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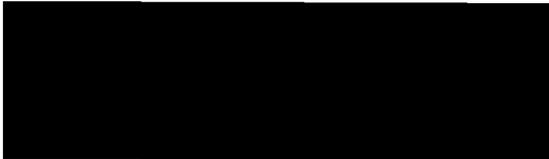
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: **MAR 01 2012**

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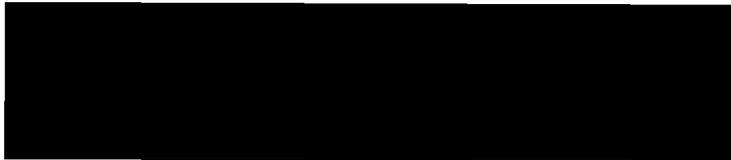
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The nonimmigrant visa was initially approved by the Director, California Service Center. On the basis of new information received and upon further review of the record, the director determined that the approval of the H-1B petition violated 8 C.F.R. § 214.2(h) or involved gross error. Accordingly, the director properly served the petitioner with a notice of her intention to revoke (NOIR) the approval of the nonimmigrant visa petition, and her reasons therefore. After the petitioner failed to submit a timely response, the director revoked the approval of the petition. The director granted a subsequent motion to reconsider, affirmed her previous findings, and certified the matter to the Administrative Appeals Office (AAO) for review. The decision of the director will be affirmed. The petition's approval will be revoked.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an H-1B nonimmigrant 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 petitioner claims to be engaged in real estate development and seeks to employ the beneficiary in the position of financial analyst.

The initial petition was approved on April 26, 2007. On September 26, 2008, the director issued a notice of intent to revoke the approved I-129 petition on the basis that the petition was incorrectly approved. Specifically, the director noted that the record was insufficient to establish that the beneficiary was qualified to perform the services of a specialty occupation and that the record did not demonstrate that a reasonable and credible offer of employment existed. In addition, the director noted that the Labor Condition Application (LCA) submitted with the petition did not correspond to the petition. The director provided the petitioner thirty days to submit evidence to overcome the reasons for the revocation.

On November 4, 2008, the director revoked the petition's approval for the reasons set forth in the NOIR, noting that the petitioner had failed to respond within the allowable period of time. On November 19, 2008, the petitioner filed a motion to reopen and reconsider the revocation, claiming that the evidence requested by the director in his September 26, 2008 NOIR had been forwarded to the service on October 27, 2008 and was received by the service on October 29, 2008. In support of this contention, the petitioner submitted a copy of the United States Postal Service Express Mail Receipt. Based on this evidence, the motion was granted and the petition was reconsidered.

The director, however, again revoked the petition's approval based on the reasons set forth in the NOIR, and certified the decision to the AAO for review. Specifically, the director found that the petitioner had failed to demonstrate that (1) the proffered position qualified as a specialty occupation; and (2) a reasonable and credible offer of employment existed.

The issue before the AAO therefore is whether the director appropriately revoked the approval of the petition.

The AAO will address the basis for the director's denial, and whether this action provided the director with sufficient grounds for revoking the H-1B petition under the language at 8 C.F.R. §

214.2(h)(11)(iii)(A), the regulation outlining the circumstances under which the approval of an H-1B Form I-129 petition must be revoked.

The regulation at 8 C.F.R. § 214.2(h)(11)(iii), which governs revocations that must be preceded by notice, states:

(A) *Grounds for revocation.* The director shall send to the petitioner a notice of intent to revoke the petition in relevant part if he or she finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition, or if the beneficiary is no longer receiving training as specified in the petition; or
- (2) The statement of facts contained in the petition was not true and correct; or
- (3) The petitioner violated terms and conditions of the approved petition; or
- (4) The petitioner violated requirements of section 101(a)(15)(H) of the Act or paragraph (h) of this section; or
- (5) The approval of the petition violated paragraph (h) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for the revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of receipt of the notice. The director shall consider all relevant evidence presented in deciding whether to revoke the petition in whole or in part. If the petition is revoked in part, the remainder of the petition shall remain approved and a revised approval notice shall be sent to the petitioner with the revocation notice.

