



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **JAN 11 2013** OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

The petitioner submitted a Petition for Nonimmigrant Worker (Form I-129) to the California Service Center on January 18, 2011. In the Form I-129 visa petition, the petitioner describes itself as a garment manufacturer established in 1992. In order to employ the beneficiary in what it designates as an international liaison position, 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 July 5, 2011, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

For the reasons that will be discussed below, the AAO agrees with the director that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed. The petition will be denied.

Later in this decision, the AAO will also address an additional, independent ground, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, beyond the decision of the director, the AAO finds that the petitioner failed to submit a Labor Condition Application (LCA) that complies with the applicable statutory and regulatory provisions. For this additional reason, the petition may not be approved. It is considered an independent and alternative ground for denial.<sup>1</sup>

In this matter, the petitioner stated in the Form I-129 that it seeks the beneficiary's services as an international liaison to work on a part-time basis (20-25 hours per week). In a letter dated December 21, 2010, the petitioner provided the following description of the duties of the proffered position:

The International Liaison would be responsible for any and all communications between [the petitioner] and the International manufacturers. She will be in charge of making sure everything is ordered properly, produced and shipped efficiently and that the manufactured clothing is of [the petitioner] quality. She will also manage and communicate all problems with manufacturing and design between the designer,

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

management and the international manufactures. Additionally, using experience with international organizations, the International Liaison will further analyze current ordering procedures and determine the best way to communicate our needs and designs to our international manufacturers to limit the amount of manufacturing and design issues.

Specifically, the petitioner stated that the beneficiary would perform the following duties:

#### Operations and Coordination Management

- Liaise between United States company and overseas manufacturers in all aspects of operational, purchasing, logistical, production, and quality issues;
- Responsible for short and mid-term demand forecast review with customers to optimize manufacturing capacity and production planning;
- Review and analyze current International Purchase Order Forms, and current communication of design to International Manufacturers;
- Analyze exchange rates when submitting purchasing orders to obtain a favorable exchange rate;
- Provide comprehensive analysis of international manufacturing orders, costs, logistics, and communication from beginning to end by developing the research criteria, identifying the proper data fields, identifying the correct data sources and preparing a comprehensive report for decision-making;
- Interprets purchase orders and logistics data;
- Analyzes correlations of forecast and sales data and uses such historical data to project future ordering needs for inventory planning purposes;
- Discuss with international manufacturers and our offices format, and objective of each form to identify problems and possible improvements;
- Prepare recommendations for new communication procedures, new forms, etc.
- Implement assist workers in understanding new forms and communication procedures;
- Coordinate with designers and internal manufacturers to make sure products needs and service expectations, such as production and shipment timelines, are met;
- Monitor productivity and quality of products and generate reports for management;
- Facilitate efforts to enhance existing manufacturing accounts and build new ones;
- Coordinate and support process improvements, and
- Support overseas manufacturers in overall daily service needs and communication[.]

#### Organizational Analysis and Strategic Planning

- Design and recommend proactive and cost effective outsourcing and sales strategies;
- Develop methods and systems to streamline procedures and dealings with international partners;
- Solve logistical, distribution, quality, and customer service issues;
- Perform cost analysis, and sales forecasting;
- Make recommendations regarding pricing, distribution, and information management; and
- Develop methods of enhancing international relations and customer service[.]

The petitioner's president stated that the international liaison "will be expected to use discretion in determining how best to spend her time. Because this is a new position, it is difficult for [the petitioner] to predict exactly how much time will be spent on each of the duties as described above." The president continued by stating that the beneficiary would allocate her time as follows:

- Operations and Coordination Management – 60%
- Organizational Analysis and Strategic Planning – 40%

The petitioner did not provide any further information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position, nor did it establish the frequency with which each of the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

The petitioner also submitted an LCA in support of the instant H-1B petition. The AAO notes that the LCA designation for the proffered position corresponds to the occupational classification of "Management Analysts" – SOC (ONET/OES Code) 13-1111, at a Level I (entry level) wage.

Further, counsel submitted a chart comparing the duties of the proffered position to the general duties for the occupational category "Management Analysts" as described in U.S. Department of Labor's *Occupational Outlook Handbook's (Handbook)*. The petitioner and counsel claimed that the duties of the proffered position resemble those of a management analyst.

Additionally, the AAO observes that the petitioner states in its job description that the requirement for the proffered position is, at minimum "a bachelor's degree in a business related field and experience with international communication."

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on March 29, 2011. The director outlined the specific evidence to be submitted. The AAO notes that the director specifically requested the petitioner submit probative evidence to establish that the proffered position is a specialty occupation.

On May 10, 2011, the petitioner and counsel responded by submitting a brief and additional evidence. The director reviewed the information provided by the petitioner and counsel. Although

the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on July 5, 2011. Counsel submitted an appeal of the denial of the H-1B petition.

Counsel states that the "preponderance of the evidence" standard is applicable in this matter, and that the petitioner submitted sufficient evidence to establish that "more likely than not" the proffered position qualifies as a specialty occupation.

The AAO notes that with respect to the preponderance of the evidence standard, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

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The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case.

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Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS examines each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. The "preponderance of the evidence" standard does not relieve the petitioner from satisfying the basic evidentiary requirements set by regulation. The standard of proof should not be

confused with the burden of proof. Specifically, the petitioner bears the burden of establishing eligibility for the benefit sought. A petitioner must establish that it is eligible for the requested benefit at the time of filing the petition. 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. As will be discussed, in the instant case, that burden has not been met.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. The AAO will first discuss some findings that are material to this decision's application of the H-1B statutory and regulatory framework to the proffered position as described in the record of proceeding.

