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U.S. Citizenship
and Immigration
Services

[Redacted]

DATE: JAN 02 2013 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,

for *Michael T. Kenny*
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 two-employee HVAC firm¹ established in 2006. In order to employ the beneficiary in what it designates as a financial manager position,² the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on the basis of his 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.

¹ Although the petitioner described itself as an HVAC firm at page 5 of the Form I-129, it provided a North American Industry Classification System (NAICS) Code of 423700 at page 17 of the Form I-129. However, the NAICS website states that 423700 is not a valid 2002, 2007, or 2012 NAICS Code. See U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "423700," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (accessed November 26, 2012). The petitioner should have selected NAICS Code 238220, "Plumbing, Heating, and Air-Conditioning Contractors" which, according to the NAICS website, encompasses the following types of businesses:

This industry comprises establishments primarily engaged in installing and servicing plumbing, heating, and air-conditioning equipment. Contractors in this industry may provide both parts and labor when performing work. The work performed may include new work, additions, alterations, maintenance, and repairs.

Id. at "238200 Plumbing, Heating, and Air-Conditioning Contractors," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

² Counsel highlights the fact that the director mistakenly referred to the proffered position as that of a database administrator at page 3 of his December 9, 2011 decision denying the petition. According to counsel, the petitioner "is concerned" that it was not "given a fair opportunity to present the case and [that] due process has been denied" due to this error.

The AAO finds no merit in counsel's assertions. First, this typographical error occurred at one portion of a six-page document, and even a cursory review of the director's decision reveals that the proffered position was analyzed as a financial manager position. Furthermore, counsel identifies no harm that resulted from this typographical error, and the AAO detects none, either. Accordingly, the AAO deems this a harmless typographical error on the part of the director, and it will address this matter no further.

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.

Beyond the decision of the director, the AAO finds two additional aspects which, although not addressed in the director's decision, nevertheless also preclude approval of the petition, namely: (1) the petitioner's having provided as the supporting Labor Condition Application (LCA) for this petition an LCA which does not correspond to the petition, in that the LCA was certified for a wage-level below that which is compatible with the levels of responsibility, judgment, and independence that the petitioner claimed for the proffered position through descriptions of its constituent duties; and (2) failure to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation.³ For these additional two reasons, the petition must also be denied.

In an undated statement attached to the undated letter counsel submitted in response to the director's August 30, 2011 RFE, the petitioner claimed that the duties of the proffered position would include the following:

- Preparing financial reports that summarize and forecast the petitioner's business activities and financial position in the areas of income, expenses, and earnings based upon present and expected transactions;
- Ensuring that financial reports comply with the petitioner's internal policies;
- Preparing operational and risk reports for management analysis;
- Developing and analyzing information in order to assess the current and future financial status of the company;
- Preparing balance sheet, profit and loss statement, cash flow chart, and other reports to summarize the petitioner's current and projected financial position with regard to capital assets, net worth, liabilities, income, and expenditures;
- Analyzing and classifying risks and investments in order to determine potential impacts on the company;
- Analyzing complex financial data and extracts;
- Defining relevant information;

³ The AAO conducts appellate review on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified these additional two grounds for denial.