It is first noted that the director has complied with the notice and decision requirements of the U.S. Citizenship and Immigration Services (USCIS) regulations regarding the revocation of H-1B petitions. Specifically, upon finding that the approval of the instant petition violated 8 C.F.R. § 214.2(h) or involved gross error, the director properly gave notice of the intent to revoke the approval of that petition and provided the requisite 33 days to submit evidence in rebuttal. Upon granting the motion to reconsider, the director properly considered the petitioner's rebuttal before issuing its certified decision to revoke approval of the H-1B petition in this matter.

Having determined that the proper procedure was followed in revoking the petition, the AAO will now address the first issue in the director's certified revocation, i.e., whether the petitioner established that the beneficiary is qualified to perform the duties of a specialty occupation.

A beneficiary's credentials to perform a particular job, however, are relevant only when the job is found to be a specialty occupation. As discussed in this decision, *infra*, the proffered position does not require a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, while the AAO would not normally need to address the beneficiary's qualifications further, it must in this instance as the director erred in stating that "USCIS does not contest that the beneficiary possesses a foreign degree that has been determined, by virtue of the foreign educational evaluation, to be equivalent to the attainment of a Bachelor of Science degree in Management Information Systems from an accredited institution of higher education in the United States."

To determine whether the three-year Bachelor of Information Systems degree from Bond University in Australia is equivalent to a bachelor's degree in management information systems from an accredited institution of higher education in the United States, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in 28 countries." <http://www.aacrao.org/about/> (accessed Feb. 28, 2012). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://aacraoedge.aacrao.org/register/> (accessed Feb. 28, 2012).

EDGE provides a great deal of information about the educational system in Australia and, contrary to the questionable evaluation submitted in this matter, it indicates that a three-year bachelor's degree, such as the one awarded to the beneficiary, is only comparable to three years of university study in the United States. As EDGE does not suggest that a three-year bachelor's degree from Bond University may be deemed a foreign equivalent degree to a U.S. baccalaureate degree and as the record lacks credible, objective evidence to refute the information provided by EDGE, it must be found that the petitioner has failed to establish that the beneficiary is qualified to perform the duties of *any* specialty occupation. Thus, despite the director's flawed reasoning with regard to this issue, this basis for the revocation of the petition's approval is hereby affirmed.

The next issue to be addressed is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the job 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 an occupation that requires:

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

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

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

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

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

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

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

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

In a March 13, 2007 letter, the petitioner explained that it is a full service real estate development, investment, and management company with two employees. It claimed to require the services of the beneficiary as a financial analyst, and stated that his duties would include the following:

- Conduct quantitative analyses of information affecting investment programs;
- Analyze financial information to produce forecasts for use in making investment decisions;
- Interpret data affecting investment programs;
- Responsible for maintaining investor relations with both local and foreign investors.

The petitioner further claimed that it required the candidate for the proffered position to possess at least a bachelor's degree in business administration, finance, accounting, or a related field. According to the petitioner, the beneficiary has a bachelor's degree in management information systems with a concentration in business administration from the University of Johannesburg in South Africa, which has been equated to a U.S. bachelor's degree in management information systems with a concentration in business administration. The petitioner concluded that the beneficiary was therefore qualified to perform the duties of the proffered position.

The director approved the petition on April 26, 2007. However, based on information contained in a consular memorandum from the [REDACTED] dated March 14, 2008, the director issued a NOIR requesting additional evidence in support of the position that the proffered position was in fact a specialty occupation.

In a response dated October 27, 2007, the petitioner, through counsel, addressed the issues raised by the director. The response included a letter from [REDACTED], president of the petitioner as well as the beneficiary's uncle, who stated that a new project known as University Place San Marcos would be growing quickly in size and scope, thus mandating the need for a financial analyst. [REDACTED] stated that the beneficiary's duties would be as follows:

- Gather and analyze financial and informational data including domestic and foreign company financial statements and economic/market data to produce forecasts of business, industry, and economic trends that are used in making financial/investment decisions **(40% of total time)**
- Interpret local market change and other available financial data affecting valuation of existing/invested properties/projects, assess and make recommendations regarding future investment directions and opportunities based on summarized financial data, local economic influences, and a proper assessment of risks and potential payoffs **(20% of total time)**
- Conduct specialized quantitative analyses of financial data and related information affecting investment opportunities and ongoing projects **(10% of total time)**
- Maintain investor relations and communicate directly with existing and potential investors located both locally and abroad; travel as needed **(10% of total time)**
- Manage financial aspect of existing and future investment projects, forecast and maintain budgets, set and achieve project phases and individualized timelines, monitor and report progress to company president, communicate directly with consultants, accountants, attorneys, plus other governmental representatives and assorted professional and construction workers as project needs arise **(20% of total time)**

The petitioner also submitted letters of support and other evidence, which will be addressed in further detail *infra*.

