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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**

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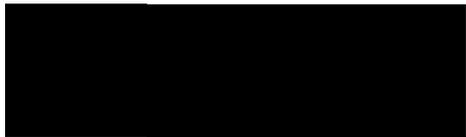


DATE: **MAR 30 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

In its September 8, 2008 letter of support filed with the Form I-129, the petitioner described itself as a corporation that “provides automotive financing for consumers by purchasing motor vehicle retail sales installment contracts from franchised and independent auto dealers.” To continue to employ the beneficiary in a position that it designated as a financial analyst, the petitioner filed this H-1B petition to continue the beneficiary’s classification as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director’s basis for denial was erroneous, and contends that the petitioner satisfied all evidentiary requirements.¹

As will be discussed below, the AAO finds that the director was correct in denying the petition on the basis that she specified. Accordingly, the appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner’s Form I-129 and the supporting documentation filed with it; (2) the service center’s request for additional evidence (RFE); (3) the response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B and counsel’s brief and attached exhibits in support of the appeal.

Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation. The issue before the AAO is whether the petitioner has provided evidence sufficient to establish that it would be employing the beneficiary in a specialty occupation position.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

¹ The petitioner was previously represented by an attorney with offices in San Gabriel, California. However, a new Form G-28, Notice of Entry of Appearance, was submitted with the appeal in this matter, designating a Beverly Hills attorney as the petitioner’s counsel. All representations will be considered, but the decision in this matter will be provided only to the petitioner and the petitioner’s current counsel of record.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor’s degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, 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, 8 U.S.C. § 1184(i)(1), 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 a particular position 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 position as described in the record of proceeding

The “Introduction to the Employer” section of the petitioner’s September 8, 2008 letter of support relates the business context of the proffered position. This letter identifies the petitioner as “a non-captive securitizer of automobile contracts” that “provides automotive financing for consumers by purchasing motor vehicle retail installment sales contracts from franchised and independent auto dealers” and that “offers sub-prime credit quality automobile loans through [its] network of dealer relationships.”

This support letter’s “Job Duties of the Position Offered” section states that the petitioner “wishes to retain [the beneficiary] so that he could continue in the professional capacity of a Financial Analyst.” The letter states that the beneficiary’s duties “include but [are] not limited to the following”:

- [(1)] Analyze financial information to produce forecasts of business, industry and economic conditions for use in making investment decisions; [(2)] interpret data affecting investment programs, such as price, yield stability, future trends in investment risks, and economic influences; [(3)] monitor fundamental economic, industrial and corporate developments through the analysis of information obtained from financial publications and services, investment banking firms, government agencies, trade publications, [and] company sources.
- [(4)] Make reports, strategy proposals to the company management.

The AAO notes that first three duties are substantially the same as the following general duties that the U.S. Department of Labor’s (DOL’s) *O*NET Online* lists among those it ascribes to financial analysts in the “Tasks” section of its Summary Report on this occupational classification:

- Inform investment decisions by analyzing financial information to forecast business, industry, or economic conditions.
- Interpret data on price, yield, stability, future investment-risk trends, economic influences, and other factors affecting investment programs.
- Monitor developments in the fields of industrial technology, business, finance, and economic theory.

The AAO finds that these descriptions are no more than abstract and generalized summaries, from an outside source, of functions generic to financial analysts in general. As such, they do not convey any substantive work in which the beneficiary has been, or would be, actually engaged. Therefore, they have no evidentiary value towards establishing either the substantive nature of the actual services to be performed in the position or a correlation between the performance requirements of the proffered position and the asserted need for at least a bachelor’s degree, or the equivalent, in a specific specialty.

Further, the AAO finds that there is a material inconsistency between the above bullet-descriptions of duties and the nature of the petitioner's business as described in the record of proceeding. That is, contrary to those descriptions, there is no credible evidence in the record of proceeding that the petitioner's particular business includes any substantial investment dimension, involves investment programs, or has an associated need to monitor developments in industrial technology, business, finance and economic theory. An H-1B petition will not merit approval on the basis of duty descriptions that do not correlate with the substantive nature of the work that the beneficiary would actually perform. *Cf. Defensor v. Meissner*, 201 F.3d 384. 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)).