- Interpreting data for the purpose of determining past financial performance and/or projecting the company's "financial probability";⁴
- Analyzing records of past and present operations, trends and costs, estimated and realized revenues, administrative commitments, and obligations incurred;
- Overseeing and analyzing budget patterns and project expenditures;
- Developing complex financial reports for forecasting, trending, and results analysis;
- Analyzing data gathered, developing information and considering available solutions or alternative methods of proceeding, and directing the compilation of data based on statistical studies and analysis of past and current years in order to prepare budgets and justify funds requested;
- Organizing and documenting findings of studies and preparing recommendations for the implementation of new business systems, procedures, or organizational changes;
- Analyzing the petitioner's business and operating procedures in order to devise the most efficient methods of accomplishing its work;
- Planning studies of work problems and procedures such as organizational change, communication, information flow, integrated production methods, inventory control, or cost analysis;
- Managing a high-level fiscal system in a complex-high volume environment with a broad scope by utilizing advanced fiscal theory and his advanced knowledge of pertinent policies and procedures;
- Managing the development and implementation of new or enhanced financial policies and procedures as required in response to sensitive and complex issues or requirements;
- Resolving difficult and unusual financial problems requiring expert knowledge and experience;
- Generating, analyzing, and presenting custom financial reports and fiscal interpretations;
- Assessing the adequacy and effectiveness of the petitioner's financial management systems;
- Reviewing the reliability, accuracy, and integrity of the financial and automated management information systems being implemented;

⁴ The meaning of "financial probability" is not clear.

- Evaluating accounting systems;
- Establishing procedures and various safeguards for the petitioner's projected growth;
- Reporting to the petitioner's management/president on significant issues related to the financial management of the company;
- Facilitating and undertaking training seminars/workshops on projected financial management for the petitioner's staff;
- Preparing financial management guidelines, manuals, and guidance notes on various issues for use by management/president;
- Evaluating the petitioner's financial reporting systems, accounting procedures, and investment activities, and making recommendations for changes to procedures, operating systems, budgets, and other financial control functions;
- Establishing procedures for the custody and control of assets, records, loan collateral, and securities in order to ensure their safekeeping;
- Overseeing the flow of cash and financial instruments, and reviewing the petitioner's fiscal operations in order to ensure integrity, accuracy, and control of data;
- Interpreting, clarifying, explaining, and applying the company's internal policies, procedures, and business practices;
- Coordinating the activities of personnel responsible for the formulation, monitoring, and presentation of budgets for controlling the funds to implement the program objectives of the company;
- Planning studies and collecting data to determine the costs of certain business activities such as the purchase of materials, inventory, and labor; and
- Overseeing all financial-related matters for the company, including billing, quoting and tracking, analyzing balance sheet accounts, preparing monthly reporting and month-end closings.

In adjudicating this petition, the AAO will first address the first additional ground for denial it has identified on appeal: the petitioner's failure to submit an LCA which corresponds to the petition in that that the LCA was certified for a wage-level below that which is compatible with the levels of responsibility, judgment, and independence the petitioner claimed for the proffered position through descriptions of its constituent duties. The AAO will then address director's sole ground for denying the petition: his determination that the petitioner failed to demonstrate that the proffered position

qualifies for classification as a specialty occupation, which also independently requires denial of the petition. Finally, the AAO will address the second additional ground for denial it has identified on appeal: the petitioner's failure to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation, which also independently requires denial of the petition.

The record contains several claims regarding the complexity and specialization of the duties of the proffered position, as well as the degree of independence the beneficiary would assume within the petitioner's organization. For example, in the duty descriptions discussed above, the petitioner claimed, *inter alia*, that the beneficiary would "analyze complex data," that he would work with a "high level fiscal system in a complex, high volume environment," and that he would resolve "difficult and unusual financial problems requiring [both] expert knowledge and experience."

In similar fashion, in his undated letter submitted in response to the director's August 30, 2011 RFE counsel discussed the proffered position's alleged "detailed, specialized[,] and complex financial management duties," and quoted a letter submitted as expert testimony to argue further that "fulfilling the requirements for the above complex duties demand[s] specialized knowledge in business administration."

Also, the petitioner submitted a letter from Dr. [REDACTED], a Professor Emeritus of Finance at the [REDACTED]⁵ who made the following assertions:

The company asserts, and I concur, that the specific duties are so specialized. . . .

* * *

Fulfilling the requirements for these complex duties demands specialized knowledge in business administration. . . .

