palomar Family YMCA for a Program Director I - Sports; Boys and Girls Club Northwest Indiana for Boys and Girls Club for a Physical Education Director; City of Bozeman, Montana for a Recreation Superintendent; City of Taylor, Texas for a Recreation Superintendent.

Upon reviewing the documents, the AAO observes that the record contains no indication that that the organizations are similar to the petitioner. The YMCA is one of the largest nonprofit community service organizations in the world. The organization website states that the Palomar Family YMCA is "dedicated to improving the quality of human life and to helping all people realize their fullest potential as children of God through development of the spirit, mind and body." The Boys and Girls Club is charitable national organization whose mission is to "enable all young people, especially those who need us most, to reach their full potential as productive, caring, responsible citizens." The City of Bozeman, Montana and the City of Taylor, Texas are small cities. Thus, the advertisements are for dissimilar organizations (non-profit community service organizations and municipalities). Thus, the documentation does not establish that the petitioner has met this prong of the regulations and further analysis regarding the specific information contained in the job postings is not necessary.

The petitioner also provided letters from several companies. The letters are from (1) a company in the sports education industry; (2) a year round company that provides services in the New England area for over 130 clients; (3) a company that runs summer camps in addition to providing services to clients in the fall and spring seasons; (4) a company that does not identify its type of business; (5) a company that provides soccer instruction and education and has residential camps; and (6) a soccer-specific camp that provides camps, clinics, educational services and tours to Europe.

A review of the letters provided does not demonstrate that organizations similar in size and scope to the petitioner routinely employ degreed professionals in parallel positions. The documents are

[16] The AAO incorporates by reference and reiterates it earlier discussion regarding the deficiencies in the evaluations, as well as in the job postings and letters provided with the Form I-129 petition as well as the information submitted on motion that was previously available and could have been presented with the Form I-129 petition. The petitioner must establish that the position offered to the beneficiary when the petition was filed merits classification. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 ('Reg. Comm'r 1978). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998). To have significant changes to the content of a petition considered, a petitioner must file a new petition, with fee, that incorporates those changes.

devoid of sufficient information regarding the organizations (such as the size, number of personnel, non-profit/for-profit status, level of revenue, scope, scale of operations, business efforts and expenditures), thereby rendering it impossible to conduct a legitimate comparison of business operations.

Furthermore, some of the writers claim that they are familiar with the regional director position; however, they do not provide adequate information regarding the basis of their knowledge. Additionally, the writers provide vague and generic duties for the positions that they claim are comparable and fail to include sufficient information regarding the actual day-to-day responsibilities of the positions. Without this information, it is impossible to conclude that the organizations possess positions parallel to the proffered position.

Furthermore, there are some unexplained inconsistencies in the letters. For example, in a letter, dated October 20, 2009, indicated that the company employed seven individuals in the position of regional director. (We have four executives who oversee the company but the vast majority of our programs comes from our Managers who we call Regional Directors, we have 7 of these people . . . .")

In a letter dated, December 10, 2009, indicated that it was providing documentation regarding for the petitioner regarding the position of "Regional Manager or similar." The AAO notes that the proffered position with the petitioner is for a regional director and that no information has been provided regarding the duties of regional managers. Additionally, the letter indicates that employs two people in the position of regional director. Other positions that are listed as similar are program director (1 employee) and regional instructional coordinators (3 employees). (did not provide an explanation for initially indicating that seven individuals were employed as regional directors and then indicating that only two employees were employed as regional directors.) The letter does not contain the job duties or further information regarding the positions. Thus, there is insufficient information to determine whether any of positions are parallel positions to the proffered position.

also provided copies of the diplomas of the six employees as evidence that a degree in sports science, physical education or a similar field is a requirement for their employees. However, a review of the credentials indicates that one of the employees possesses a Certificate in Education. No explanation was provided regarding this employee's academic background but it suggests that a bachelor's degree in the fields listed above may not be required.