Additionally, the above-discussed material inconsistency between the work claimed for the proffered position and the nature of the petitioner's business as conveyed in the record of proceeding is in itself sufficient basis for denying this petition, for this material inconsistency, on such a fundamental element as the relationship between the duties claimed for a beneficiary's position and the actual nature of the petitioner's business operations, undermines the overall credibility 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. 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).

The AAO also finds that, by listing only three of the ten tasks that *O*NETOnline* ascribes to the financial analyst occupation, and thus failing to disclose the full spectrum of duties by which the *O*NET* characterizes this occupation, the petitioner portrayed the occupation inaccurately. The full complement of the tasks that *O*NET* ascribes to the occupation reads as follows:

- Draw charts and graphs, using computer spreadsheets, to illustrate technical reports.
- Inform investment decisions by analyzing financial information to forecast business, industry, or economic conditions.
- Monitor developments in the fields of industrial technology, business, finance, and economic theory.
- Interpret data on price, yield, stability, future investment-risk trends, economic influences, and other factors affecting investment programs.
- Monitor fundamental economic, industrial, and corporate developments by analyzing information from financial publications and services, investment banking firms, government agencies, trade publications, company sources, or personal interviews.
- Recommend investments and investment timing to companies, investment firm staff, or the public.
- Determine the prices at which securities should be syndicated and offered to the public.

- Prepare plans of action for investment, using financial analyses.
- Evaluate and compare the relative quality of various securities in a given industry.
- Present oral or written reports on general economic trends, individual corporations, and entire industries.

Read in full, the complete list of *O*NET Online* tasks clearly indicates that the defining services of financial analysts far exceed the scope of work in which it is claimed that the beneficiary would engage. The record of proceeding does not establish the petitioner's business as involving investment decisions of the nature indicated by the constellation of duties quoted above, which in part require analysis of securities for investment, assessment of the best timing for investments, monitoring of "fundamental economic, industrial, and corporate developments," and the maintenance of an ongoing investment program generating "plans of action" for investment. Accordingly, the petitioner has failed to establish that the position that is the subject of this petition is what the Form I-129 identified it to be. Also, and consequently, the AAO finds that the Labor Condition Application (LCA) submitted with the Form-129 does not correspond to the petition. That is, as already reflected in this decision's comments regarding the discrepancies between the purported duties of the proffered position and the Financial Analyst occupation specified in the LCA, the proffered position is not encompassed by the occupational classification stated in the LCA.

The AAO also finds that its observations regarding the material disparity between the proffered position as depicted by the record of proceeding and the actual nature of the Financial Analyst occupation is supported by the relevant chapter in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the nature and educational requirements of the wide variety of occupations which it addresses.²

The AAO finds that comparison of the evidence in this record of proceeding with the *Handbook's* "Financial Analysts" chapter conclusively establishes that, regardless of the title assigned to it by the petitioner, the position that is the subject of this petition is not that of a financial analyst.³

The following excerpt from the *Handbook's* chapter is decisive:

Nature of the Work

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,

² The *Handbook*, which is available in printed form, may also be accessed on the Internet. The AAO's references are to Internet editions.

³ The AAO accessed this chapter in the 2010-2011 Internet edition at www.stats.bls.gov/oco/ocos301.htm.

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.

Some experienced analysts called *portfolio managers* supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. Hedge fund and mutual fund managers are called *fund managers*. Fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions. These managers are not only responsible for the overall portfolio, but are also expected to explain investment decisions and strategies in meetings with investors.

Ratings analysts evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government defaulting on its bonds. Other financial analysts perform budget, cost, and credit analysis as part of their responsibilities.

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.

Work environment. Financial analysts usually work in offices. They may work long hours, travel frequently to visit companies or potential investors, and face the pressure of deadlines. Much of their research must be done after office hours because their days are filled with telephone calls and meetings.

The above information regarding the Financial Analyst occupation compels the AAO to find that, whatever the correct occupational classification may be for the proffered position, it is not the Financial Analyst one that is specified in the petition and its accompanying LCA.

The aforementioned September 8, 2008 letter of support further states:

[The beneficiary] will also analyze specific deals from financial, marketing and operational perspective; define the risk of the portfolio to decide the purchase price; evaluate quality of loans and assigns [*sic*] risk rating; select loans to evaluate for credit risk according to factors[;] assigns risk rating indicating borrowers' financial strength and probability of loan repayment; identify issues for purchase price reductions, deal structuring or deal termination; confirm financial information to create appropriate transaction structure; design financial model; write memorandums [*sic*] and reports on specific clients; identify the opportunities to help the growth of the company.

