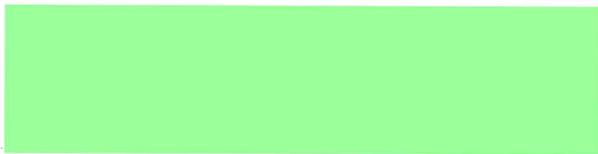
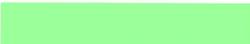


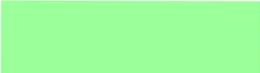


U.S. Citizenship  
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Services

(b)(6)

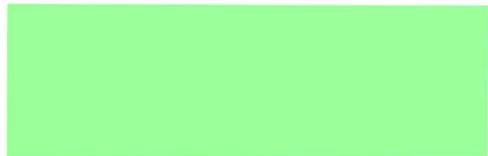


DATE: JUN 21 2013 OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

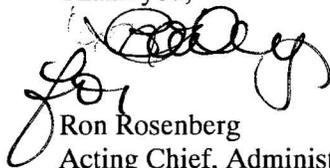


INSTRUCTIONS:

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.

On the Form I-129 visa petition and supporting documentation, the petitioner describes itself as a business and technology consulting firm established in 2005. In order to employ the beneficiary in what it designates as a senior business analyst 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, 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 for the petitioner 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 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, and the petition will be denied.

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the 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 providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation.

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college

professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 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.

In the petition signed on March 26, 2012, the petitioner indicates that it is seeking the beneficiary's services as a senior business analyst on a full-time basis at the rate of pay of \$90,000 per year. In the March 23, 2012 letter of support, the petitioner states the following regarding the duties of the proffered position:

The Senior Business Analyst collects, develops and analyzes data and information in order [to] synthesize ideas and designs into a coherent solution involving people, process, and technology. The Senior Business Analyst will need to have basic Project Management skills; develop and manage project life cycle document sets customized to meet the needs of the client. Develop standard project control documentation such as schedules, status reports, budgets, risk mitigation and communication plans.

In the position of Senior Business Analyst at [the petitioning company], [the beneficiary] will use her Master of Business Administration, related coursework, and her several years of experience to collect, input, organize, and analyze large data sets.

\* \* \*

Specifically, the duties of a Senior Business Analyst at [the petitioning company] include but will not be limited to:

Elicit requirements using interviews, document analysis, requirements workshops, surveys, site visits, business process descriptions, use cases, scenarios, business and workflow analysis.

Critically evaluate information gathered from multiple sources, reconcile conflicts, de-compose high-level information into details along with the

ability to use the detail to gain an understanding of the end to end solution. Most important is the ability to distinguish critical vs. non-critical use requests from their underlying true needs.

Prepare, manipulate, and manage extensive databases and large data sets; [i]ncludes data modeling and analysis using software applications that help interpret information which is used for policy creation and aid in decision making.

Assess system impacts and provide gap, process and cost/benefit analysis.

Evaluate information gathered from multiple resources, reconcile conflicts, de-compose information into details and use the detail to gain an understanding of the end to end solution.

The petitioner also states that the proffered position "is a specialty occupation requiring at a minimum, a Bachelor's Degree in Economics, Business, Computer Science, or related, and the advanced specialized knowledge and academic experience associated therewith and experience."

With the initial petition, the petitioner submitted a copy of the beneficiary's Master of Business Administration and transcript from [REDACTED] in Massachusetts. The degree was awarded on August 20, 2011.

The petitioner also submitted a Labor Condition Application (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 "Operations Research Analysts" - SOC (ONET/OES Code) 15-2031, at a Level II wage.

In addition, the petitioner submitted documentation in support of the petition. Specifically, the evidence included the following: (1) a two-page brochure, which provides a general summary of the petitioner's approach and service offerings; and (2) a one-page document entitled "Case Studies," with brief summaries of four projects completed by the petitioner.<sup>1</sup>

The director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on August 6, 2012. The petitioner was asked to submit documentation to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted. The AAO notes that the director specifically requested the petitioner to submit evidence that it has sufficient specialty occupation work that is immediately available upon the beneficiary's entry into the United States.

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<sup>1</sup> The AAO observes that the petitioner stated in the Form I-129 petition that it was established in 2005. No information was provided regarding when the four projects commenced or the duration of the projects. No supporting evidence was provided regarding the projects, and there is no evidence that the projects are ongoing.