As previously discussed, the petitioner also provided a letter from of , Human Capital Services dated October 23, 2009. The letter indicates that a private survey was conducted to ascertain whether "similarly situated organizations" have a similar position that requires a degree. The letter also states that survey questionnaires were sent to "peer organizations." However, the letter and supporting documentation do not provide any specific information as to how these organizations were selected. The survey questionnaire states that the information was being collected among organizations that provide soccer camps, courses and tournaments to soccer clubs at a national level. The AAO notes that there is no indication that the organizations provided or confirmed that they were in fact involved in these

activities. Moreover, no information was provided regarding the size, number of personnel, non-profit/for-profit status, level of revenue, scope, scale of operations, business efforts and expenditures of the organizations. The only information provided regarding the organizations was the names. Thus, it is impossible to reasonably compare the business operations of these organizations to the petitioner's operations.

Furthermore, the documentation indicates that organizations were provided with a "Summary Job Description" of the proffered position. The AAO notes that the petitioner and counsel have submitted multiple versions of the job description to USCIS for the proffered position and finds it questionable that this particular description of the job duties that was utilized for the survey was never previously provided to USCIS.

There are also inconsistencies between the job description provided in connection with the survey and the letter from regarding the duties and level of responsibility of the position. For example, the job description indicates that the regional directors "make *recommendations* for hiring, promoting and dismissing coaches" while the letter indicates that "the Regional Director *independently makes decisions* regarding the hiring, disciplining and promoting of subordinates [coaches and trainers]."

Moreover, the AAO notes that there are discrepancies in the results of the survey and the supporting documentation. For example, provided the job specifications for one of the organizations for the position of regional director, which indicates that the educational background for the position is a bachelor's degree in sports science, physical education, *business, marketing* (or similar applicable majors). However, the survey results omit the fields of business and marketing. There is insufficient information to determine whether or not the job specification is for a position that is parallel to the proffered position. However, if it were a parallel position, it must be noted that when a job can be performed by a range of degrees or a degree of generalized title, without further specification, the position does not qualify as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988).

The petitioner also submitted an affidavit and the credentials of an employee of However, the affidavit does not contain any additional information regarding the company, nor does it contain the job title and the job duties of the position. Furthermore, the affidavit does not indicate whether a college degree is required in a specific discipline. The AAO notes that the individual possesses a bachelor's degree in Hospitality and Leisure Management.

Upon review of the documents, the petitioner has not established that similar organization in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.[17]

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[17] According to the *Handbook*'s detailed statistics on recreation workers, there were approximately 327,500 persons employed as recreation workers by local governments, nursing and residential care facilities, and civic and social organizations in 2008. *Handbook*, 2010-11 ed., available at http://www.bls.gov/oco/ocos020.htm (last accessed January 25, 2012). Based on the size of this relevant

As the record does not establish that a degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner has not demonstrated that the proffered position qualifies as a specialty occupation pursuant to the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

The petitioner and counsel claim that the duties of the proffered position are complex, unique and sophisticated and they indicate that the petitioner has provided sufficient documentation to satisfy this prong through the evidence submitted. However, a review of the record indicates that the petitioner has failed to credibly demonstrate the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such a degree of complexity or uniqueness.

The petitioner and counsel provided a generic description of the tasks of the proffered position with the Form I-129 petition. The petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that they can be performed only by an individual with at least a bachelor's degree in a specific specialty. The petitioner failed to establish what differentiates the proffered position from other related "non-specialty occupation" positions. The petitioner also failed to provide an explanation of which duties are more discretionary, demanding, complex, highly advanced, specialized or sophisticated to such a level that they exceed industry or normal position standards not involving a requirement of at least a bachelor's degree in a specific specialty. The petitioner also failed to establish that its business is so specialized, distinctive and/or exceptional that it requires the services of an individual with a degree in a specific field of study to serve in the proffered position, even though it is not an industry minimum standard.

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study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few job postings and letters with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements - and companies providing the letters - were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements and letters supported the finding that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, it cannot be found that such a limited number of postings and letters that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Upon review of the record of proceeding, the petitioner failed to sufficiently establish the relative complexity or uniqueness as an aspect of the proffered position of regional director. The duties for the proffered position appear routine and do not elevate the proffered position above that for which no particular educational requirements are demonstrated. 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. In fact, the record of proceeding fails to adequately establish that the job duties described relate any dimensions of complexity and uniqueness such that a bachelor's degree in a specific specialty would be required.