Upon review of the record of proceeding, the AAO notes that the petitioner's claim that a bachelor's degree in "a business related field and experience with international communication" is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.<sup>2</sup> A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly to the duties and responsibilities of 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 "a bachelor's degree in a business related field," 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).

To demonstrate that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as "a bachelor's degree in a business related field," may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>3</sup>

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<sup>2</sup> The petitioner claims that the beneficiary is qualified for the proffered position based upon her foreign degree in tourism and foreign master of business administration, along with her professional experience. USCIS is required to follow long-standing legal standards and determine first, whether the proffered position is a specialty occupation, and second, whether an alien beneficiary is qualified for the position at the time the nonimmigrant visa petition is filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 560 ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

<sup>3</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; *cf. Matter of*

Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in a business related field. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Furthermore, upon review of the record of proceeding, the AAO notes that there are numerous inconsistencies and discrepancies in the petition and supporting documents, which undermine the petitioner's credibility with regard to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position. When a petition includes numerous discrepancies, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions.

When determining whether a position is a specialty occupation, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

In the instant case, the record of proceeding contains discrepancies between what the petitioner claims about the level of responsibility inherent in the proffered position set against the contrary level of responsibility conveyed by the wage level indicated by the LCA submitted in support of petition. That is, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Management Analysts" at a Level I (entry level) wage.

More specifically, the petitioner submitted an LCA in support of the instant petition that designated the proffered position under the occupational title of "Management Analysts" - SOC (ONET/OES) code 13-1111.<sup>4</sup> The petitioner stated in the LCA that the wage level for the proffered position was a

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*Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

<sup>4</sup> The petitioner and counsel claim that the duties of the proffered position closely resemble the duties and responsibilities of a management analyst as described in the *Handbook*.

Level I (entry) position, with a prevailing wage of \$24.67 per hour. The LCA was certified on December 27, 2010 and signed by the petitioner on January 4, 2011.

Wage levels should be determined only after selecting the most relevant Occupational Information Network (O\*NET) occupational code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.<sup>5</sup> Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.<sup>6</sup> DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

**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.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at

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<sup>5</sup> For additional information on wage levels, see DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

<sup>6</sup> A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

[http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

Throughout the record of proceeding, the petitioner and counsel claim that the proffered position involves complex, unique and/or specialized duties. For example, the petitioner states in a letter dated December 21, 2010 that "the position requires a **high level of responsibility.**" (Emphasis in original.) Moreover, the petitioner repeatedly states that the proffered "position is more discretionary than a 'non-specialty occupation'" because the beneficiary will have "minimal direction or supervision" and as a result the position "requires a high level responsibility." According to the petitioner, the position is "more demanding" than other positions. Furthermore, the petitioner asserts that the position is "more complex" due to "the number of logistical and analytical management and coordination duties for which the position is responsible." The petitioner reports that the proffered position is also "more highly advanced" since a "similar 'non-specialty occupation' would not report directly to the president." The petitioner claims that the beneficiary "will have minimum direction or supervision" and suggests that the beneficiary will be given discretion in time allocation. Further, the petitioner states that the position is "more specialized" because it requires "intimate familiarity with inherent business components including finance, international economy, transportation and logistics, systems and operations." In addition, the petitioner asserts that the position is also "more sophisticated" because the beneficiary "must be aware of and able to interpret complex issues relating to [the petitioner's] international transactions and the effect those transactions have on [the] business as a whole." Counsel claims that "the beneficiary will be required to apply highly specialized theories and practices."

The AAO must question the level of complexity, independent judgment and understanding required for the proffered position as the LCA is certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described in the record of proceeding conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require 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.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. As previously mentioned, 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).

As noted below, the regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

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

While DOL is the agency that certifies LCA applications before they are submitted to 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 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. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I entry-level position. This conflict undermines the overall credibility of the petition. The AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

A review of the enclosed LCA indicates that the information provided does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work and requirements in accordance with the pertinent LCA regulations. As a result, even if it were determined that the petitioner overcame the other independent reason for the director's denial (which it has not), the petition could not be approved for this reason.

For H-1B approval, the petitioner must demonstrate a legitimate need for an employee exists and to substantiate that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. It is incumbent upon the petitioner to demonstrate it has sufficient work to

require the services of a person with at least a bachelor's degree in a specific specialty, or the equivalent, to perform duties at a level that requires the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty for the period specified in the petition.

In response to the RFE, the petitioner submitted a document it referred to as its "Business Plan." Upon review of the information, the AAO notes that the petitioner has provided a significant amount of information virtually verbatim from a sample business plan for a sole proprietorship computer consulting company. The information is available on the Internet and the petitioner did not cite or credit the information from its claimed business plan information to this source. That is, the petitioner did not identify the source of the information, or acknowledge that the text was not its own. It appears that the impact of the petitioner's statements and submission were to attribute to it concepts regarding its business operations and the industry that actually were not its own, in order to fortify the petition. When a submission is copied virtually verbatim from an uncredited source, it may suggest that the statements are not necessarily those of the petitioner and may cast some doubt on the validity of the document. Notably, in the business plan, the petitioner states that it was incorporated in 1992 (almost 20 years prior to the submission of the business plan) and then, in the next sentence, the petitioner refers to itself as a "start-up company." Generally, a start-up company is defined as a company recently formed, a fledgling business enterprise, or company that is in the first stage of its operations. The petitioner did not acknowledge this apparent inconsistency or provide any explanation. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 591. Additionally, in the business plan, the petitioner claims that it intends to expand its business and significantly increase personnel. However, notably, the petitioner did not provide objective evidence to support its claim.