The AAO finds that the petitioner has not established that, as actually performed in the petitioner's self-described business of "automotive financing for consumers," the above duties would exceed those of a consumer loan officer as described in the *Handbook's* chapter entitled "Loan Officers."⁴ That chapter indicates that such positions do not normally require at least a bachelor's degree in a specific specialty.

On March 31, 2009, the service center issued an RFE which requested, *inter alia*, that the petitioner explain why the proffered position requires a minimum of a bachelor's degree or the equivalent in a specific specialty. The RFE requested evidence that the petitioner's competitors commonly require an employee to perform the duties of the proffered position and require that such person possess a minimum of a bachelor's degree, or the equivalent, in a specific specialty.

In a May 9, 2009 letter responding to the RFE, previous counsel provided an expanded version of the duties of the proffered position. The AAO will here present each of that letter's additional, bullet-format descriptions of the duties of the proffered position and the related worktime requirements, immediately followed by the AAO's assessment of each description.

According to the May 9, 2009 letter, the beneficiary will expend his time as follows:

- 20% "[A]nalyzing financial information to produce forecasts of business, industry, and economic conditions for use in making investment decisions. Since [the petitioner] is a car financing company, [the beneficiary] needs to analyze what kind of financial deals are offering [*sic*] in the car financial industry and what kinds [of] rate are financing companies charg[ing] and what kind of protection that they are offering."

⁴ The AAO accessed this chapter in the 2011-2012 Internet edition at <http://www.bls.gov/ooh/business-and-financial/loan-officers.htm>.

The AAO finds that the record of proceeding contains no credible evidence of investment decisions in which the beneficiary would be involved, as the petitioner's business has not been credibly shown to extend beyond "purchasing motor vehicle retail sales installment contracts from franchised and independent auto dealers" so that it can "provide automotive financing for consumers."⁵ The AAO further finds that the second sentence of this duty segment, which is apparently meant to describe the type of investment decisions which would occupy the beneficiary, does not describe an investment process, but rather part of the petitioner's day-to-day car-financing activities.

- 20% "[I]nterpreting data affecting investment programs, such as price, yield stability, future trends in investment risks, and economic influences; monitor fundamental economic, industrial, and corporate developments through the analysis of information obtained from financial publications and services, investment banking firms, government agencies, trade publications, [and] company sources. Make reports, strategy proposals to the company management.

The AAO finds not only that the above duty description is not corroborated by any documentary evidence in the record of proceeding, but also that it is inconsistent with the petitioner's business operations as described in the record of proceeding. They do not indicate that the petitioner is involved in any investment programs that would require interpretation of the investment-related data outlined in the duty segment above. As such, the AAO finds this claimed aspect of the proffered position incredible, and that, as such, it also materially undermines the credibility of the petition.

- 30% "[A]nalyzing specific deals from financial, marketing and operational perspective[s]. Combine the credit report collected from clerk regarding each client to define the risk of the portfolio to decide the purchase price; evaluate quality of loans and assigns [*sic*] risk rating; select loans to evaluate for credit risk according to factors[;] assigns risk rating indicating borrowers' financial strength and probability of loan repayment.

The AAO finds that the introductory sentence, regarding the beneficiary's employing "financial, marketing and operational perspective[s]," adds nothing to the more specific delineation of duties that follows it, which deals with factors that the beneficiary must consider in evaluating a candidate for the petitioner's automotive financing services. The AAO further finds that the duties as delineated do not establish the need for the application any specific educational level, or educational equivalency, in any specific specialty. Rather, they appear to comport with the duties of a consumer loan officer, which, as earlier discussed in this decision, do not normally require at least a bachelor's degree, or the equivalent, in any specific specialty.

- 25% "[A]lso identifying issues for purchase price reductions, deal structuring or deal termination; confirm financial information to create appropriate transaction structure; design financial model; write memorandums [*sic*] and reports on specific clients[;] [identify the opportunities to help the growth of the company.]"

⁵ Quoted language is taken from the petitioner's self-description in its aforementioned September 8, 2008 letter of support. .

