



U.S. Citizenship
and Immigration
Services

D2

[REDACTED]

Date: **OCT 22 2012** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Director, Vermont Service Center, (“the 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 remain denied.

On the Form I-129, Petition for Nonimmigrant Worker, the petitioner describes itself as a dental office established in 2006 with six employees and \$1,051,061 in gross annual income. The petitioner seeks to employ the beneficiary as an office manager and seeks to classify her 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 determining that the petitioner had failed to demonstrate that the position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains (1) the Form I-129 and supporting documentation; (2) the director’s request for additional evidence (RFE); (3) the petitioner’s response to the RFE; (4) the director’s denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, and counsel’s supplemental brief. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director’s grounds for denying this petition.¹ Accordingly, the appeal will be dismissed, and the petition will remain denied.

Beyond the decision of the director, we find additionally that the petitioner has failed to demonstrate that the petition is supported by a certified Labor Condition Application (LCA) which corresponds to it. For this additional reason the petition must be denied.

As noted above, the petitioner described itself on the Form I-129 as a dental office. In its March 31, 2010 letter of support, contrary to the statement on the Form I-129, the petitioner indicated it had been established in 1996. The record does not include information clarifying when the petitioner was established. The petitioner indicated that its office manager would supervise, oversee, and manage the marketing, financial, and insurance processes of the office. The petitioner noted the duties of the position would include:

- Supervising the day-to-day billing and accounting operations;
- Developing and implementing marketing strategies;
- Analyzing current billing and accounting practices to determine and address areas of inefficiency;
- Overseeing internal and external revenue collection;
- Coordinating between insurance companies and the office;
- Contacting patients to discuss the financial aspects of treatment plans;
- Reconciling revenue in the accounting system;

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). It was in this review that the AAO observed an additional ground for denial of the petition, which, although not noted by the director, nevertheless precludes approval of this petition.

- Developing and maintaining billing and accounting spreadsheet and other tracking measures; and
- Maintaining statistical data on billing/reimbursement activities.

The petitioner stated that the proffered position required an individual with at least a bachelor's degree, or the equivalent, in business administration or a related field.

In the October 8, 2010 response to the director's RFE, counsel noted the time allocated to specific duties, repeated some duties, and added others. Counsel noted that the specific duties of the proffered position would include:

- *Managing the day-to-day billing and accounting operations to ensure operational efficiency, timely billing practices, and resolution of outstanding accounts – 20 percent*
- *Hiring and supervising the daily work of full-time employees, including future Dental Assistant Interns; fostering a positive work environment conducive for continual learning and performance improvement; and conducting periodic performance reviews – 15 percent*
- *Analyzing current billing and accounting practices to determine and address areas of inefficiency, and developing and implementing operational solutions – 15 percent*
- *Developing and implementing marketing strategies; determining target markets; and developing advertising campaigns and materials – 15 percent*
- *Overseeing internal and external (debt collection service) revenue collections from overdue accounts; assessing the level of bad debt reserves; and reviewing and recommending write-offs – 10 percent*
- *Managing customer service processes and procedures for favorable resolution of patient concerns and complaints, and to maximize positive word-of-mouth within the community – 10 percent*
- *Acting as liaison between patients, dentists, and insurance companies, and ensuring compliance with federal and state regulations – 5 percent*
- *Maintaining statistical data on billing/reimbursement activities; analyzing statistical data; and developing and recommending strategies for decreasing write-offs and unpaid fees and increasing the financial health of the practice – 5 percent*
- *Managing other critical business functions, including contracting with repair personnel, communicating with outside payroll company to ensure efficient pay system, maintaining HR information such as employee documentation, federal regulations, office protocols, etc. – 5 percent.*

Counsel contended that the above list shows that the office manager is responsible for a variety of complex duties and added that the beneficiary would directly supervise the activities of all the office employees. The petitioner provided a list of the positions in its practice including the president/dentist, an office manager (the proffered position), a public relations officer, and four registered dental assistants. Counsel averred that the complex analytical and professional tasks could only be performed by an individual who possesses at least a bachelor's degree, or the equivalent, in business administration or a related field. Counsel asserted further that the individual who holds this position must possess training and knowledge that can be gained only

through a college education, as he or she must have a solid foundation in the theories and practice of business administration, and related topics to successfully perform the duties of the position.