On November 19, 2009, the director again revoked the petition's approval, finding that the evidence submitted in response to the NOIR did not overcome the bases cited for revocation.

In reviewing the record, the AAO observes that the critical element is not the title of the position or 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.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. Factors considered by the AAO when determining this criterion include whether the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty.

The petitioner claims that the proffered position is that of a financial analyst. To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2010-2011 online edition of the *Handbook* for its discussion of financial analysts. As stated by the *Handbook*, the occupation of financial analyst is described in relevant part as follows:

Financial analysts provide guidance to businesses and individuals making investment decisions. Financial analysts assess the performance of stocks, bonds, commodities, and other types of investments. Also called *securities analysts* and *investment analysts*, they work for banks, insurance companies, mutual and pension funds, securities firms, the business media, and other businesses, making investment decisions or recommendations. Financial analysts study company financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting its future earnings. They often meet with company officials to gain a better insight into the firms' prospects and management.

Financial analysts can be divided into two categories: *buy side analysts* and *sell side analysts*. Analysts on the buy side work for companies that have a great deal of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments. Buy side financial analysts devise investment strategies. Conversely, sell side analysts help securities dealers, such as banks and other firms, sell stocks, bonds, and other investments. The business media hire financial advisors that are supposed to be impartial, and occupy a role somewhere in the middle.

Financial analysts generally focus on trends impacting a specific industry, region, or type of product. For example, an analyst will focus on a subject area such as the utilities industry, an area such as Latin America, or the options market. Firms with larger research departments assign analysts even narrower subject areas. They must understand how new regulations, policies, and political and economic trends may impact the investments they are watching. *Risk analysts* evaluate the risk in portfolio

decisions, project potential losses, and determine how to limit potential losses and volatility using diversification, currency futures, derivatives, short selling, and other investment decisions.

* * *

Financial analysts use spreadsheet and statistical software packages to analyze financial data, spot trends, create portfolios, and develop forecasts. Analysts also use the data they find to measure the financial risks associated with making a particular investment decision. On the basis of their results, they recommend whether to buy, hold, or sell particular investments.

U.S. Dept. of Labor, Bureau of Labor Statistics *Occupational Outlook Handbook*, 2010-11 ed., “Financial Analysts,” <http://www.bls.gov/oco/ocos301.htm> (accessed February 28, 2012).

Contrary to the findings of the director, who concluded that the proffered position was akin to the *Handbook’s* description of financial analysts, the AAO notes that the size and nature of the petitioner’s business does not support a finding that the beneficiary’s primary responsibilities would involve the duties of a financial analyst as contemplated by the *Handbook*.¹

The duties, as described in the petitioner’s initial letter of support, do not reflect the employment of financial analysts whose work is discussed in the 2010-2011 edition of the *Handbook*. Instead, the AAO finds that most of the duties of the proffered position, which are largely focused on the petitioner’s budget, financial operations, and forecasting, reflect the work performed by budget analysts. As indicated by the *Handbook*:

Budget analysts help organizations allocate their financial resources. They develop, analyze, and execute budgets, as well as estimate future financial needs for private businesses, nonprofit organizations, and government agencies. In private sector firms, a budget analyst's main responsibility is to examine the budget and seek new ways to improve efficiency and increase profits. In nonprofit and governmental organizations, which usually are not concerned with profits, analysts try to find the most efficient way to distribute funds and other resources among various departments and programs.

In addition to managing an organization's budget, analysts are often involved in program performance evaluation, policy analysis, and the drafting of budget-related legislation. At times, they also conduct training sessions for company or government personnel regarding new budget procedures.