The AAO finds, that, in the context of this petitioner's particular business operations as presented by the petitioner, neither the above nor any other duty descriptions in the record of proceeding are indicative of an actual need for attainment of any particular level of education, or educational equivalency, in a specific specialty.

Further, the AAO finds that, in light of the material conflict, noted above, between the claimed scope of the proffered position's duties, on the one hand, and the petitioner's business operations as documented in the record of proceeding, on the other hand, both the petitioner's delineation of the services that the beneficiary would perform and its characterization of them as constituting a specialty occupation merit no credibility. This alone is a sufficient, independent basis for dismissing the appeal, for a petition may not be approved on the basis of material statements that are materially incorrect.⁶

The AAO notes that, in his December 15, 2009 letter submitted on appeal, the petitioner's president credited the beneficiary with having a finance program, stating:

[The beneficiary has developed an innovating [*sic*] finance program in which our company can fully utilize the profit/risk analysis in making pertinent financial decision[s] and open credit to hundreds of consumers in the credit crunch market. As such, our company has gained a momentum towards financial success.

This assertion merits no evidentiary weight in the analysis of the specialty occupation issue. First, the petitioner does not establish that development of the unidentified "finance program" was work performed during the extension period sought in this petition. Second, even if it is assumed that the petitioner is referring to the CRP program, neither the CRP documents nor any other documentary evidence in the record establish that the development of the finance program required the theoretical and practical application of at least a bachelor's degree level of a body of knowledge in any specific specialty required to perform financial-analyst positions as they are described in the *Handbook*. Third, as reflected in the AAO's earlier comments about the evidence regarding the proffered position, the petitioner failed to establish that whatever role the beneficiary may have in the implementation of the "innovating finance program" would require at least a bachelor's degree, or the equivalent, in a specific specialty. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190.))

The AAO has also taken into account the copies of [REDACTED] consignment contracts, which reference the petitioner as the entity that "should be named as loss payee for the vehicle consigned." The AAO finds, however, that these documents have no material bearing towards establishing the nature and level of education, or educational equivalency, that the beneficiary would have to apply to perform the duties of the proffered position.

The AAO recognizes that the evidence in the record of proceeding indicates that, as counsel states on appeal, that "[o]nce a purchase is made, the petitioner finances the same cars through its finance department."

⁶ Thus does the USCIS regulation at 8 C.F.R. § 214.2(h)(10)(iii)(A)(2) provide for revocation of an approved petition when "[t]he statement of facts contained in the petition was not true and correct."

The AAO finds that the petitioner fails to establish how that aspect of the petitioner's business translates into a financial analyst position for the beneficiary, or, for that matter, any type of specialty-occupation-caliber duties for the beneficiary.

The AAO accords no evidentiary weight to counsel's statements in the appeal brief that are not supported by documentation in the record of proceeding, such as counsel's particular renditions of the beneficiary's work that extend beyond what the petitioner has actually stated or what the documentary evidence in the record clearly shows. 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).

Examples of the beneficiary's work product

The AAO finds no probative value in the documents that the petitioner submitted as samples of the beneficiary's work product. These consist of several documents submitted as part of the RFE response, and one submitted for the first time on appeal.

As "[w]ork product from [the] Beneficiary for the Previous Validity Period," counsel's RFE response includes copies of the following documents, lettered by counsel as (a) through (d), which shall be reviewed below: (a) as New Exhibit 9, a 14-page document entitled "Investment and Expansion Plan[:] Dealership in East Los Angeles" (hereinafter referred to as the East L.A. Dealership Plan) and a four-page document, entitled "Market Analysis"; (b) as New Exhibit 10, an eight-page compilation of miscellaneous documents, which counsel's RFE-reply letter introduces as a "Financial Analysis Report for [the petitioner's] [I]nsurance [D]epartment [R]egarding [C]laims" (hereinafter referred to as the FAR); (c) as New Exhibit 11, an eight-page compilation of documents that counsel describes as "Guideline and Sales Program at Goodina" (hereinafter referred to as the Goodina document) and (d) as New Exhibit 12, a 25-page document, attributed to the beneficiary and dated April 18, 2007, entitled "Growth Factors in the Natural Resource Industry."