The petitioner also provided a September 24, 2010 position evaluation report prepared by [REDACTED], a faculty member at South University in West Palm Beach, Florida. [REDACTED] paraphrased counsel's description of the duties of the proffered position of office manager and initially concluded "that the position is so complex and specialized that only an individual with a bachelor's degree in business administration, management or its equivalent could adequately perform the complex responsibilities." [REDACTED] also opined: "a Bachelor's degree is normally required and is common to the industry in parallel positions among similar organizations" for the position of office manager. [REDACTED] noted that she had conducted a thorough review of employment websites for the position of office manager and then listed six examples of office manager positions that required a bachelor's degree in a related field of work. She also indicated that as a faculty member she is in contact with recruiters regarding numerous employment opportunities for students and that recruiters have consistently indicated that a bachelor's degree in business administration, management or its equivalent is the requisite background required for this particular position. [REDACTED] ended her report by concluding that the position of office manager for the petitioner's business would require a bachelor's degree in business administration or its equivalent to adequately perform the complex duties required for the position.

The record contains multiple claims regarding the complex and specialized knowledge required for the proffered position as noted above. On appeal, counsel repeats the description of duties previously provided and again asserts that specific duties of the position of office manager in this matter are so complex and specialized that it qualifies as a specialty occupation.

However, when considering the petitioner's claim regarding the responsibilities inherent in the position in connection with the LCA the petitioner submitted with the petition, the petitioner's claims are questionable. The LCA submitted by the petitioner in support of the instant position indicates that the occupational classification for the position is "Healthcare Support Worker, All Others," with the SOC (ONET/OES) Code 31-9099.99,² at a Level I (entry-level) wage.³ The *Prevailing Wage Determination Policy Guidance* issued by the U.S. Department of Labor (DOL) states the following with regard to Level I wage rates:

Level 1 (entry) wage rates are assigned to job offers for beginning level employees

² The current O*NET Summary Report indicates that not all healthcare support workers are listed separately and that the "all other" titles represent occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations. See the Internet at <http://www.onetonline.org/link/details/31-9099.00>.

³ See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. November 2009), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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

The proposed duties' level of complexity, uniqueness, and specialization, as well as the level of independent judgment and understanding required to perform them, are questionable, as the petitioner submitted an LCA certified for a Level I, entry-level position. The LCA's wage level is indicative of a position that is actually a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. However, the duty descriptions provided by the petitioner appear relatively abstract, as they depict the general functions of the proffered position, and, as such, do not establish a level of complexity, uniqueness and/or specialization that distinguishes the duties, or the position, from positions whose performance does not require a bachelor's degree, or the equivalent, in a related specialty.

We noted that wage levels should be determined only after selecting the most relevant O*NET occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.⁴ Prevailing wage determinations start with an entry level wage and progress to a wage that is commensurate with that of a Level 2 (qualified), Level 3 (experienced), or Level 4 (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.⁵ The U.S. Department of Labor (DOL)

⁴ See DOL, *Employment and Training Administration's Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. May 9, 2005), available on the Internet at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf.

⁵ A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one

emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received. Otherwise, the petitioner while asserting that the proffered position requires the individual to perform complex and specialized tasks, could set the wage level at the entry-level minimum as has been done here and avoid payment of the corresponding prevailing wage for such a position.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proposed position's complexity, demands and level of responsibilities. 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. 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 regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) makes clear that certification of an LCA does not constitute a determination that a position qualifies for classification as a specialty occupation:

Certification by the Department of Labor of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.

While DOL is the agency that certifies LCA applications before they are submitted to United States Citizenship and Immigration Services (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 (emphasis added):

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.

category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, it appears that the petitioner has failed to submit a valid LCA that corresponds to the claimed duties of the proposed position. Specifically, it has failed to submit a valid LCA that corresponds to the level of work and responsibilities that the petitioner ascribes to the proposed position and to the wage-level corresponding to such a level of work and responsibilities in accordance with the requirements of the pertinent LCA regulations.

The petitioner's claim that the beneficiary will perform duties that reflect a high level of independent responsibility and independent judgment are materially inconsistent with the certification of the LCA for a Level I entry-level position, and this conflict undermines the overall credibility of the petition. The record contains no explanation for this inconsistency regarding the proposed position's wage level. Thus, even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved due to the petitioner's failure to submit an LCA certified for the proper wage classification.

We now address the basis upon which this petition was denied - the director's determination that the proposed position does not qualify for classification as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

In this matter, the petitioner states that it seeks the beneficiary’s services as an office manager for its dental office and identifies the position for wage consideration as a healthcare support worker. 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, Id.* The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

The AAO notes that, as reflected in the job descriptions quoted above in this decision, the petitioner describes the duties of the proffered position in terms of generalized and generic functions, which, the AAO finds, do not convey either the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of knowledge that the beneficiary would have to apply to her duties. The petitioner initially indicated that the beneficiary would supervise and analyze billing, accounting, and collections and noted that the beneficiary would coordinate between insurance companies and the office and would contact patients to discuss treatment plans. The petitioner also indicated that the beneficiary would develop and implement marketing strategies. Accordingly, the proffered position appears to incorporate some duties of a bookkeeper/accounting clerk, some duties of an administrative services manager, as well as some marketing duties. In response to the RFE, the petitioner, through counsel added that the beneficiary would also supervise other office workers, manage customer service, and compile statistical data to increase the financial health of the petitioner's practice.