The AAO reviewed the record of proceeding and acknowledges that the petitioner submitted documentation regarding its business operations, including the following: (1) 2009 U.S. Federal Tax return; (2) quarterly wage reports for 2010; (3) articles of incorporation, dated December 18, 1992; (4) Certificate of Registration; (5) a company organizational chart; (6) one packaging slip for the vendor [REDACTED] dated July 27, 2010; (7) a chart entitled "China Contacts," which lists the names, addresses and telephone numbers of eight companies in China (however, the only indication of any relationship between the petitioner and any of the contacts submitted to USCIS was the previously mentioned packaging slip for the vendor [REDACTED] dated July 27, 2010); (8) a two-page printout summarizing basic information about four of the petitioner's apparel products (two tops and two hoodies); (9) a printout from [REDACTED] for one of the petitioner's products; and (10) printouts from [REDACTED] regarding two products (the products are not attributed to the petitioner).

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position.<sup>7</sup> Going on record without

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<sup>7</sup> The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

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'r 1998). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1). USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(1).

Upon review of the record, the AAO finds that the petitioner has provided insufficient probative documentation to substantiate its claims regarding its business activities and the actual work that the beneficiary will perform to establish eligibility for this benefit. That is, there is a lack of substantive, documentary evidence substantiating the petitioner's claims regarding its business operations and that it has H-1B caliber work for the beneficiary for the period of employment requested in the petition. The petitioner has not sufficiently established that it would employ the beneficiary in the capacity specified in the petition and it has not established that the statement of facts contained in the petition is accurate.

Although the petitioner requested the beneficiary be granted H-1B classification for a three-year period, the evidence does not establish that the petitioner would be able to sustain an employee performing the duties of an international liaison at the level required for the H-1B petition to be granted for the entire period requested. The petitioner has not substantiated how the duties the petitioner claims that the beneficiary will perform will manifest themselves in their actual performance within the petitioner's business operations. Furthermore, the petitioner has not established that the beneficiary's overall day-to-day duties, for the entire period requested, would require at least a baccalaureate degree or the equivalent in a specific specialty, as required for classification as a specialty occupation.

Without further clarification by the petitioner, it appears that the beneficiary may be employed in a lesser capacity or serving in a different position. The record of proceeding lacks (1) evidence corroborating that the petitioner has work that exists as an ongoing endeavor generating definite

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Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States; or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. See section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

employment for the beneficiary's services; and (2) evidence that the beneficiary's duties ascribed would actually require the theoretical and practical application of at least a baccalaureate level of a body of highly specialized knowledge in a specific specialty, as required by the Act. Without further information, the petitioner has failed to credibly convey how it would be able to sustain an employee performing the duties at the level required for the H-1B petition to be granted for the entire period requested.

A position may be awarded H-1B classification only on the basis of evidence of record establishing that, at the time of the filing, definite, non-speculative work would exist for the beneficiary for the period of employment specified in the Form I-129. The record of proceeding does not contain such evidence. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. 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. It should be noted that, for efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the duties and requirements of the proffered position into each basis discussed below for dismissing the appeal.

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

The regulation at 8 C.F.R. § 214.2(h)(4)(ii) states, in pertinent part, the following:

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

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

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, a proposed 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 at 147 (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 make its determination whether the proffered position qualifies as a specialty occupation, the AAO now turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position.

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

The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>8</sup> The Form I-129 indicates that the proffered position is an "International Liaison." As previously discussed, the petitioner submitted an LCA in support of the petition identifying the occupational category as "Management Analysts," and both counsel and the petitioner repeatedly claim that the proffered position closely resembles the *Handbook's* description of "Management Analysts."

The AAO reviewed the chapter of the *Handbook* entitled "Management Analysts," including the sections regarding the typical duties and requirements for this occupational category.

The subchapter of the *Handbook* entitled "What Management Analysts Do" states the following about this occupation:

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.

**Duties**

Management analysts typically do the following:

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<sup>8</sup> All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

- 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
- 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
- Although some management analysts work for the organization that they are analyzing, most work as consultants on a contractual basis.

Whether they are self-employed or part of a large consulting company, the work of a management analyst may vary from project to project. Some projects require a team of consultants, each specializing in one area. In other projects, consultants work independently with the client organization's managers.

Management analysts often specialize in certain areas, such as inventory management or reorganizing corporate structures to eliminate duplicate and nonessential jobs. Some consultants specialize in a specific industry, such as healthcare or telecommunications. In government, management analysts usually specialize by type of agency.

Organizations hire consultants to develop strategies for entering and remaining competitive in the electronic marketplace.

Management analysts who work on contract may write proposals and bid for jobs. Typically, an organization that needs the help of a management analyst solicits proposals from a number of consultants and consulting companies that specialize in the needed work. Those who want the work must then submit a proposal by the deadline that explains how they will do the work, who will do the work, why they are the best consultants to do the work, what the schedule will be, and how much it will cost. The organization that needs the consultants then selects the proposal that best meets its needs and budget.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Management Analysts, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm#tab-2> (last visited January 9, 2013).