However, as will now be discussed, these assertions materially conflict with the wage level designated in the LCA that the petitioner submitted with the petition. The LCA submitted by the petitioner in support of the instant position specifies the occupational classification for the position as "Financial Managers," SOC (O*NET/OES) Code 11-3031.00, at a Level I (entry level) wage. The *Prevailing Wage Determination Policy Guidance*⁶ 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

⁵ Dr. [REDACTED]'s letter will be discussed in further detail below.

⁶ Available at http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf (last accessed November 26, 2012).

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 petitioner's assertions regarding the proposed duties' level of complexity and specialization, as well as the level of independent judgment and responsibility and the understanding required to perform them, are materially inconsistent with the petitioner's submission of an LCA certified for a Level I, entry-level position. The LCA's wage-level (Level I, the lowest of the four that can be designated) is only appropriate for a low-level, entry position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels quoted above, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; will be expected to perform routine tasks requiring limited, if any, exercise of judgment; will be closely supervised and have her work closely monitored and reviewed for accuracy; and will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the proffered position's 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).

It should be noted that, for efficiency's sake, the AAO's discussion and findings regarding the material conflict between assertions in the petition and the LCA wage-level are hereby incorporated as part of this decision's later analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Aside from the adverse impact of the LCA wage-level against the overall credibility of the petition, the AAO will now discuss that additional issue raised by the LCA which was noted at the outset of this decision as precluding approval of the petition, namely, the fact that the LCA does not appear to correspond to the instant petition.

The DOL has clearly stated that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA.

With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that "[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA."

Further, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) also 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 the DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (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.

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. As reflected in this decision's earlier discussion of the conflict between the assertions of record regarding the proffered position, on the one hand, and, on the other, the position's characterization inherent in the LCA's Level I wage-rate designation, the petitioner has failed to submit an LCA that corresponds to the claimed duties of the proffered position. Specifically, it has failed to submit an LCA whose wage-level corresponds to the level of work and responsibilities that the petitioner claims for the proffered position. 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.

As reflected in this decision's earlier discussion regarding the fact that the LCA does not correspond to the petition, that conflict between the petition and the LCA in itself precludes approval of this petition, independently from and regardless of the merits of the petition. Also, as previously noted, the conflict between the LCA and the petition also adversely affects the merits of the petition, because it materially undermines the credibility of the petition's statements with regard to the nature and level of work that the beneficiary would perform.

The AAO will now address the director's determination that the proffered position is not a specialty occupation. 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:

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”). 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,⁷ 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.

The duties proposed for the beneficiary were set forth earlier in this decision. The AAO finds that, even when read in the aggregate and as supplemented by the supporting documents submitted into

⁷ Contrary to counsel’s assertion made on appeal, the AAO notes that it is reasonable to assume that the size of an employer’s business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner’s business, as the size impacts upon the duties of a particular position.

this record of proceeding, the descriptions of the proposed duties and the position to which they are ascribed, do not establish the proposed duties, or the position that they comprise, as so complex, specialized, 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).

Even when read in the aggregate and in full evidentiary context of this record of proceeding, while the duties as described indicate many separate functions that the petitioner claims for the proffered position, the extent to which they were described lacks substantive details of how those functions would be performed and also fails to show that performance of those functions would require the practical and theoretical application of any particular educational level of a body of knowledge in any specific specialty. For example, although the petitioner claimed that the beneficiary would resolve difficult and unusual problems, it did not explain why the petitioner's financial problems are so difficult and unusual or, for that matter, identify any of the representative problems requiring resolution. Although the petitioner claimed that the beneficiary would "facilitate or manage a broad scope and high level fiscal system in a complex, high volume environment," it did not explain how the petitioner, an HVAC firm with two employees, developed such a high-level fiscal system or how such a relatively small operation constitutes both a complex and high-volume environment. Also, given that the petitioner has two employees, of whom one is the president, it is not clear who the beneficiary would oversee while coordinating the activities of those personnel responsible for formulating budgets. Just whom the beneficiary would be overseeing while performing this task is unclear. It is also not clear why the beneficiary would need to "plan [a] study" and "collect data" in order to determine how much the petitioner spends on labor, given that it has only two employees. It is also unclear how the beneficiary would "plan [a] study of work problems and procedures" which would include a study of the flow of information among its two employees. Nor did the petitioner expand upon the beneficiary's duty to "interpret, clarify, explain, and apply the company's internal policy and procedures [and] business practices" in any meaningful way. Such generalized and unsupported statements do not establish any necessary correlation between knowledge that may be required for the position and attainment of at least a bachelor's degree, or the equivalent, in a specific specialty.

