



U.S. Citizenship
and Immigration
Services

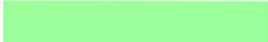
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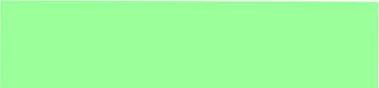
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OFFICE: CALIFORNIA SERVICE CENTER

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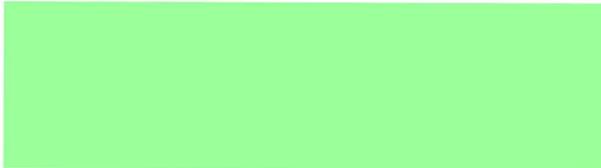


IN RE: Petitioner:
Beneficiary:



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 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,

for
Michael T. Kelly
Ron Rosenberg
Acting 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.

On the Form I-129 visa petition, the petitioner describes itself as a “utility solar developer” established in 2009. In order to employ the beneficiary in what it designates as a management analyst position,¹ the petitioner 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 on the basis of her determination that the petitioner had failed to demonstrate that the proffered position qualifies for classification as a specialty occupation.

The record of proceeding before the AAO contains the following: (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 letter denying the petition; and (5) the Form I-290B and supporting documentation.

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

As will now be discussed, based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes 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 Immigration and Nationality Act (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:

¹ The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for the SOC (O*NET/OES) Code 13-1111, the associated Occupational Classification of “Management Analysts,” and a Level I (entry-level) prevailing wage rate.

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this illogical and absurd result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v.*

Chertoff, 484 F.3d 139, 147 (1st Cir. 2007) (describing “a degree requirement in a specific specialty” as “one that relates directly to the duties and responsibilities of a particular position”).² Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position’s title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally* *Defensor v. Meissner*, 201 F. 3d at 384. The critical element is not the title of the position nor an employer’s self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

In its November 8, 2011 letter of support, the petitioner stated that the duties of proffered position would include the following tasks:

² Counsel argues on appeal that the bachelor’s degree or equivalent is not required to come from a specific specialty and cites *Matter of Sheikh*, 17 I&N Dec. 634 (BIA 1980). However, *Matter of Sheikh* has no relevance here. Contrary to counsel’s claim, the court in *Matter of Sheikh* was not addressing the issue of whether the offered position in that petition qualified for classification as a specialty occupation. Rather, the issue in that case was whether the beneficiary qualified as a member of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), as interpreted in 1980, a date prior to the statutes and regulations implementing the H-1B specialty occupation program. Here, the director did not question the beneficiary’s qualifications to perform the duties of the proffered position; the issue before the AAO is whether the petitioner’s proffered position qualifies as a nonimmigrant H-1B specialty occupation. Furthermore, even if the beneficiary’s qualifications to perform the duties of the proffered position were in question, the issue would be whether she qualifies to perform the duties of a specialty occupation rather than whether she qualifies as a member of the professions as defined in section 101(a)(32) of the Act.

While similar, the terms “profession” and “specialty occupation” are not interchangeable. The current, primary, and fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor’s or higher degree, or equivalent, to be in a specific specialty. There is no such requirement to qualify as a profession. Even a position specifically identified as qualifying as a profession in section 101(a)(32) of the Act would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

For all of these reasons, *Matter of Sheikh* has no relevance here.

- Solving management problems through the analysis of relevant data and the creation of new reports for better corporate understanding;
- Developing systems to maintain open-flow communication between partners, coworkers, and teams;
- Analyzing annual revenues and budgets in order to keep overhead budgets low;
- Developing systems for processing budget information for accounting by coding, categorizing, and auditing daily office expenses;
- Determining the optimal employment levels for company efficiency while also monitoring internal organization and culture;
- Assisting in the determination of the function of the roles of future hires;
- Developing company-wide operations and procedures manuals to increase operational efficiency in accordance with the organization's objectives, as determined by the partners;
- Training current employees and new hires on new office procedures and processes;
- Managing and building out new information technology systems with server implementation and remote access capabilities in order to improve organizational efficiency;
- Developing systems and procedures for documenting, filing, and recording important office information and contracts in soft and hard copy on the company-wide shared drive; and
- Analyzing and evaluating information and relevant data in order to predict and solve problems.