The subchapter of the *Handbook* entitled "Work Environment" states the following about this occupation:

Management analysts held 718,800 jobs in 2010. They usually divide their time between their offices and the client's site. Because they must spend a significant amount of time with clients, analysts travel frequently. Analysts may experience stress when trying to meet a client's demands, often on a tight schedule.

In 2010, about 23 percent of management analysts were self-employed. Self-employed analysts can decide how much, when, and where to work. However, self-employed analysts often are under more pressure than those who are wage and salary employees, because their livelihood depends on their ability to maintain and expand their client base.

Management analysts worked in the following industries in 2010:

Management, scientific, and technical consulting services	20%
Finance and insurance	9%
Federal government, excluding postal service	8%
State and local government, excluding education and hospitals	6%
Computer systems design and related services	5%

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Management Analysts, on the Internet at <http://www.bls.gov/ooh/Business-and-Financial/Management-analysts.htm#tab-3> (last visited January 9, 2013).

In the instant case, in the Form I-129, the petitioner stated that it is a garment manufacturer with eleven employees. The petitioner also reported its gross annual income as approximately \$964,300 and its net annual income as \$149,025. The petitioner designated its business operations under the North American Industry Classification System (NAICS) code 31523.<sup>9</sup> The AAO notes that this NAICS code is designated for "Womens and Girls' Cut and Sew Apparel Manufacturing." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments primarily engaged in manufacturing womens and girls' apparel from purchased fabric. Women's and girls' clothing jobbers, who perform entrepreneurial functions involved in apparel manufacture, including buying raw materials, designing and preparing samples, arranging for apparel to be made from their materials, and marketing finished apparel, are included.

See U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 31523-Womens and Girls' Cut and Sew Apparel Manufacturing, on the Internet at <http://www.census.gov/cgi->

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<sup>9</sup> According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity, each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last viewed January 9, 2013).

bin/sssd/naics/naicsrch?code=31523&search=2007%20NAICS%20Search (last viewed January 9, 2013).

The AAO reviewed the record of proceeding, but is not persuaded by the petitioner's claim that the proffered position of international liaison falls under the occupational category for "Management Analysts." The duties of the proffered position, to the extent that they are depicted in the record of proceeding, indicate that the beneficiary may perform a few general tasks in common with this occupational group, but not that the beneficiary's duties would constitute a management analyst position, and not that they would require the range of specialized knowledge that characterizes this occupational category. It must be noted that the petitioner failed to provide probative documentary evidence to substantiate its claim that the beneficiary will primarily, or substantially, perform the same or similar duties, tasks and/or work activities that characterize the occupation of management analysts. The totality of the evidence in this proceeding, including information and documentation regarding the proposed duties, the petitioner's business operations, and the petitioner's organizational structure, does not establish that the duties of the proposed position are substantially comparable to those of management analysts.

Nevertheless, assuming, *arguendo*, that the proffered position is a management analyst position, the AAO finds that the *Handbook* does not indicate that normally the minimum requirement for entry into management analyst positions is at least a bachelor's degree in a specific specialty, or its equivalent.

The subchapter of the *Handbook* entitled "How to Become a Management Analyst" states the following about this occupation:

**Education**

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.

Analysts also routinely attend conferences to stay up to date on current developments in their field.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2012-13 ed.*, Management Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited January 9, 2013).

When reviewing the *Handbook*, the AAO must note again that the petitioner designated the wage

level of the proffered position as a Level I position on the LCA. As previously discussed, this designation is indicative of a comparatively low, entry-level position relative to others within the occupation and signifies that the beneficiary is only expected to possess a basic understanding of the occupation and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that she would be closely supervised; that her work would be closely monitored and reviewed for accuracy; and that she would receive specific instructions on required tasks and expected results.

The AAO notes that the *Handbook* does not support a finding that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. While the *Handbook* indicates that a bachelor's degree is the typical entry-level requirement, the *Handbook* does not indicate that a degree in a *specific specialty* is normally the minimum requirement for entry into these positions. The *Handbook* reports that many fields of study provide a suitable education for these positions. The *Handbook* identifies common areas of study to include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering. The petitioner has not submitted any evidence to establish that the fields business, management, accounting, marketing, economics, statistics, computer and information science, and engineering encompass a specific specialty.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as marketing and computer information science, would not meet the statutory requirement that the degree be "in *the* specific specialty," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties.<sup>10</sup> Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's degree is the typical entry-level requirement for management analysts, it also indicates that many fields of study provide a suitable education for management analysts. Thus, according to the *Handbook*, it appears that management analyst possess academic backgrounds in disparate fields of study (i.e., business, management, accounting, marketing, economics, statistics, computer and information science, and engineering).

Furthermore, the *Handbook* indicates that a common field of study for this occupation is business and that some employers prefer to hire candidates who have an advanced degree in business

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<sup>10</sup> Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

administration. (Obviously, a *preference* for a candidate with a master's degree in business administration is not an indication of a *requirement* for the occupation.) As noted above, although a general-purpose bachelor's degree, such as a degree in business or business administration, may be a legitimate prerequisite for a particular position, the acceptance of 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. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business/business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normally the minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a management analyst does not normally require at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation, it does not support the proffered position as being a specialty occupation.

In support of the H-1B petition, the petitioner and counsel submitted a letter from [REDACTED]. The letter is dated May 3, 2011 and is on the [REDACTED] letterhead. Notably, the professor states that the letter encompasses his opinions and statements and that these do not necessarily reflect the views of the administration of the [REDACTED]. The AAO reviewed the opinion letter in its entirety. However, as discussed below, the letter from [REDACTED] is not persuasive in establishing the proffered position as a specialty occupation position.