Nor does the letter from Dr. [REDACTED] a Professor Emeritus of Finance at the [REDACTED] establish 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 October 21, 2011 letter, Dr. [REDACTED] briefly described the petitioner's business operations; listed the credentials he believes qualify him to opine upon the minimum qualifications necessary to perform the duties of the proffered position; listed the duties proposed for the beneficiary; listed the specific duties he believes require a degree; discussed the beneficiary's qualifications to perform the duties of the position; and asserted that an individual normally recruited for this position would have earned a bachelor's degree in business administration.

At the outset, the AAO finds that neither Dr. [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 small HVAC firm. 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 Dr. [REDACTED] list the reference materials on which he relied as a basis for his statements, or indicate whether he had 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 Dr. [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, Dr. [REDACTED] finds that the proffered position requires the attainment of a bachelor's degree or its equivalent in business administration. Even if established by the evidence of record, which it is not,⁸ 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

⁸ It is noted that Dr. [REDACTED] listed the preparation of financial statements, including balance sheets and profit and loss statements as among those "necessitating that the candidate possess an undergraduate degree in business or a related area, and substantive work experience that equates with graduate work in business administration." However, the *Handbook* specifically lists those duties as among those normally performed by bookkeeping, accounting, and auditing clerks, who are not normally required to possess a bachelor's degree, or the equivalent, in a specific specialty. U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Bookkeeping, Accounting, and Auditing Clerks." <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2> (accessed November 26, 2012).

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 Dr. [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 aforementioned DOL *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations it addresses.⁹ The petitioner argues that the duties of the proffered position align with those of financial managers as such positions are described in the *Handbook*. In pertinent part, the *Handbook* states the following:

Financial managers are responsible for the financial health of an organization. They produce financial reports, direct investment activities, and develop strategies and plans for the long-term financial goals of their organization. . . .

Financial managers typically do the following:

- Prepare financial statements, business activity reports, and forecasts
- Monitor financial details to ensure that legal requirements are met
- Supervise employees who do financial reporting and budgeting
- Review company financial reports and seek ways to reduce costs
- Analyze market trends to find opportunities for expansion or for acquiring other companies
- Help management make financial decisions

The role of the financial manager, particularly in business, is changing in response to technological advances that have significantly reduced the amount of time it takes to

⁹ 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.

produce financial reports. Financial managers' main responsibility used to be monitoring a company's finances, but they now do more data analysis and advise senior managers on ideas to maximize profits. They often work on teams, acting as business advisors to top executives.

Financial managers also do tasks that are specific to their organization or industry. For example, government financial managers must be experts on government appropriations and budgeting processes, and healthcare financial managers must know about issues in healthcare finance. Moreover, financial managers must be aware of special tax laws and regulations that affect their industry. . . .

The following are examples of types of financial managers:

Controllers direct the preparation of financial reports that summarize and forecast the organization's financial position, such as income statements, balance sheets, and analyses of future earnings or expenses. Controllers also are in charge of preparing special reports required by governmental agencies that regulate businesses. Often, controllers oversee the accounting, audit, and budget departments.

Treasurers and **finance officers** direct their organization's budgets to meet its financial goals. They oversee the investment of funds. They carry out strategies to raise capital (such as issuing stocks or bonds) to support the firm's expansion. They also develop financial plans for mergers (two companies joining together) and acquisitions (one company buying another).