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

At the beginning of each budget cycle, managers and department heads submit operational and financial proposals to budget analysts for review. These plans outline the organization's programs, estimate the financial needs of these programs, and propose funding initiatives to meet those needs. Analysts then examine these budget estimates and proposals for completeness, accuracy, and conformance with established procedures, regulations, and organizational objectives. Sometimes they employ cost-benefit analyses to review financial requests, assess program tradeoffs, and explore alternative funding methods. They also examine past budgets and research economic and financial developments that affect the organization's income and expenditures.

After the initial review process, budget analysts consolidate individual departmental budgets into operating and capital budget summaries. These summaries contain statements that argue for or against funding requests. Budget summaries are then submitted to senior management, or as is often the case in government organizations, to appointed or elected officials. Budget analysts then help the chief operating officer, agency head, or other top managers analyze the proposed plan and devise possible alternatives if the projected results are unsatisfactory. The final decision to approve the budget usually is made by the organization head in a private firm, or by elected officials, such as State legislators, in government.

Throughout the year, analysts periodically monitor the budget by reviewing reports and accounting records to determine if allocated funds have been spent as specified. If deviations appear between the approved budget and actual spending, budget analysts may write a report explaining the variations and recommending revised procedures. To avoid or alleviate deficits, budget analysts may recommend program cuts or a reallocation of excess funds. They also inform program managers and others within the organization of the status and availability of funds in different accounts.

Data and statistical analysis software has greatly increased the amount of data and information that budget analysts can compile, review, and produce. Analysts use spreadsheet, database, and financial analysis software to improve their understanding of different budgeting options and to provide accurate, up-to-date information to agency leaders. In addition, many organizations are beginning to incorporate Enterprise Resource Planning (ERP) programs into their budget-making process. ERP programs can consolidate all of an organization's operating information into a single computer system, which helps analysts estimate the effects that a budget alteration will have on each part of an organization.

Although the *Handbook* indicates that a bachelor's degree is typically required for entry into this occupation, the *Handbook* also indicates that a bachelor's degree in one of many areas is acceptable for entry into this profession. Specifically, the *Handbook* indicates that:

Education and training. Employers generally require budget analysts to have at least a bachelor's degree, but some prefer or require a master's degree. Within the Federal Government, a bachelor's degree in any field is sufficient for an entry-level budget analyst position. State and local governments have varying requirements, but usually require a bachelor's degree in one of many areas, including accounting, finance, business, public administration, economics, statistics, political science, or sociology. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful, regardless of the prospective budget analyst's major field of study. Some States may require a master's degree. Occasionally, budget-related or finance-related work experience can be substituted for formal education.

Id.

Based on the above discussion, the proffered position's budget-related duties do not require the beneficiary to hold a baccalaureate degree in a directly related academic specialty, as required for classification as a specialty occupation. Accordingly, while the AAO agrees with the director's ultimate conclusions in this matter regarding the specialty occupation issue, the director's focus on whether there was a nexus between the beneficiary's degree and the degree required for the proffered position is misplaced, since a review of the record indicates that the proffered position is most akin to an occupational classification that does not require a degree in a specific specialty. Instead, the AAO finds that the petitioner has not established the proffered position as a specialty occupation under the first criterion at 8 C.F.R. 214.2(h)(4)(iii)(A) – a baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position.²

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively 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. Factors often considered by USCIS when determining the industry standard include:

² The AAO notes that the petitioner, through counsel, submitted a U.S. District Court case, an unpublished decision by the AAO, and two letters from individuals in the industry in support of the contention that the beneficiary was qualified, by virtue of his foreign educational credentials, to perform the duties of a specialty occupation. Since the issue of the beneficiary's qualifications (i.e., whether a nexus existed between the beneficiary's degree and the duties of a financial analyst) are no longer at issue here since the AAO has determined that (1) the beneficiary is not qualified to perform the duties of any specialty occupation and (2) the proffered position is that of a budget analyst and thus not a specialty occupation, these documents and their evidentiary value will not be addressed.

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

The petitioner did not submit evidence that responds to this criterion. Although the record contains letters from two individuals in the industry, these letters address the academic qualifications of the beneficiary and do not make a statement with regard to the hiring trends for parallel positions in similar organizations in the petitioner's industry.