In the letter, [REDACTED] states his opinion on the educational requirements for the proffered position. For example, on page 2 of the letter, [REDACTED] states "no one with less than a bachelor's degree in a specialty discipline such as management, marketing, or other specifically related disciplines would be able to successfully function in that position." This sentiment is repeated on page 3. On page 6, [REDACTED] states that the "duties of [the petitioner]'s International Liaison are so complex that they require the performance of a professional with a baccalaureate degree in a specific specialty, to include business administration or related disciplines." It must be noted that [REDACTED] conclusion that a degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. As discussed *supra*, recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a normally the minimum entry requirement for this occupation.

[REDACTED] provided a summary of his education and experience and attached a copy of his curriculum vitae. He described his qualifications, including his educational credentials, professional experience, and information regarding his research interests, awards, as well as provided a list of the publications he has written. Based upon a complete review of [REDACTED] letter, the AAO notes that [REDACTED] may, in fact, be a recognized authority on various topics; however, he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. While he attached his curriculum vitae, he has not established his expertise pertinent to the hiring practices of organizations seeking to fill positions similar to the proffered position in the instant case. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized

knowledge regarding the *current recruiting and hiring practices* of for-profit "garment manufacturer" companies in the industry of "Womens and Girls' Cut and Sew Apparel Manufacturing" (as designated by the petitioner in the Form I-129 and with the NAICS code) or similar organizations for international liaison positions (or parallel positions).

opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for such positions (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements.

states that his "determination was reached in part on the basis of the materials supplied by [the petitioner] describing the duties and responsibilities of the position" and that through his academic and professional experience, he believes that he is qualified to opine on the requirements for the proffered position. also references the petitioner's support letter. Upon review of the opinion letter, there is no indication that possesses any knowledge of the petitioner's proffered position beyond this information.

does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise.

claims that the apparel industry is "one of the most competitive industries in which to operate." further states that these types of companies operate on "very tight financial margins," which means that "some specific person" in the organization (referring to the proffered position) "no matter if it is a very small or a very large organization, has to be constantly monitoring costs of material, shipping, manufacturing and production costs, etc., and constantly monitor those factors." further claims that due to the nature of the business that involves outsourcing overseas and new designs which restart the monitoring, this "specific person" needs to be "intimately familiar with business and all of its inherent parts such as finance, transportation and logistics, international economy, operations and systems." He also states that the person in the proffered position needs to "literally keep up with changes and readjust the organization's core business processes to create new business opportunities from these changes."

However, it must be noted that there is no indication that the petitioner and counsel advised that the petitioner characterized the proffered position as a low, entry-level international liaison position (under the occupational classification of "Management Analysts"), for a beginning employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require 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. It appears that would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine parallel positions based upon job duties and responsibilities.

[REDACTED] also did not provide any documentation to establish his credentials as a recognized authority on the relevant industry-hiring standards. He claims to possess expertise in the field of business management and related fields, but he did not identify the specific elements of his knowledge and experience that he may have applied in reaching his conclusions here. For example, the opinion letter contains no evidence that it was based on scholarly research conducted by [REDACTED] in the specific area upon which he is opining. He claims that his determination was reached in part "with the consideration and comparison of the types of positions offered to our business majors who graduate from the [REDACTED] [REDACTED] refers to a one-page document entitled [REDACTED] and states that "it is very common for our own graduates to enter positions identical to that being offered by [the petitioner] to [the beneficiary]." However, the AAO notes that the document merely lists the job titles and employment settings for "typical occupations and employers associated with this major [management]." The printout does not serve as documentary evidence to establish that a degree in management is normally the minimum requirement for entry into international liaison positions (or parallel positions) for companies similar to the petitioner in the same industry. Rather, the printout appears to be intended for assisting a limited group of people – students at the [REDACTED] who are interested in pursuing a major in management.

In support of [REDACTED] assertions regarding the proffered position, he references the duties of "Management Analysts" as described in the Occupational Information Network (O\*NET) [incorrectly referenced as OIN]. [REDACTED] claims that O\*NET "clearly states that the majority of the positions in this occupational category require a 4-year bachelor's degree." The AAO reviewed this section of the O\*NET OnLine website, but finds that it does not support the professor's claim that the position qualifies as a specialty occupation.<sup>11</sup> That is, O\*NET OnLine does not state a requirement for a bachelor's degree (or higher) in a specific specialty, or its equivalent. Rather, it assigns this occupation a Job Zone Four rating, which groups it among occupations for which "[m]ost of these occupations require a four-year bachelor's degree, but some do not."<sup>12</sup> A Job Zone Four does not, however, demonstrate that a bachelor's degree *in any specific specialty* is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). Therefore, despite [REDACTED]

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<sup>11</sup> For more information about SOC Code 13-111 "Management Analysts," see O\*NET OnLine available at <http://www.onetonline.org/link/summary/13-1111.00> (visited January 9, 2013).