Credit managers oversee the firm's credit business. They set credit-rating criteria, determine credit ceilings, and monitor the collections of past-due accounts.

Cash managers monitor and control the flow of cash that comes in and goes out of the company to meet the company's business and investment needs. For example, they must project cash flow (amounts coming in and going out) to determine whether the company will not have enough cash and will need a loan or will have more cash than needed and so can invest some of its money.

Risk managers control financial risk by using hedging and other strategies to limit or offset the probability of a financial loss or a company's exposure to financial uncertainty. Among the risks they try to limit are those due to currency or commodity price changes.

Insurance managers decide how best to limit a company's losses by obtaining insurance against risks such as the need to make disability payments for an employee who gets hurt on the job and costs imposed by a lawsuit against the company.

(accessed November 26, 2012).

The petitioner has not demonstrated that it will employ the services of a financial manager, who is part of an executive decision-making team. Furthermore, there is no evidence that the proffered position would include complex or advanced financial planning duties involving mergers and consolidations or that it would require an individual with knowledge of sophisticated financial planning techniques normally associated with the duties of a financial manager. The petitioner has not demonstrated that the proffered position includes the types of executive decision-making described in the *Handbook* required by financial managers.¹⁰

The petitioner's description of the duties of the proffered position provides an overview of a position that may be associated with managing financial activities. This overview, however, does not provide the detail necessary to determine that the actual daily duties of the proffered position, as the duties relate to the petitioner's business, incorporate the duties of a specialty occupation. The petitioner did not provide documentary evidence of the reports generated and analyzed, of financial forecasts or budget analysis, or of any reports advising management. The record includes no underlying evidence substantiating the complexity of the petitioner's financial business or any documentation that would provide an understanding of the petitioner's requirement that its financial manager must have a baccalaureate or higher degree to perform the duties associated with its business operations.¹¹ 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)). Such a general overview of an occupation without the attendant detail relating the actual duties of the occupation to the petitioner's actual business operations is insufficient to establish the position as satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO observes that the job description is so general that it could be considered as describing a general managerial position, an administrative managerial position, a junior accounting position, or a number of occupations that do not necessarily require the attainment of a bachelor's degree in a

¹⁰ Furthermore, as indicated above, many of the duties of the proffered positions are not those of a financial manager but are instead listed by the *Handbook* as being among those normally performed by bookkeeping, accounting, and auditing clerks. Again, the *Handbook* states that these clerks typically prepare balance sheets, profit and loss statements, which are duties proposed for the beneficiary. *Handbook* at <http://www.bls.gov/ooh/office-and-administrative-support/bookkeeping-accounting-and-auditing-clerks.htm#tab-2>.

¹¹ While the AAO acknowledges the petitioner's submission of five contracts for work to be performed (which would collectively generate \$144,000 in annual revenue) the petitioner did not provide any explanation or information that would develop these contracts' evidentiary weight. All of these contracts were executed more than two years before this petition was filed, so their mere existence does not, alone, mandate the employment of a financial manager. Absent any clarification or other explanation from the petitioner, these contracts do not provide the detail necessary to determine that the actual daily duties of the proffered position, as they relate to the petitioner's business, actually incorporate the duties of a specialty occupation. Moreover, the probative value of these contracts is questionable, as it is noted that not a single contract provides the names of the individuals who signed them.

specific specialty, or higher, in order to perform the duties of the position. When establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner's job description does not progress beyond a generalized outline of the proposed tasks; and in light of the minimal evidence regarding the substantive work in which the beneficiary would actually engage, the petitioner has failed to establish that, notwithstanding the title that the petitioner designated for it, the proffered position actually comports with the Financial Managers occupational classification.