Additionally, as Exhibit D on appeal, counsel submits a set of documents described by counsel as the "Captive Retail Program Developed by the Alien and Exhibits Thereto" (hereinafter referred to by the acronym CRP).

The AAO finds that the content of the East L.A. Dealership Plan and the accompanying "Market Analysis" document does not indicate that their production involved the use of any analytical methodologies or applications that would require at least a bachelor's degree level of knowledge in a body of highly specialized knowledge in finance or any other specific specialty. Further, there is no indication of any original research or of any specialized analysis of the attributes of the East L.A. dealership as an investment prospect. Thus, this exhibit is not probative evidence that the beneficiary either has been or would be serving in a specialty occupation.

Next, the AAO finds that, although entitled "Financial Analysis Report," the FAR does not contain any analysis, financial or otherwise, that indicates that it is the product of the application of at least a bachelor's degree level of a body of highly specialized knowledge in any specific specialty. Therefore, this document is also not probative evidence on the specialty occupation issue.

The AAO finds that nothing in the narrative and the accompanying tables and graphs of the [REDACTED] document conveys that they are the product of a highly specialized analytical process, let alone one requiring at least a bachelor's degree, or the equivalent, in a specific specialty. Thus, this document also has no probative value.

Next, the AAO finds it curious that this petitioner, with no apparent connection to any natural resource industry, would have assigned the beneficiary to produce the paper "Growth Factors in the Natural Resource Industry." Aside from that credibility issue, the AAO finds that the paper, though learned in nature and reflecting a grasp of the economic theories and formulas cited therein, does not correlate with any of the petitioner's present operations or with any investment strategy established in the record of proceeding. Rather, the paper appears to be the result of an academic exercise in economics that has no obvious bearing on or utility for the petitioner's business. As such, the AAO accords no evidentiary weight to the paper, submitted as it is without any explanations of why the petitioner would require such a paper, and how its conclusions, academic as they are, would benefit the petitioner.

The AAO also accords no probative weight to the CRP documents submitted on appeal. The AAO finds nothing in the narrative, including the formulas cited there, that is indicative of the CRP requiring, at any stage, the application of at least a bachelor's degree level of a body of highly specialized knowledge in finance or any specific specialty. Further, the AAO finds that nothing in the CRP documents suggests that the program required any substantial commitment of time to research or analyze. Further, the evidentiary significance of these documents is even further reduced by the fact that the CRP was not specifically mentioned in either the documents initially filed with this petition or in the RFE response – a fact which suggests that the CRP was not a material aspect of the petitioner's claimed need for a financial analyst when it filed the petition.

In summary, the AAO finds that the documents submitted as examples of the beneficiary's work product not only have no probative value toward establishing the proffered position as a specialty occupation, but also suggest that the beneficiary has not in fact been engaged in the caliber of work for which the previous petition was approved.

The copies of job vacancy advertisements

It is important to note that, while job advertisements may or may not be relevant, depending upon their particular content and the extent to which they are shown to relate to the particular position for which an H-1B petition is filed, they are not recognized in statute, regulation, or precedent decisions as a type of evidence that merits any special weight or deference. Further, the burden resides with the petitioner to establish, by persuasive documentary evidence, that the samples presented in support of the petition are for positions that are substantially similar to the proffered position in specific duties to be performed and in the scope of substantive matters upon which the duties would be performed. It is also incumbent upon the petitioner to establish how representative the advertisements are of the advertisers' own recruiting and hiring practices and those of firms substantially similar to the petitioner in its industry. As will be evident in the discussion below, the job vacancy advertisements submitted into this record of proceeding do not establish that they even relate to positions parallel to the one proffered in this petition.

The submissions in response to the RFE also include copies of two vacancy announcements, from the *monster.com* employment website, which the petitioner's previous counsel submitted as evidence that the degree requirement specified by the petitioner "is common to the industry in parallel positions."

One of the announcements was placed by an employment recruiting company seeking a financial analyst on behalf of an unidentified firm in an unidentified business. These identity issues alone render the advertisement irrelevant to an assessment of the educational requirements of the proffered position. Further, the announcement states that a successful applicant must possess a "[b]achelor's degree in Business, Finance, or an equivalent combination of education, training, and related experience." As the announcement specifies a broadly stated, undifferentiated degree in Business as acceptable, the announcement is not indicative of a position whose performance requires at least a bachelor's degree, or the equivalent, in a specific specialty. A bachelor's degree in business administration is inadequate to establish that a position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree of generalized title, such as business administration or liberal arts, without further specification, does not establish eligibility. The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility. *See, Matter of Michael Hertz, Assoc.*, 19 I&N Dec. 558, 560 (Comm. 1988).