We observe that the petitioner does not indicate that it has a position of bookkeeper or accounting clerk and thus it appears that the beneficiary would not be relieved from performing the routine tasks associated with billing, accounting, and collections work. It appears more likely than not that the beneficiary is being hired to perform, at least in substantive part, the duties of a bookkeeper or an accounting clerk.⁶ Although the petitioner indicates that the beneficiary will supervise other office employees, as noted above, this claim conflicts with the petitioner's designation of the wage level for the proffered position as a Level 1, entry-level position. The petitioner states that the beneficiary will also be involved in marketing and customer service but also provides a position chart that indicates another employee performs these duties.

As discussed in greater detail, *infra*, as the evidence in this record of proceeding does not establish the educational attainment actually required to perform the proffered position, the

⁶ The *Handbook* identifies the typical duties of a bookkeeping, accounting, and auditing clerk as: using bookkeeping software; posting financial transactions; receiving and recording cash, checks, and vouchers; producing reports and income statements; and checking figures, reports and postings for accuracy and reconciling discrepancies. The *Handbook* notes that these workers have a wide range of tasks and some maintain an entire organization's books. The *Handbook* reports that most bookkeeping, accounting and auditing clerks need a high school diploma although some employers prefer candidates who have some postsecondary education, particularly coursework in accounting. *See* Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., available at <http://www.bls.gov/oco/ocos001.htm>.

petitioner failed to satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the appeal must be dismissed, and the petition denied.

For thoroughness, however, the AAO will briefly discuss each criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). The AAO will first review the record of proceeding in relation to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). To satisfy this criterion, the evidence must establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition.

To expand upon our finding, we observe that some of the petitioner's listed duties are also found in the *Handbook's* discussion of duties performed by administrative service managers, bookkeepers/accounting clerks, and marketing managers. In relevant part, the *Handbook* summarizes the duties typically performed by an administrative services manager:

Administrative services managers plan, direct, and coordinate supportive services of an organization. Their specific responsibilities vary by the type of organization and may include keeping records, distributing mail, and planning and maintaining facilities. In a small organization, they may direct all support services and may be called the *business office manager*. Large organizations may have several layers of administrative managers who specialize in different areas.

The *Handbook* reports that the educational requirements for administrative service managers vary by the type of organization and the work they do. However, the *Handbook* states generally:

A high school diploma or a General Educational Development (GED) diploma is typically required for someone to become an administrative services manager. However, some administrative services managers need at least a bachelor's degree. Those with a bachelor's degree typically study business, engineering, or facility management.

Regarding the duties and educational requirements for a bookkeeper/accounting clerk, and as briefly referenced above, the *Handbook* states in pertinent part:

Bookkeeping, accounting, and auditing clerks produce financial records for organizations. They record financial transactions, update statements, and check financial records for accuracy.

The records that bookkeeping, accounting, and auditing clerks work with include expenditures (money spent), receipts (money that comes in), accounts payable (bills to be paid), accounts receivable (invoices, or what other people owe the organization), and profit and loss (a report that shows the organization's financial health).

Most bookkeeping, accounting, and auditing clerks need a high school diploma, and they usually learn some of their skills on the job. They must have basic math and computer skills, including knowledge of spreadsheets and bookkeeping software.

Regarding the duties of a marketing manager, the *Handbook* reports: "Advertising, promotions, and marketing managers plan programs to generate interest in a product or service" and "[t]hey work with art directors, sales agents, and financial staff members." The *Handbook* indicates that generally "a bachelor's degree is required for most advertising, promotions, and marketing management positions. These managers typically have work experience in advertising, marketing, promotions, or sales."

The common theme in the above occupational classifications is that a bachelor's degree in a specific discipline is not required to perform the duties of the positions. Our review has found that the occupations of an administrative services manager, a bookkeeper/accounting clerk, or a marketing manager who is responsible for the basic and general duties as described in this matter are not occupations that normally impose a normal minimum entry requirement of a bachelor's degree in a specific field of study as required by section 214(i)(1)(B) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The *Handbook* does not conclude that these positions normally require at least a bachelor's degree, or its equivalent, in a specific specialty for entry into the occupation.