The petitioner's description of the proffered position is insufficient to establish the actual duties of the position as those duties impact the day-to-day operations of the petitioner. The AAO does not accept a broad overview of an occupation as definitive of a particular position's daily duties. The petitioner must provide some evidence of the daily tasks the petitioner requires from the proffered position. To recite generalities, rather than specifics substantiated by the requirements of the particular petitioner, leads to the absurd result of petitioners indiscriminately labeling and summarizing positions in an effort to obtain specialty occupation classification. Each petitioner must detail its expectations of a proposed position and must provide evidence of what the duties of the position entail on a daily basis. Such descriptions must correspond to the needs of the petitioner and be substantiated by documentary evidence. To allow otherwise, essentially requires acceptance of any petitioner's broadly stated description, rather than a detailed, comprehensive description demonstrating what the petitioner expects from the beneficiary and what the proffered position actually requires.

The petitioner's description of the duties of the proffered position lacks substantive detail. It fails to explain what the beneficiary would actually be doing on a day-to-day basis, and it does not convey the actual, substantive work that would actually be required of the beneficiary.

Also, as previously discussed, the petitioner submitted an LCA certified for a comparatively low, entry-level position relative to others within its occupation.

Nor does the record of proceeding contain any persuasive documentary evidence from any other relevant authoritative source 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)).

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.

As evidence of eligibility under this criterion, the petitioner submitted information from [REDACTED] and a career publication, both of which described the need for companies to employ the services of a financial manager. However, as noted above, the petitioner has not established that it will actually employ the beneficiary in that capacity.

Nor does the letter from [REDACTED] satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). In his October 16, 2011 letter, Mr. [REDACTED] claimed that, in [REDACTED] experience, "companies in [the] HVAC business and comparable to [the petitioner's] size and nature of the business [sic] hire Financial Managers for financial related [sic] matters" (footnote omitted). However, [REDACTED] letter is of little probative value, as he cited no support for his opinion. Nor did he address the petitioner's designation of the proffered position on the LCA as an entry, low-level position relative to others in the occupation. Nor did Mr. [REDACTED] submit any evidence or information to establish that the petitioner would actually employ the beneficiary as a financial manager.

Nor does the record of proceeding contain any other evidence to establish a requirement for at least a bachelor's degree in a specific specialty as common to the petitioner's industry in parallel positions among similar organizations.

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 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.

As reflected in this decision's earlier comments regarding the descriptions of the duties presented as comprising the proffered position, the petitioner has not established any substantive aspects of the proffered position that would distinguish it as so complex or unique as to require the services of a person who holds at least a bachelor's degree, or the equivalent, in a specific specialty. To the extent that they are presented in the record, neither the duties comprising the proffered position nor the position itself convey the relative complexity or uniqueness required to satisfy the present criterion. The record of proceeding simply has not developed relative complexity or uniqueness as factors distinguishing the proffered position as more complex or unique than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

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 wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate is 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 his work reviewed for accuracy.

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.¹² In the instant case, the record does not

¹² 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.

establish a prior history of recruiting and hiring for the proposed 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 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 this is the first time the petitioner has filed an H-1B specialty-occupation petition for the instant position. On appeal, counsel argues that "the federal regulation for H1B does not require the petitioner to show the past employment history for the offered position or whether the offered position is existing or newly created position unlike Labor Certification process [sic]." The AAO notes that while counsel correctly indicates that a first-time hiring for a position is not in itself generally a basis for precluding a position from recognition as a specialty occupation, certainly an employer that has never recruited and hired for the position would not be able to 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.

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.

The AAO also incorporates herein its earlier comments and finding regarding the petitioner's failure to adequately develop any substantive aspects of the proffered position that would distinguish it as so complex or unique as to require the services of a person who holds at least a bachelor's degree, or the equivalent, in a specific specialty. As the petitioner has failed to sufficiently develop the

substantive duties of the proffered position, it has similarly failed to demonstrate that their nature 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 the specialty. The petitioner has simply not explained how the beneficiary would actually spend his time. As the petitioner has not provided sufficiently detailed evidence with regard to the substantive nature of the duties that would be performed if this petition were approved, the petitioner has not established those duties as 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).