The other vacancy announcement was placed by an unnamed commercial-asset appraisal and liquidation firm – a company obviously outside the petitioner's industry. This announcement states, "Four-year college degree required," but it does not specify any major or academic concentration. Accordingly, this document is not supportive of the petition.

On appeal, counsel provides copies of two additional vacancy announcements found on the Internet.

One is for a senior data analyst for a company that describes itself as a widely recognized Fortune 500 bank. It states that the position requires a "Bachelor's degree in any quantitative field (business, math, economics, finance, statistics, science, eng" As the copy provided is truncated at that point, it does not include the total range of majors or academic concentrations acceptable to the bank. However, requiring a degree in the wide range of disparate disciplines listed does not constitute requiring a minimum of a bachelor's degree or the equivalent in a specific specialty. Further, the petitioner is not in the banking industry as is the Fortune 500 bank that placed the advertisement. Additionally, there is no evidence in the record of proceeding that the bank's expressed need for a financial analyst is mirrored in the actual needs of the instant petitioner.

The other vacancy announcement was placed by [REDACTED] for a position it described as Senior Business Analyst Manager. In this advertisement, [REDACTED] identified itself as the fourth largest non-captive auto lender in the United States. It stated that the vacancy announced requires a bachelor's degree and that a bachelor's degree in a quantitative major is preferred. Not only does the content of the vacancy announcement not support the proposition for which it was submitted, but it also serves as evidence that, if the [REDACTED] position is substantially similar to the position that is the subject of this petition, such positions do not require a degree in a specific specialty.

That the [REDACTED] advertisement specified a bachelor's degree and indicated a preference for a quantitative major does not even state a minimum requirement of a bachelor's degree in a specific specialty. Rather, it indicates that any academic major or concentration may be acceptable. As such, the advertisement in fact discredits the petitioner's view of it as evidence that the proffered position is a specialty occupation.

The AAO notes that the CRP documents reference the petitioner's business as purchasing automobile retail installment contracts (i.e., car loans) and suggested that it provides cars to used car dealers on consignment, both from its inventory of repossessed cars and from cars it would subsequently acquire at auction. In a letter dated December 15, 2009 the petitioner's president described this plan as "an innovating [sic] financing program in which our company can fully utilize the profit/risk analysis in making pertinent financial decision [sic] and open credit to hundreds of consumers in the credit crunch market." He further stated, "As such, our company has gained a momentum [sic] toward success." In the brief submitted on appeal counsel characterized that innovation as "an all around overhaul" of the petitioner's business. Counsel also stated, "[USCIS] lacks the expertise to assess the [petitioner's] business need [for a] professional accountant."⁷

Neither counsel nor the petitioner has provided evidence substantiating the nature and extent of the so-called "momentum" or "all around overhaul." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. Again, 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 evidence in the record of proceeding does not provide substantive details of any Financial Analyst work that would purportedly engage the beneficiary through the extension period sought in this petition. Additionally, the evidence of record does not substantiate that, at the time the petition was filed, the petitioner had so expanded its business as to secure definite, non-speculative financial-analyst work for the beneficiary during the employment period specified in the Form I-129. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed (*See* 8 C.F.R. 103.2(b)(1) and *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978)); a visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts (*See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248; *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971)).

The AAO will now specifically address the supplemental criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). In doing so, the AAO hereby incorporates into its analysis of each criterion all of this decision's preceding comments and findings regarding the evidentiary deficiencies, material inconsistencies, lack of credibility, and all other grounds identified by the AAO as precluding approval of this petition for its failure to establish the proffered position as a specialty occupation.

⁷ Of course, the instant visa petition was filed not for an accountant, but for what the petitioner designated a financial analyst position.

The AAO turns first to the alternative criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree, or its equivalent, in a specific specialty is the normal minimum requirement for entry into the particular position.