Even though counsel claims that the proffered position's duties are so complex and unique that a bachelor's degree is required, the petitioner failed to demonstrate how the regional director duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, while a few courses in a related field may be beneficial in performing certain duties of a regional director 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 are required to perform the duties of the particular position here proffered. 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).

Therefore, the evidence of record does not establish that this position is significantly different from other recreation worker positions (including recreation supervisors and camp counselors) such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred 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 other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

As the petitioner failed to demonstrate how the proffered position of regional director is so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion entails an employer demonstrating that it normally requires a degree or its equivalent for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position. The AAO notes that the petitioner and counsel repeatedly claim that the duties of the proffered position can only be employed by a degreed individual. 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 the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d 384, 387 (5th Cir. 2000). That is, 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").

In this case, the petitioner provided documentation regarding employees who were previously granted H-1B status to serve in the position of regional director. However, a review of the cases indicates that several of the H-1B petitions have been revoked by the service center director. The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The petitioner claims that for over the past 20 years, it has required a degree in a specific specialty for the position of regional director. However, no information or documentation was provided regarding the actual recruitment procedures and hiring practices of the petitioner. The petitioner also did not provide any information or documentation regarding its methods for recruiting the beneficiary for the position.

Furthermore, the AAO notes that the petitioner did not submit any information or documentation regarding employees who currently or previously served as regional directors who have not held H-1B status. That is, the petitioner did not provide any information regarding employees who were recruited and hired by the petitioner to serve as regional directors who have not held H-1B status, such as U.S. workers, and whether a bachelor's degree in a specific specialty was required for these employees to serve in the position.

The documentation submitted by the petitioner in this matter is not sufficient evidence to establish that the petitioner's specification of a degree requirement is necessitated by the actual performance requirements of the proffered position. It must be further noted that any nonimmigrant petitions that were approved based on the same unsupported and contradictory assertions that are contained in the current record constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Therefore, as the evidence in the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty, 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.

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

The AAO incorporates by reference and reiterates it earlier discussions about the evidentiary deficiencies of both the generalized and generic nature of the description of the proposed duties submitted by the petitioner and counsel and also the more specific and detailed description of duties contained in documents submitted in support of the petition. They fail to establish the specialization and complexity of specific duties that are necessary to satisfy this particular criterion. That is, the petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that performance would require knowledge at a level associated with at least a bachelor's degree, or the equivalent, in a specific specialty.

The AAO acknowledges the opinion letters submitted by the petitioner on this issue, but again, for the reasons previously stated finds that those documents have no probative value. As previously discussed, the opinions expressed lack the necessary factual and analytic foundations and also were provided by persons not shown to merit any deference in the area in which they were opining. The AAO's earlier discussions regarding those opinions are hereby incorporated by reference.

Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are manifestly so specialized or complex as to be usually associated with the knowledge required by this criterion. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than would normally be required of employees who engage in some sports management duties, but not at a level requiring the application of theoretical and practical knowledge that is usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

As the evidence of record does not establish that the specific duties of the proffered position are so specialized and complex that the knowledge required to perform them is usually associated

with the attainment of a baccalaureate or higher degree in a specific specialty, the AAO, concludes that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

Without a comprehensive description of how the beneficiary's actual duties in connection with the petitioner's business differentiate it from other related "non-specialty occupation" positions, the AAO is precluded from determining that the proffered position is a specialty occupation. The petitioner has failed to provide sufficient substantive evidence that the duties of the actual position require the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program in a specific discipline that relates to the proffered position. Accordingly, the petitioner has not established that the position meets any of the requirements for a specialty occupation set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A) or that the beneficiary would be coming temporarily to the United States to perform the duties of a specialty occupation as that term is defined at 8 C.F.R. § 214.2(h)(4)(ii).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the director's decision will not be disturbed.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the director's decision will be affirmed, and the petition will be denied.

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