The petitioner stated that "the minimum level of education allowable for entry into this type of position within this industry is a bachelor's degree in business administration, or [a] related field[.]"

By virtue of their number and differences, the proposed duties appear specialized and complex. However, the AAO finds that, even when read in the aggregate, neither the above duty descriptions, nor any other in this record of proceeding, distinguish the proposed duties, or the position that they comprise, as so complex, specialized, and/or unique as to require the practical and theoretical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty, as required to establish a specialty occupation in accordance with the definitions at section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii). Rather, the AAO finds, the proffered position and its constituent duties are described in terms of general functions that appear generic to the occupation in general and which, as so generically described, do not convey the substantive nature of the work that would be involved or the performance of these functions within the particular context of the petitioner's business operations.

Nor does the letter from [REDACTED], a Professor of [REDACTED] establish that the proffered position is a specialty occupation or that it meets any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) enumerated above. In his January 25, 2012 letter, [REDACTED] discussed the credentials he believes qualify him to opine upon the proffered position; repeated the job duties proposed for the beneficiary as provided by the petitioner; briefly described the petitioner's business operations; asserted that the proffered position requires an individual with a bachelor's degree in business administration, management, or a related area; and claimed that it is standard practice for a company such as the petitioner to hire a management analyst with at least a bachelor's degree.

However, the AAO finds that neither [REDACTED] academic status, as described by him, nor his resume, nor his writings, establish him as one with expert knowledge, or as one who has been accepted as a recognized authority, in the area in which he opines, namely, the academic requirements for performing the duties of a particular position within this occupational classification, let alone one in such a position in a relatively small company describing itself on the Form I-129 as a "utility solar developer." Further, his submission is superficial and conclusory, for it does not specify and discuss any studies, surveys, or other authoritative publications, and, significantly, it does not discuss the pertinent occupational information provided in the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook* (the *Handbook*).

Nor did [REDACTED] list whatever studies, surveys, or other reference materials on which he relied as a basis for his statements, or indicate whether he visited the petitioner's business premises or spoken with anyone affiliated with the petitioner, so as to ascertain, and base his opinion upon, the substantive nature, and the substantive educational requirements, of the proposed duties and the proffered position as they would be actually performed. It appears that [REDACTED] did not base his opinion on any objective evidence, but instead simply restated the duties of the proffered position as provided by the petitioner. Nor did he address the petitioner's certification of the LCA for a Level I, entry-level position. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Moreover, it is noted that [REDACTED] opined that a bachelor's degree in business administration would provide adequate preparation to perform the duties of the proffered position. 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 at 147.

For all of these reasons, the AAO finds that the letter from [REDACTED] is not probative evidence that the petitioner has satisfied any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding.

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which is satisfied by establishing 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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.³ The AAO agrees with the petitioner that the generally described duties of the proffered position align with those of management analysts as outlined in the *Handbook*.

The *Handbook* states the following with regard to the duties of management analysts:

Management analysts, often called management consultants, propose ways to improve an organization's efficiency. They advise managers on how to make organizations more profitable through reduced costs and increased revenues. . . .

Management analysts typically do the following:

- Gather and organize information about the problem to be solved or the procedure to be improved
- Interview personnel and conduct on-site observations to determine the methods, equipment, and personnel that will be needed
- Analyze financial and other data, including revenue, expenditure, and employment reports, including, sometimes, building and using sophisticated mathematical models

³ The *Handbook*, which is available in printed form, may also be accessed online at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are from the 2012-13 edition available online.

- Develop solutions or alternative practices
- Recommend new systems, procedures, or organizational changes
- Make recommendations to management through presentations or written reports
- Confer with managers to ensure that the changes are working

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Management Analysts," <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-2> (accessed December 19, 2012).

The *Handbook* states the following with regard to the educational requirements necessary for entrance into the field:

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

Id. at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4>.