As previously discussed, the information reported in the *Handbook's* "Financial Analysts" chapter, does not support the proffered position as being that of a financial analyst. Also, the petitioner has not provided reliable evidence from any authoritative source to refute the *Handbook's* depiction of the scope of work performed by financial analysts, a depiction with which the duties described in the record of proceeding do not comport.

As previously discussed, the AAO finds that the documentary evidence submitted into the record to establish the nature of the work that the beneficiary would perform is not indicative of a financial analyst position; it also is not indicative of the need for at least a bachelor's degree, or the equivalent, in any specific specialty.

As also previously noted, while some of the proposed duties comport with those of a consumer loan officer, the *Handbook's* information on that particular occupation clearly indicates that it is not one that normally requires a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as the record of proceeding fails to establish that the particular position that is the subject of this petition is one that normally requires at least a bachelor's degree in a specific specialty, the petitioner has failed to satisfy the alternative criterion at 8 C.F.R. §214.2(h)(4)(iii)(A)(1).

Next, the AAO will address 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 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 already discussed, the petitioner has not established that its proffered position falls under an occupational classification for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, the petitioner has not provided any documentation to indicate that the industry's professional association has made a degree a minimum entry requirement for the type of position that the evidence in the record of proceeding indicates the beneficiary would perform. Moreover, the petitioner did not submit any affidavits from firms or individuals in the industry attesting to relevant recruiting and hiring practices.

As already reflected in this decision's analysis of the job vacancy announcements submitted into the record, they do not constitute probative evidence that the proffered position qualifies as a specialty occupation.

It should also be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, about relevant industry recruiting and hiring practices can be drawn from the small sample of advertisements submitted.⁸

For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next consider the second alternative prong at 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.

As evident in the duty descriptions quoted earlier in this decision, the petitioner described the proffered position and the duties comprising it in terms of generalized and generic functions. The AAO finds that neither those descriptions nor any evidence in the record of proceeding developed relative complexity or uniqueness as characteristics of the proffered position that mark it as one that can only be performed by a person with at least a bachelor's degree in a specific specialty. Thus, the petitioner has not satisfied this second alternative prong at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

As the record of proceeding indicates that the petitioner has not previously hired anyone for this position, except the beneficiary pursuant to the previously approved petition, there is no evidence for consideration under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. The AAO finds that the evidence of record did not describe the duties of the proffered position in other than generalized terms of generic functions that do not address the duties of the proffered position with sufficient specificity to establish whatever relative degree of specialization and complexity may reside in them.

The petitioner has not satisfied at least one of the supplementary criteria in the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

⁸ The petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just two job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the industry.

Moreover, given that there is no indication that the advertisements 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").

In sum, the AAO finds that the director was correct in her determination that the petitioner failed to establish that the beneficiary would be employed in a specialty occupation position. Accordingly, the director's decision to deny the petition shall not be disturbed.

Beyond the decision of the director, the AAO finds that there is an additional aspect of this petition that precludes approval of the petition, namely, that the LCA submitted to support this petition does not correspond to the nature of the proffered position as indicated by credible evidence in the record of proceeding. That is, for all of the reasons earlier discussed in the decision for finding that the proffered position is not, as claimed in the petition, a financial analyst position, the LCA, certified as it is for a financial analyst position, does not relate to the actual position that is the subject of this petition.⁹

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.

In addition, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) states, as part of the general requirements for petitions involving a specialty occupation, that:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

Further, the regulation at 8 C.F.R. § 214.2(h)(2)(E), states the following:

Amended or new petition. The petitioner shall file an amended or new petition, with fee, with the Service Center where the original petition was filed to reflect any material changes in the terms and conditions of employment or training or the alien's eligibility as specified in the original approved petition. An amended or new H-1C, H-1B, H-2A, or H-2B petition must be accompanied by a current or new Department of Labor determination. In the case of an H-1B petition, this requirement includes a new labor condition application.

⁹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The regulations require that before filing a Form I-129 petition on behalf of an H-1B worker, a petitioner obtain a certified LCA from DOL in the occupational specialty in which the H-1B worker will be employed. *See* 8 C.F.R. § 214.2(h)(4)(i)(B). The Form I-129 filing requirements imposed by regulation require that the petitioner submit evidence of the certified LCA at the time of filing. Thus, for this reason also, the petition must be denied.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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