In the alternative, the petitioner may submit evidence to establish that the duties of the position are so complex or unique that only an individual with a degree in a specific specialty can perform the duties associated with the position. The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist him in carrying out the duties of the proffered position; however, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify which of the duties, if any, of the proffered position are so complex or unique as to be distinguishable from those of similar but non-specialty-degreed employment. The petitioner has thus failed to satisfy either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Nor is there evidence in the record to establish the third criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A): that the petitioner normally requires a degree or its equivalent for the position. The petitioner has not provided any evidence or claim that it has previously employed specialty-degreed individuals in the proffered position. The record, therefore, does not document that the duties of the proffered position require a baccalaureate or higher level of education to perform them.

The AAO notes that the petitioner claims repeatedly 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 in a specific specialty could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's 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"). Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires that the petitioner establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. The duties of the position described encompass routine budget management and forecasting. While the petitioner claims that the duties of the proffered position are sufficiently complex, the record does not contain explanations or clarifying data sufficient to elevate the position to one that is so specialized and complex that the knowledge to perform these additional tasks is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The AAO finds that, to the extent that they are described, the duties of the proffered position do not convey either the need for the beneficiary to apply a particular body of highly specialized knowledge in a specific specialty, or a usual association between such knowledge and the attainment of a particular educational level in a specific specialty. As the petitioner has not established that the proffered position's specific duties require the application of specialized and complex knowledge usually associated with the attainment of a baccalaureate degree or higher degree in a specific discipline, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).³

The petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The director's revocation of the approval of the H-1B petition in this matter is affirmed for this additional reason.

The next issue before the AAO is whether a reasonable and credible offer of employment existed at the time of filing.

The director noted that the address provided by the petitioner, [REDACTED] was simply a postal box located inside a United Parcel Service (UPS) store. The petitioner addressed this fact in response to the NOID, and indicated that, in addition to this address which served as its official mailing address, the petitioner also maintained a full-scale professional [REDACTED] at [REDACTED] in San Diego. This address, it claimed, was the home of [REDACTED]

³ Counsel asserts that the duties of the proffered position are complex. It must be noted, however, that the petitioner has designated the proffered position as a Level I position on both the 2007 and 2008 Labor Condition Applications (LCAs), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. See Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). Therefore, it is simply not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

█ the petitioner's president. Photographs of an office building were submitted in support of this contention.

In response to the NOID, the petitioner provided a new, signed petition listing the work address of the beneficiary as █. Also included in response to the NOID was a new, certified LCA, certified on October 24, 2008. No filing fee was submitted with the Form I-129.

The director, finding that the petitioner failed to demonstrate that a credible offer of employment existed, based the revocation on the fact that the statements contained on the initial I-129 and LCA were not true and correct, by virtue of the petitioner's listing of a post office box as the work location of the beneficiary. As specific bases for revocation, the director concluded that: (1) the newly-submitted Form I-129 on appeal constituted an amendment and thus a material change to the petition, which could not be accepted; and (2) the petitioner had failed to submit a certified LCA that corresponded with the petition at the time of filing.

The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of a certified LCA at the time of filing. Title 20 C.F.R. § 655.705(b) further indicates that an LCA must correspond to the petition with which it is submitted. The initial LCA submitted with the petition is certified for San Diego, California. Although the petitioner's claims with regard to the actual work location of the beneficiary are inconsistent and unsubstantiated, the LCA is in fact certified for the intended work location of the beneficiary, which was all that was required of DOL's LCA form at that time. Nevertheless, in order for the 2007 LCA submitted in this matter to correspond to the claimed financial analyst position, it would have to have been certified for Occupational Code 160, and not Occupational Code 161. This is because the DOT code for a 13-2051, Financial Analyst, is 160.267-036, Investment Analyst, and none of the DOT code 161 occupations are equated by DOL to a 13-2051, Financial Analyst position. Therefore, as the LCA submitted in support of the instant petition was certified for the wrong occupational classification, the director's ultimate conclusion with regard to this issue is hereby affirmed.

The AAO also concurs with the director's finding with regard to the material changes to the petition. In part 6 of Form I-129, the petitioner must affirm, under penalty of perjury, that the petition and evidence submitted with it is true and correct. In addition, under the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(B)(2), the petitioner must state on the petition that it will comply with the terms and conditions of the LCA for the duration of the beneficiary's stay. In this matter, the director correctly noted that the petitioner's claim on the Form I-129, in which it claimed the beneficiary's work location would be the address where the petitioner's post office box was located, demonstrates that the petitioner was not in compliance with the terms and conditions of employment in that there was no physical location at which to employ the beneficiary.