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a categorical requirement for at least a bachelor's degree in a specific specialty. In that regard we have reviewed [REDACTED] opinion relating to the proffered position. First, we observe that she does not list the reference materials on which she relies as a basis for her conclusion. Thus, it appears that she did not base her opinion on any objective evidence, such as the results of formal surveys, research, statistics, or any other objective quantifying information; but rather relied on the general description of the proffered position as set out by the petitioner and anecdotal evidence based on her interactions with recruiters. We will address [REDACTED] research on the Internet regarding employment solicitations below. Suffice it to say, however, that the AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. Accordingly, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

Moreover, [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration or a related field or business administration, management, or a related field. Even if established by the evidence of record, which it is not, the requirement of 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 correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also

establish that the position requires the attainment of a bachelor's or higher degree in a *specialized field of study or its equivalent*. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007). Therefore, the AAO finds that the letter from Dr. Liken is neither an authoritative source nor has her opinion established that the proffered position is a specialty occupation.

For all of the reasons discussed above, the AAO finds that the petitioner has not satisfied the requirements of the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry* in positions that are both: (1) parallel to the proposed position; and (2) located in organizations that are similar to the petitioner.

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

As discussed *supra*, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry.

The five job vacancy announcements submitted by counsel also do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Counsel has not submitted any evidence to demonstrate that these advertisements are from companies "similar" to the petitioner. The petitioner has submitted no evidence to establish that these advertisers conduct business in the petitioner's industry and that they are also similar to the petitioner in size, scope, and scale of operations, business efforts, and expenditures. Nor does the petitioner submit any evidence regarding how representative these advertisements are of the advertisers usual recruiting and hiring practices. Simply 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)).⁷

⁷ Furthermore, based on the size of this relevant study population, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the five vacancy announcements it submits with regard to determining the common educational requirements for entry into parallel positions in similar

We have again reviewed [REDACTED] evaluation of the proffered position and note her reference to six job announcements for the position of office manager which according to her evaluation require a bachelor's degree in a related field of work. We note that [REDACTED] does not provide copies of these job announcements and we find the conclusions reached that the job announcements evidence that a bachelor's degree for the position of office manager is required has no foundational support when considering whether the proffered position is a specialty occupation. Again, there is no information that the job announcements reviewed were solicitations for jobs that are similar to the proffered position other than in title and there is no evidence that the advertising companies are similar to the petitioner's six to eight person dental office.

Accordingly, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

A review of the record of proceeding indicates that the petitioner has failed to credibly demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail any particular level of complexity or uniqueness such that they can only be performed by an individual with at least a bachelor's degree in a specific specialty. The petitioner provided generic descriptions of the tasks of the proffered position that fail to adequately establish the complexity or uniqueness of any specific duties of the actual work that the beneficiary would perform. Moreover, the AAO hereby incorporates by reference and reiterates its earlier discussion that the LCA indicates the proffered position is a low-level, entry position relative to others within the occupation. Based upon the wage-level, the beneficiary is only required to have a basic understanding of the occupation. Furthermore, based upon that LCA wage-level, the beneficiary is expected to perform routine tasks that require limited, if any, exercise of independent judgment.

The record does not sufficiently demonstrate how the duties of the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study

organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). 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").

leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex or unique. While a few related courses may be beneficial in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position. Moreover, as referenced above, the petitioner states that the proffered position required an individual with at least a bachelor's degree, or the equivalent, in business administration or a related field. As determined above, this assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation, as a degree in business administration, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the record of proceeding does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty. Counsel for the petitioner noted in response to the director's RFE that the petitioner previously employed an office manager who held a bachelor's degree and a certificate in dental office management. To substantiate the educational credentials of the former office manager, counsel references her resume and W-2 Form. However, the record does not include the former employee's actual educational credentials demonstrating that the former employee obtained a bachelor's degree in a specific discipline that was directly related to duties that require the theoretical and practical application of specialized knowledge. 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, *supra*.

Moreover, while a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387, *supra*. 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* Section 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 a petitioner to establish that the nature of its position’s duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree. Here, the AAO incorporates by reference and reiterates its earlier discussions about the generalized nature of the petitioner’s descriptions of the proposed duties and our discussion and analysis of the petitioner’s designation of the proposed position on the LCA as a low-level, entry position relative to others within the occupation. It is therefore simply not credible that the position is one with specialized and complex duties and would be a position likely to be classified at a higher-level, requiring a significantly higher prevailing wage. The petitioner has failed to establish that the duties of the proffered position are sufficiently specialized and complex that their performance would require knowledge in a specific field of study at a level usually associated with at least a bachelor’s degree in that field. Insufficient evidence was provided to demonstrate that the proffered position reflects a higher degree of knowledge and skill than other types of employees, including those bearing the title “office manager,” but not at a level of applying theoretical and practical knowledge that is usually associated with at least a bachelor’s degree in a specific discipline.

The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that the proffered position qualifies as a specialty occupation under any one of the requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Accordingly, the AAO shall not disturb the director’s denial of the petition.

The appeal will be dismissed and the petition denied. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. § 291 of the Act, 8 U.S.C. § 1361. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

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