Finally, despite counsel's assertion otherwise, the unpublished AAO decisions he submits have no precedential value. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

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.

Finally, as noted at the outset of this discussion, the AAO also finds, beyond the decision of the director, that the petitioner has also failed to demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation. Thus, even if the petitioner had established that the proffered position qualifies for classification as a specialty occupation, which it did not, the petition still could not be approved because the petitioner has not demonstrated the beneficiary's qualifications to perform its duties.

Section 214(i)(2) of the Act, 8 U.S.C. § 1184(i)(2), states that an alien applying for classification as an H-1B nonimmigrant worker must possess:

- (A) full state licensure to practice in the occupation, if such licensure is required to practice in the occupation,
- (B) completion of the degree described in paragraph (1)(B) for the occupation, or
- (C) (i) experience in the specialty equivalent to the completion of such degree, and
(ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

In implementing section 214(i)(2) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C) states that an alien must also meet one of the following criteria in order to qualify to perform services in a specialty occupation:

- (1) Hold a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (2) Hold a foreign degree determined to be equivalent to a United States baccalaureate or higher degree required by the specialty occupation from an accredited college or university;
- (3) Hold an unrestricted state license, registration or certification which authorizes him or her to fully practice the specialty occupation and be immediately engaged in that specialty in the state of intended employment; or
- (4) Have education, specialized training, and/or progressively responsible experience that are equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and have recognition of expertise in the specialty through progressively responsible positions directly related to the specialty.

Therefore, to qualify an alien for classification as an H-1B nonimmigrant worker under the Act, the petitioner must establish that the beneficiary possesses the requisite license or, if none is required, that he or she has completed a degree in the specialty that the occupation requires. Alternatively, if a license is not required and if the beneficiary does not possess the required U.S. degree or its foreign degree equivalent, the petitioner must show that the beneficiary possesses both (1) education, specialized training, and/or progressively responsible experience in the specialty equivalent to the completion of such degree, and (2) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

As the beneficiary did not earn a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(1). As he does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), either.¹³ As the petitioner has not demonstrated that the

¹³ Although the record of proceeding contains an evaluation of the beneficiary's academic credentials, it does not establish that those credentials are equivalent to a bachelor's degree awarded by an accredited institution of higher education in the United States. Instead, it finds that his academic studies "are substantially similar to those required *toward* completion of a Bachelor's Degree in Economics from an accredited institution of higher education in the United States" (emphasis added). In other words, the evaluator did not find that the beneficiary's foreign education is not equivalent to a bachelor's degree in economics from an accredited institution of higher education in the United States; rather, the evaluation only opined that the beneficiary's coursework is only equivalent to coursework completed *toward* such a degree. Accordingly, that evaluation does not satisfy 8 C.F.R. § 214.2(h)(4)(iii)(C)(2). Although this evaluation also evaluates the beneficiary's work experience, and that portion of the evaluation will be discussed below when the AAO analyzes the beneficiary's qualifications under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) and 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), that portion of the evaluation is not material to the AAO's analysis under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2)

beneficiary holds an unrestricted state license, registration or certification to perform the duties of a specialty occupation, he does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(3), either. Accordingly, 8 C.F.R. § 214.2(h)(4)(iii)(C)(4), remains as the only avenue for the petitioner to demonstrate the beneficiary's qualifications to perform the duties of the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) requires a demonstration that the beneficiary's education, specialized training, and/or progressively responsible experience is equivalent to the completion of a United States baccalaureate or higher degree in the specialty occupation, and that the beneficiary also has recognition of that expertise in the specialty through progressively responsible positions directly related to the specialty. Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(D), equating a beneficiary's credentials to a United States baccalaureate or higher degree under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) is determined by at least one of the following:

- (1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;
- (2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);
- (3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;¹⁴
- (4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;
- (5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience.