<sup>12</sup> For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of management analyst positions require at least a bachelor's degree, it could be said that "most" management analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner (which as previously discussed is designated by the petitioner as a low, entry level position in the LCA). Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." § 214(i)(1) of the Act.

assertion to the contrary, the referenced O\*NET information is not probative of the proffered position qualifying as a specialty occupation.

asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusion. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. Accordingly, the very fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. There is no evidence that has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. He has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. does not provide sufficiently substantive and analytical bases for his opinion.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the opinion letter rendered by is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record. Therefore, the AAO finds that the letter from does not establish that the proffered position is a specialty occupation. As such, neither findings nor his ultimate conclusions are worthy of any deference, and his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

Upon review of the record, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, the AAO reviews the record regarding 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The record of proceeding does not contain any evidence from an industry professional association to indicate that a degree is a minimum entry requirement.

In support of the petitioner's assertion that the proffered position is a specialty occupation position, the record of proceeding contains several job announcements. However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

As previously mentioned, the petitioner stated that it is a garment manufacturer with eleven employees. The petitioner also reported its gross annual income as approximately \$964,300 and its net annual income as \$149,025. As noted above, the petitioner designated its business operations under the NAICS code 31523, which is designated for "Womens and Girls' Cut and Sew Apparel Manufacturing."

For the petitioner to establish that an advertising organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that the organizations are similar and in the same industry without providing a legitimate basis for such an assertion. As previously discussed, 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. 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

The AAO reviewed the job advertisements submitted by the petitioner. Notably, the petitioner and counsel did not provide any independent evidence of how representative these job advertisements are of the particular advertising employers' recruiting history for the type of jobs advertised. Further, as

they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. For example, the petition submitted the following advertisements:

- A job posting for [REDACTED] for an International Materials Buyer/Planner. The industry is listed as "Manufacturing – Other." No further information regarding the advertising employer was provided. The petitioner has not supplemented the record or provided any information regarding which aspects or traits (if any) it shares with the advertising organization. The record is devoid of information to establish that the advertising company is similar to the petitioner.

Moreover, it appears that the advertised position may be a more senior position than the proffered position and it does not appear to be parallel to the proffered position. The job posting states that the position requires a degree and experience. That is, the posting states that 5+ to 7 years of experience is required, and also states that 1 to 3 years of experience in a manufacturing environment is required for the position. Further, the position also requires the ability to "read, write and speak English and Mandarin Chinese." The AAO notes that a language requirement other than English in an employer's job offer generally is considered a special skill for all occupations, with the exception of Foreign Language Teachers and Instructors, Interpreters, and Caption Writers.<sup>13</sup> As previously noted, the petitioner designated the proffered position as a Level I, entry-level position in the LCA. Upon review of the posting, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised position are parallel to the proffered position.

- An advertisement from [REDACTED] for an International Customer Service Specialist. The industry is listed as "Manufacturing – Other." The advertisement does not contain sufficient information regarding the nature of type or organization and/or information regarding its business operations. Consequently, the record is devoid of sufficient information regarding the advertising organization to conduct a legitimate comparison of the organization to the petitioner. The petitioner did not provide any additional information to establish that the advertising company and the petitioner share the same general characteristics, such as evidence that the organizations are similar in nature or type of organization. The petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organization. Without further information, the advertisement appears to be for an organization that is not similar to the petitioner, and the petitioner has not provided any probative evidence to suggest otherwise.

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<sup>13</sup> For more information about prevailing wage levels, For additional information on wage levels, see DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (Rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

Moreover, the advertisement states "a [c]ollege degree in Business Administration, Marketing, or equivalent experience is preferred." Contrary to the purpose for which the advertisement was submitted, the posting states that a college degree is preferred. Obviously, a *preference* for a degreed individual is not an indication of a *requirement* for the position. Thus, further review of the advertisement is not necessary.

- A job posting for [REDACTED] for a Manager of International Reporting. The industry is listed as "Manufacturing – Other." No further information regarding the advertising employer was provided. The petitioner has not supplemented the record or provided any information regarding which aspects or traits (if any) it shares with the advertising organization.

Moreover, the advertised position does not appear to be parallel to the proffered position. The position is "responsible for the preparation, review, analysis and distribution of the Company's consolidated financial statements and international businesses." The position requires a bachelor's degree in accounting and "a minimum of three to five years of prior accounting experience." The posting also states a requirement of 5+ to 7 years of experience. As previously mentioned, in the LCA, the petitioner designated the proffered position as an entry-level position with the Level I wage rate. Furthermore, the petitioner has not indicated that the proffered position primarily involves accounting or related duties. Upon review of the posting, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised position are parallel to the proffered position.

- An advertisement for [REDACTED] for International Procurement Manager. The posting indicates that the employer's industry is "consumer packaged good manufacturing, wholesale trade/import-export." The employer states that it is "a leader in the marketing and design of seasonal consumer products." No further information regarding the advertising employer was provided. The petitioner has not supplemented the record or provided any information regarding which aspects or traits (if any) it shares with the advertising organization.

The position requires "a Bachelor's degree" but does not list a specific specialty. Thus, contrary to the purpose for which the advertisement was submitted, the posting states that a bachelor's degree is required, but it does not indicate that a bachelor's degree in a *specific specialty* that is directly related to the duties and responsibilities of the position is required.

Moreover, the advertised position does not appear to be parallel to the proffered position. The organization is seeking an individual with a degree and "7+ to 10 years of experience." Additionally, the position is classified as "Manager (Manager/Sup. of Staff)." Thus, it appears that the position may be a more senior

position than the proffered position. More importantly, there is no information regarding the duties and responsibilities of the advertised position. The petitioner did not provide an explanation for submitting a job posting that is devoid of this necessary information. The record lacks evidence establishing the advertised position is parallel to the proffered position.