The petitioner's evidence provided in response to the NOID, therefore, constitutes a material change to the petition. Specifically, Form I-129, which lists the proffered position's location as being the UPS store in San Diego, California, does not correspond with the documentation provided by the petitioner in response to the NOID, which indicate that the beneficiary will actually be working out

of the home of the petitioner's president at an address not previously disclosed or noted as an office location for the petitioner.

The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. See 8 C.F.R. § 103.2(b)(8). If material 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. In this matter, the director correctly determined that the newly-claimed worksite in response to the NOID constituted a material change to the initial petition.

In addition, to determine whether a reasonable and credible offer of employment exists, the AAO must also examine the employer-employee relationship between the petitioner and beneficiary.

Pursuant to 8 C.F.R. § 214.2(h)(4)(ii), *United States employer* means a person, firm, corporation, contractor, or other association, or organization in the United States which:

- (1) Engages a person to work within the United States;
- (2) Has an employer-employee relationship with respect to employees under this part, as indicated by the fact that it may hire, pay, fire, supervise, or otherwise control the work of any such employee; and
- (3) Has an Internal Revenue Service Tax identification number.

At the time of filing, the petitioner submitted the following documentation:

- A Form ETA 9035E, Labor Condition Application (LCA), which identifies the beneficiary's work location as San Diego, California; and
- Copies of the beneficiary's academic credentials.

To qualify as a United States employer, all three criteria must be met. The Form I-129 and corporate tax documentation contained in the record indicate that the petitioner has an Internal Revenue Service Tax Identification Number. However, the record is devoid of documentary evidence, such as an employment contract and an offer or employment in letter form, demonstrating that an employment agreement exists between the petitioner and the beneficiary. Moreover, correspondence contained in the record indicates that the beneficiary is the nephew of the petitioner's president. While familial ties are not a basis for denial of a H-1B visa petition, the absence of additional evidence of eligibility mandates review of all evidence, and lack thereof, submitted in support of the petition. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record prior to adjudication contained no documentary evidence that a valid employment agreement or credible offer of employment existed between the petitioner and the beneficiary. Therefore, the petitioner has failed to satisfy the requirements at 8 C.F.R. § 214.2(h)(4)(ii)(1) and (2) with regard to the definition of United States employer. More importantly, it was determined after a site visit that the petitioner maintained no official business premises, and that the address provided in the petition, as discussed above, was simply a post office box in a UPS store. After noting this in the NOID, the petitioner attempted to rectify this discrepancy by claiming that its actual offices were at the home of the petitioner's president. In support of this contention, black and white photographs of what appears to be a commercial office building were submitted.

As stated above, 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. *Matter of Ho*, 19 I&N Dec. at 591. In this matter, there is no evidence to support a finding that the beneficiary will actually work in a legitimate position for the petitioner. The president of the petitioner is the beneficiary's uncle. While not dispositive, the record contains no evidence, such as an employment contract or agreement, demonstrating that a legitimate position exists for the beneficiary within this company. Moreover, the petitioner claimed a post office box as the work site of the beneficiary, and only claimed a new work location after being notified of this discrepancy in the NOID. Finally, the photographs submitted in response to the RFE look like a legitimate commercial office, yet the petitioner claims they are actually taken inside the home of the petitioner's president. No additional evidence, such as exterior photos showing the location of these offices inside the president's house, is submitted to demonstrate that an actual office is situated at the residence of the petitioner's president. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

The numerous unresolved discrepancies in this matter raise the critical issue of whether a credible offer of employment exists for the beneficiary. This information provided the director with a sufficient basis for revoking approval of the petition under the grounds at 8 C.F.R. § 214.2(h)(11)(iii)(A)(2), (3), (4), and (5).

As related in the discussion above, the petitioner has not established that a credible offer of employment was available to the beneficiary at the time of filing and, therefore, has failed to establish that an employer-employee relationship exists or will credibly exist between the petitioner and the beneficiary. Accordingly, the AAO will not disturb the director's findings in this matter.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden and the director's decision shall accordingly be affirmed.

ORDER: The director's revocation of the approval of the H-1B petition is affirmed. The petition's approval is revoked.