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. Although the *Handbook* indicates that a master's degree in business administration may be required for some positions, it also indicates that a bachelor's degree from the fields of business, management, accounting, marketing, economics, statistics, computer and information science, and engineering would also suffice. However, the disparate fields of business, management, accounting, marketing, economics, statistics, computer and information science, and engineering do not constitute a specific specialty; such a wide range of acceptable majors or academic concentrations is not indicative of a position requiring the theoretical and practical application of a distinct body of highly specialized knowledge in a specific specialty, as required by section 214(i)(1) of the Act and its implementing regulation at 8 C.F.R. § 214.2(h).

Accordingly, as the *Handbook* indicates that working as a management analyst does not normally require at least a bachelor's degree or the equivalent in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

The AAO notes further that, as discussed briefly above, the petitioner stated in its November 8, 2011 letter that a bachelor's degree in business administration would provide an individual with adequate preparation to perform the duties of the proffered position. Again, 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.⁴ Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The information from O*NET OnLine submitted by counsel does not establish that the proffered position satisfies the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. O*NET OnLine is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a requirement for a given position, as its JobZone designations make no mention of the specific field of study from which a degree must come. As was noted previously, the AAO 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 proposed position. Additionally, the Specialized Vocational Preparation (SVP) rating is meant to indicate only the total number of years of vocational preparation required for a particular position. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. For all of these reasons, the O*NET OnLine excerpt is of little evidentiary value to this issue.

Finally, the AAO notes that the petitioner designated the proffered position as a Level I position on the LCA. That designation is indicative of a comparatively low, entry-level position relative to others within its occupation, and it signifies that the beneficiary is only expected to possess a basic understanding of the occupation.⁵

⁴ Again, 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 enumerated 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 at 147.

⁵ 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 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

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source⁶ establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish the proffered position as, in the words of this criterion, a "particular position" for which "[a] baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry."

As the evidence in the record of proceeding does not establish that a baccalaureate degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not established the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

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 occupational 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 indicates that the proffered position 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 possess 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.

⁶ The information that counsel submits from Salary.com is neither authoritative nor persuasive. While this information indicates that a majority of management analysts possess at least a bachelor's degree, it does not indicate that a bachelor's degree, or the equivalent, *in a specific specialty*, is normally required.

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

For the reasons already discussed, the AAO is not persuaded by counsel's argument on appeal that Professor [REDACTED] submission has satisfied this criterion.

Nor do the six job vacancy announcements submitted by counsel satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). First, the petitioner has not submitted any evidence to demonstrate that the positions being advertised in these vacancy announcements are "parallel" to the position proffered here.⁷ Second, the petitioner has not submitted any evidence to demonstrate that any of these advertisements is from a company "similar" to the petitioner.⁸ The petitioner has submitted no evidence to establish that any of these advertisers are similar to the petitioner in size, scope, scale of operations, business efforts, expenditures, or other fundamental dimensions. Nor has the petitioner established that the job-vacancy announcements require a bachelor's degree, or the equivalent, in a specific specialty.⁹ Nor does the petitioner submit any evidence regarding how representative these advertisements are of the industry's usual recruiting and hiring practices with regard to the position advertised. Again, 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. at 165.¹⁰

⁷ For example, all six of these positions require work experience. However, as noted above, the wage-level designated by the petitioner in the LCA indicates that the proffered position is actually a low-level, entry position relative to others within the occupation.

It is also noted that [REDACTED] requires a master's degree for its advertised position, which is not a requirement for the position proffered in this petition.

⁸ On the Form I-129, the petitioner claimed to be a "utility solar developer" company with fifteen employees. However, [REDACTED] described the industry within which it operates as "Accounting – Finance Consulting"; the unnamed company conducting its recruitment through Gaming Hospitality Executive described the industry within which it operates as "Accounting – Finance[,] Computer Software [and] Hotel – Resort"; [REDACTED] describes itself as "the world leader in implementation and operations management consulting"; the [REDACTED] claims that it is "focused on IT, Engineering, and Finance"; the [REDACTED] is a dental consulting firm; and [REDACTED] claims that it "provide[s] cost and project management services, and specialist consultancy services, to public- and private-sector clients around the world." The petitioner did not explain how its business operations are similar to any of these companies in terms of size, scope, scale of operations, business efforts, expenditures, or other fundamental dimensions.