- A confidential posting for an International Business Development Manager. The posting indicates that the company is "an international trading and representation company" and has been "in business for over 30 years" with "operations in Europe, Asia and the Middle East." The petitioner has not supplemented the record or provided any information regarding which aspects or traits (if any) it shares with the advertising organization.

Moreover, the advertised position does not appear to be parallel to the proffered position. The organization is seeking an individual with a degree and "at least 5 years of managerial experience, preferably in a trading company." Additionally, the position is classified as an "Executive (SVP, VP, Department Head, etc.)" in the job posting. The salary is listed as \$100,000 to \$150,000 per year. As previously noted, the petitioner designated the proffered position as a Level I, entry-level position in the LCA. Thus, the advertised position appears to be more senior position than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised position are parallel to the proffered position.

- An advertisement for [REDACTED] for an International Operations Manager. The posting indicates that the company is "the #1 leading chemical distributor in the world." The petitioner did not provide any additional information to establish that the advertising company and the petitioner share the same general characteristics, such as evidence that the organizations are similar in nature or type of organization. The petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organization. Without further information, the advertisement appears to be for an organization that is not similar to the petitioner, and the petitioner has not provided any probative evidence to suggest otherwise.

Moreover, the advertisement states "a bachelor's degree or equivalent" as a requirement, but contrary to the purpose for which the advertisement was submitted, the posting does not indicate that a bachelor's degree in a *specific specialty* is required. Thus, further review of the advertisement is not necessary.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed.

The job advertisements do not establish that similar organizations to the petitioner routinely employ individuals with degrees in a specific specialty, in parallel positions in the petitioner's industry. Further, it must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from the advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations.<sup>14</sup>

Again, the AAO acknowledges that the record of proceeding contains an opinion letter from [REDACTED]. However, as previously discussed, the AAO finds that the opinion letter does not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as a specialty occupation.

Thus, based upon a complete review of the record, the petitioner has not established 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. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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<sup>14</sup> According to the *Handbook's* detailed statistics on management analysts, there were approximately 718,800 persons employed as management analysts in 2010. *Handbook*, 2012-13 ed., available at <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-1> (last accessed January 9, 2013). 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 postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the industry. 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 the job announcements supported the finding that organizations similar to the petitioner in its industry commonly require, for positions parallel to the one here proffered, at least a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings 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 normally require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

To begin with and as discussed previously, the petitioner itself does not require at least a baccalaureate degree or its equivalent in a *specific specialty*, but accepts a general-purpose degree, i.e., a bachelor's degree in a business related field.

The petitioner claims that the position is "more complex" due to "the number of logistical and analytical management and coordination duties for which the position is responsible." The petitioner asserts that a non-specialty occupation "would not have this level of responsibility and might only be doing supervised or assisted coordination duties."

The petitioner also claims that the position is "more specialized" and states the following in support of the conclusion:

[T]he position requires intimate familiarity with inherent business components including finance, international economy, transportation and logistics, systems and operations. The international liaison must also keep abreast of [the] business' and industry's constantly evolving trends and operations dynamics and use those changes to foster great business opportunities. A similar "non-specialty occupation" might work in a less dynamic or more general-business setting.

Further, the petitioner states that the position is "more sophisticated" because the proffered position "must be aware of and able to interpret complex issues relating to [the petitioner's] international transactions and the effect those transactions have on [the petitioner's] business as a whole." The petitioner does not provide any further information or details regarding the claimed "complex issues." The petitioner claims that the proffered position is "highly advanced" because the beneficiary will report directly to the president. According to the organizational chart, the petitioner's business operations consist of eleven employees (including the proffered position). The petitioner asserts that these attributes of the international liaison position support the conclusion that the proffered position qualifies as a specialty occupation under this criterion of the regulations.

The AAO reviewed the record of proceeding and acknowledges that the petitioner submitted documentation regarding its business operations, including the following: (1) 2009 U.S. Federal Tax return; (2) quarterly wage reports for 2010; (3) articles of incorporation, dated December 18, 1992; (4) Certificate of Registration; (5) a company organizational chart; (6) one packaging slip for the vendor [REDACTED] dated July 27, 2010; (7) a chart entitled "China Contacts," which lists the names, addresses and telephone numbers of eight companies in China (however, the only indication of any relationship between the petitioner and any of the contacts submitted to USCIS was the previously mentioned packaging slip for the vendor [REDACTED] dated July 27, 2010); (8) a two-page printout summarizing basic information about four of the petitioner's apparel products (two tops and two hoodies); (9) a printout from [REDACTED] for one of the petitioner's products; (10) printouts from [REDACTED] regarding two products (the products are not attributed to the petitioner); and (11) a document it refers to as its "Business Plan." Counsel claims that the supporting documentation illustrates the complexity of the petitioner's business operations.

The AAO reviewed the evidence in its entirety and incorporates by reference its earlier discussion of the evidence. The AAO finds that while the documentation provides some insights into the

petitioner's business activities, the evidence does not establish that the proffered position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent.<sup>15</sup>

The AAO finds that the petitioner has not provided sufficient documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent. This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. The LCA indicates a wage level at a Level I (entry level) wage. As previously mentioned, the wage-level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require 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. Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>16</sup>

It is further noted that although the petitioner asserts that a bachelor's degree is required to perform the duties of the proffered position, the petitioner failed to sufficiently demonstrate how the duties require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. That is, the record of proceeding does not establish that the petitioner's requisite knowledge for the proffered position can only be obtained through a baccalaureate or higher degree program in a specific specialty, or its equivalent. The petitioner listed coursework completed by the beneficiary in obtaining a degree in tourism and a master's degree in business administration, and claims that the courses are relevant for the proffered position. However, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it claims are so complex or unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the proffered position.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. That is, the petitioner failed to establish how the beneficiary's responsibilities and day-to-day duties are so complex or unique that

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<sup>15</sup> The AAO acknowledges that the petitioner submitted an opinion letter from [REDACTED]. However, as previously stated, the AAO incorporates by reference and reiterates its earlier discussion and analysis that the opinion letter does not establish the proffered position as qualifying as a specialty occupation.