The record contains an evaluation of the beneficiary's academics and work experience prepared by Dr. [REDACTED]

because it addresses the beneficiary's work experience. In order to be relevant under 8 C.F.R. § 214.2(h)(4)(iii)(C)(2), an evaluation must be based upon the beneficiary's academic credentials alone.

¹⁴ The petitioner should note that, in accordance with this provision, the AAO will accept a credentials evaluation service's evaluation of *education only*, not experience.

[REDACTED], dated July 25, 2011. According to Dr. [REDACTED], the beneficiary's foreign education and work experience are equivalent to a master's degree in business administration awarded by an accredited institution of higher education in the United States.

However, Dr. [REDACTED] evaluation does not demonstrate that the beneficiary is qualified to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), as the petitioner has not demonstrated both: (1) that Dr. [REDACTED] has the authority to grant college-level credit for training and/or experience in a pertinent specialty at the [REDACTED],¹⁵ and (2) that the [REDACTED] has a program for granting such credit in the pertinent specialty based on an individual's training and/or work experience.¹⁶ 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*, at 165.¹⁷

For all of these reasons, the beneficiary does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(2), which requires submission of the results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI).

Nor does the beneficiary qualify under 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). As was the case under 8 C.F.R. §§ 214.2(h)(4)(iii)(C)(1) and (2), the beneficiary is unqualified under this criterion because she did not earn a baccalaureate or higher degree from an accredited college or university in the United States and does not possess a foreign degree that has been determined to be equivalent to a baccalaureate or higher degree from an accredited college or university in the United States.

¹⁵ The July 6, 2010 letter from [REDACTED] does not satisfy this criterion, as [REDACTED] states only that [REDACTED] "authorizes the granting of credit to students for completion of degree program requirements." However, whether [REDACTED] grants credit to students who complete degree program requirements is not the issue here. As indicated, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) specifically mandates that the petitioner demonstrate that the evaluator have the "authority to grant college-level credit for training and/or experience in the specialty." [REDACTED] makes no such assertion.

¹⁶ [REDACTED]'s letter does not satisfy this criterion, either. Although [REDACTED] claims that the [REDACTED] "offers academic programs in which students are granted credit based on course work, training, and experience in a wide range of fields," he did not claim that it has a program for granting college-level credit for training and/or experience in the specialty at issue here (i.e., financial management or a closely related field), as specifically required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1).

¹⁷ It is noted further that [REDACTED] letter is critically deficient in that it was issued more than one year before [REDACTED] evaluation. As such, the petitioner has not established that the information provided by [REDACTED] was still accurate at the time [REDACTED] issued his evaluation.

No evidence has been submitted to establish, nor does the petitioner assert, that the beneficiary satisfies 8 C.F.R. § 214.2(h)(4)(iii)(D)(4), which requires that the beneficiary submit evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty.

The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) states the following with regard to analyzing an alien's qualifications:

For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. . . . It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;¹⁸
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

Although the record contains some information regarding the beneficiary's work history, it does not establish that this work experience included the theoretical and practical application of specialized knowledge required by the proffered position; that it was gained while working with peers, supervisors, or subordinates who held a bachelor's degree or its equivalent in the field; and that the

¹⁸ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. See 8 C.F.R. § 214.2(h)(4)(ii).

beneficiary achieved recognition of expertise in the field as evidenced by at least one of the five types of documentation delineated in 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i)-(v).

Accordingly, the beneficiary does not qualify under any of the criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(D)(5)(i)-(v) and therefore does not qualify to perform the duties of a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(C)(4). As such, the petitioner has failed to establish that the beneficiary qualifies to perform the duties of a specialty occupation, and the petition must be denied for this additional reason.

Conclusion

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d 683.

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

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