⁹ Although [REDACTED] and [REDACTED] require a bachelor's degree, they do not require that it be in a specific specialty.

¹⁰ Furthermore, according to the *Handbook* there were approximately 718,800 persons employed as management analysts in 2010. *Handbook* at <http://www.bls.gov/ooh/business-and-financial/management->

Therefore, the petitioner has not satisfied the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty as 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.

Next, the AAO finds that the petitioner did not satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "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."

In this particular case, the petitioner has failed to credibly demonstrate that the duties the beneficiary would perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty. The duties proposed for the beneficiary are similar to those outlined in the *Handbook* as normally performed by management analysts, and the petitioner's description of the duties which collectively constitute the proffered position lacks the detail and specificity required to establish that they surpass or exceed the duties performed by typical management analysts in terms of complexity or uniqueness. As noted above, the *Handbook* indicates that the performance of these typical duties does not normally require a bachelor's degree, or the equivalent, in a specific specialty. The AAO finds further that, even outside the context of the *Handbook*, the petitioner has simply not established complexity or uniqueness as attributes of the proffered position, let alone as attributes with such an elevated degree as to require the services of a person with at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, the AAO incorporates here by reference and reiterates its earlier discussion regarding the LCA and its indication that the proffered position is a low-level, entry position relative to others within the occupation. Based upon the Level I wage rate specified in the LCA, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is

analysts.htm#tab-6 (accessed December 19, 2012). 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 six submitted vacancy announcements with regard to determining the common educational requirements for entry into parallel positions in similar 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").

As such, even if these six job-vacancy announcements established that the employers that issued them routinely recruited and hired for the advertised positions only persons with at least a bachelor's degree in a specific specialty closely related to the positions, it cannot be found that these six job-vacancy announcements that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

indicative of a position where the beneficiary would perform routine tasks that require limited, if any, exercise of independent judgment; would be closely supervised and monitored; would receive specific instructions on required tasks and expected results; and would have her work reviewed for accuracy.

The petitioner therefore failed to establish how the beneficiary's responsibilities and day-to-day duties constitute a position so complex or unique it can be performed only by an individual with at least a bachelor's degree, or the equivalent, in a specific specialty.

Consequently, as it did not show that the particular position for which it filed this petition is so complex or unique that it can only be performed by a person with at least a bachelor's degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree, or the equivalent, in a specific specialty for the position.

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and with regard to employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior recruiting and hiring for the position. The record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the proffered position.¹¹ In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree, or the equivalent, in a specific specialty.

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. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory

¹¹ Any such assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the occupation.

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”).

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner’s perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the actual performance requirements of the position necessitate a petitioner’s history of requiring a particular degree in its recruiting and hiring for the position. See generally *Defensor v. Meissner*, 201 F. 3d at 387. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proposed position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor’s degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. See *id.* at 388.

The record indicates that the petitioner has never employed a management analyst. Although the fact that a proffered position is a newly-created one is not in itself generally a basis for precluding a position from recognition as a specialty occupation, an employer that has never recruited and hired for the position cannot satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires a bachelor’s degree, or the equivalent, in a specific specialty for the position.

As the petitioner has failed to demonstrate a history of recruiting and hiring only individuals with a bachelor’s degree, or the equivalent, in a specific specialty for the proffered position, it has failed to satisfy 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Next, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which requires the petitioner to establish that the nature of the proffered 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 in a specific specialty.

The AAO here incorporates by reference into this discussion its earlier comments and findings regarding the generalized and generic level at which the proffered position and its duties are described.

Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, the petitioner’s designation of an LCA wage-level I is indicative of duties of relatively low complexity.

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

The pertinent guidance from the Department of Labor, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

Level II (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O*NET Job Zones.

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

Level III (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker. . . .

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

Level IV (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, as clear by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II). The AAO also finds that, separate and apart from the petitioner's submission of an LCA with a wage-level I designation, the petitioner has also failed to provide sufficiently detailed documentary evidence to establish that the nature of the specific duties that would be performed if this petition were approved is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As the petitioner has not satisfied at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

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.