<sup>16</sup> For additional information regarding wage levels as defined by DOL, see Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), at [http://www.foreignlaborcert.doleta.gov/pdf/Policy\\_Nonag\\_Progs.pdf](http://www.foreignlaborcert.doleta.gov/pdf/Policy_Nonag_Progs.pdf).

the position can be performed only by an individual with a bachelor's degree in a specific specialty, or its equivalent. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not credibly demonstrated that this position, which the petitioner characterized in the LCA as an entry-level position, is so complex or unique that it can be performed only by an individual with at least a baccalaureate degree in a specific specialty, or its equivalent. Thus, based upon the record of proceeding, including the LCA, it does not appear that the proffered position is so complex or unique that it can only be performed by an individual who has completed a baccalaureate program in a specific discipline that directly relates to the proffered position.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in the industry will assist her in carrying out the duties of the proffered position, and takes particular note of her academic degrees. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. The petitioner does not explain or clarify at any time in the record which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, the AAO finds that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A) entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the position. The AAO usually reviews the petitioner's past recruiting and hiring practices, as well as information regarding employees who previously held the position.

To satisfy this criterion, 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 performance requirements of the position. 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 specific 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 petitioner 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 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition

of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

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 position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. 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 proffered 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 AAO notes that the petitioner stated in the Form I-129 petition that it was established in 1992 (approximately 20 years prior to the submission of the H-1B petition). The petitioner stated that it has not employed an international liaison in the past. The petitioner submitted a letter from [REDACTED] dated April 7, 2011 (three months after the H-1B submission), which states that the company has assisted with job orders, including a recent assignment for an international liaison with a bachelor's degree in business and experience in international communications. It must be noted that without further information, the letter is not persuasive in establishing that the petitioner normally requires at least a bachelor's degree in a specific specialty for the position.

Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent. In fact, based on the petitioner's statements with regard to its own claimed educational requirement for the position (i.e., a bachelor's degree in a business related field), which is further supported by the letter from [REDACTED] it is clear that a general bachelor's degree is sufficient to perform the duties of the position.

Upon review of the record, the petitioner has not provided probative evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. The record is devoid of information to satisfy this criterion of the regulations.

Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific 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 in a specific specialty or its equivalent.

The AAO acknowledges that the petitioner submitted an opinion letter from [REDACTED]. However, the AAO incorporates by reference and reiterates its earlier discussion and analysis that the opinion letter does not establish the proffered position as qualifying as a specialty occupation.

Furthermore, as previously discussed, the AAO reviewed the record of proceeding and acknowledges that the petitioner submitted documentation regarding its business operations, including the following: (1) 2009 U.S. Federal Tax return; (2) quarterly wage reports for 2010; (3) articles of incorporation, dated December 18, 1992; (4) Certificate of Registration; (5) a company organizational chart; (6) one packaging slip for the vendor [REDACTED] dated July 27, 2010; (7) a chart entitled "China Contacts," which lists the names, addresses and telephone numbers of eight companies in China (however, the only indication of any relationship between the petitioner and any of the contacts submitted to USCIS was the previously mentioned packaging slip for the vendor [REDACTED] dated July 27, 2010); (8) a two-page printout summarizing basic information about four of the petitioner's apparel products (two tops and two hoodies); (9) a printout from [REDACTED] for one of the petitioner's products; (10) printouts from [REDACTED] regarding two products (the products are not attributed to the petitioner); and (11) a document the petitioner refers to as its "Business Plan." As mentioned earlier, counsel claims that the supporting documentation illustrates the complexity of the petitioner's business operations. The AAO reviewed the evidence in its entirety and incorporates by reference its earlier discussion of the evidence. Additionally, the AAO observes that while the evidence provides some insights into the petitioner's business activities, the documents do not establish that the nature of the specific duties of the proffered position 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 in a specific specialty or its equivalent.

In the appeal, the petitioner claims that the position is "more discretionary" because the beneficiary "will have minimal direction or supervision, that she will report directly to the President and that, as a result, the International Liaison position requires a high level of responsibility." The petitioner also claims that the position is "more demanding" due to "its particular duties, the level of discretion, the pace of [the] industry and [the petitioner's] ambitious goals." The petitioner asserts that these attributes of the proffered position support the conclusion that the position qualifies as a specialty occupation under this criterion of the regulations.

The AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupation. The petitioner designated the position as a Level I position (the lowest of four assignable wage levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would likely be classified at a higher-level, such as a Level IV position, requiring a significantly higher prevailing wage. A Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

A beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. As discussed in this decision, the petitioner has failed to establish that the proffered position requires a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the AAO need not and will not address the beneficiary's qualifications.

As previously mentioned, 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 1043, *aff'd*, 345 F.3d 683; *see also Soltane v. DOJ*, 381 F.3d 145 (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 for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act. Here, that burden has not been met.

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