On August 20, 2012, counsel responded by submitting a brief and additional evidence. Specifically, counsel submitted, in part, (1) a written statement from [REDACTED], Director for the petitioning company; (2) a template of an employment agreement; (3) a printout from the petitioner's website (the text of each of the five pages is almost identical); (4) a document entitled "[REDACTED]" which his dated June 30, 2010;<sup>2</sup> (5) tax documents; and (6) a job description.<sup>3</sup>

The director reviewed the information provided by counsel to determine whether the petitioner had established eligibility for the benefit sought. 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. In addition, the director determined that the record of proceeding provided insufficient probative evidence to substantiate that the petitioner has sufficient work for the requested period of intended employment. The director denied the petition on October 26, 2012. Counsel submitted an appeal of the denial of the H-1B petition.<sup>4</sup>

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<sup>2</sup> The document provides general information regarding [REDACTED] and states that it is provided for informational purposes only. It does not establish any particular work involving the petitioner and/or the proffered position. Notably, the document is dated approximately *two years prior* to the petitioner's response to the RFE.

<sup>3</sup> There is no evidence to indicate that the document corresponds to the petitioner's proffered position. The document is not on the petitioner's letterhead and it is not endorsed by the petitioner. The document does not identify the petitioner (or the beneficiary). The job title is also not provided. The record of proceeding does not indicate the source of the duties that are attributed to the position described in the document. Moreover, the document provides vague and general tasks that define a range of functions, but fails to sufficiently convey the substantive work that the individual will be expected to perform. Moreover, the experience and education section of the document states "4 year degree in business administration, engineering, computer science, MIS, finance or equivalent." The AAO observes that although there is some overlap with the petitioner's stated requirements for the proffered position, this statement in the document is not identical to the petitioner's claimed requirements as it includes additional disciplines (i.e., MIS, finance).

<sup>4</sup> With the appeal, counsel provided copies of previously submitted documents and new evidence. With regard to the new documentation submitted on appeal that was encompassed by the director's RFE, the AAO notes that this evidence is outside the scope of the appeal. The regulations indicate that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. See 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. See 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, it should have submitted it with the initial petition or in response to the director's request for evidence. *Id.* The petitioner has not provided a valid reason for not previously submitting the evidence. Under the circumstances, the

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 make some preliminary 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.

The petitioner has provided inconsistent information regarding the requirements of the proffered position. In the letter dated March 23, 2012, the petitioner claims that it requires at least a bachelor's degree in "Economics, Business, Computer Science, or related" for the proffered position. In response to the RFE, counsel submitted a job description for a position that states "4 year degree in business administration, engineering, computer science, MIS, finance or equivalent." In the appeal, the petitioner submitted a statement from [REDACTED] the petitioner's chief financial officer, which states, "The Business Analyst position at [the petitioner's] requires at minimum a Bachelors of Degree in Business or equivalent, the advanced specialized knowledge and academic experience associated therewith, as well as experience in the field." No explanation for the variance in the requirements was provided.

Based upon these documents, it appears that the petitioner will accept a degree in economics, business/business administration, computer science, engineering, MIS, and/or finance. 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 disparate fields 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. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," 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. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Again, the petitioner provided documentation that the duties can be performed by an individual with a degree in economics, business/business administration, computer science, engineering, MIS, and/or finance. The issue here is that it is not readily apparent that all of these fields of study are closely related or that the fields are directly related to the duties and responsibilities of the particular position proffered in this matter.

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AAO need not consider the sufficiency of such evidence submitted for the first time on appeal.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, simply fails to establish either (1) that the fields (economics, business/business administration, computer science, engineering, MIS, and/or finance) are closely related fields, or (2) that the fields are directly related to the duties and responsibilities of the proffered position.<sup>5</sup> As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge in a specific specialty, or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a degree in any of these fields suggests that the proffered position is not in fact a specialty occupation. Therefore, absent probative evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires at least a bachelor's degree in a specific specialty.

Moreover, the petitioner claims that a degree in business/business administration is sufficient for the proffered position. The claimed requirement of a degree in business/business administration for the proffered position, without specialization, is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business or business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

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. As discussed *supra*, 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 degree in business/business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>6</sup>

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<sup>5</sup> The field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent that a general degree in engineering or one of its other sub-specialties, such as chemical engineering or nuclear engineering, is closely related to the other disciplines or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter.

<sup>6</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

Again, the petitioner 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 business/business administration.

Upon review of the record of proceeding, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion. The petitioner's assertions regarding its requirements for the proffered position are tantamount to an admission that the proffered position is not in fact a specialty occupation. As such, even if the substantive nature of the work had been established, the instant petition could not be approved for this reason.

Moreover, the AAO notes that the petitioner in this matter provided a list of the beneficiary's proposed duties. As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide.

In that regard, the AAO has reviewed the information in the record regarding the petitioner's business and technology consulting firm. Upon review of this information, the AAO finds that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. That is, the record does not include sufficient work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. Thus, the petitioner has not provided the underlying documentation necessary to substantiate that the beneficiary would perform the claimed duties set out in the petitioner's letter of support. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

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F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of 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.*

Furthermore, the AAO notes that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1). Evidence that the petitioner creates after the issuance of an RFE is not considered independent and objective evidence for establishing eligibility for the benefit sought.

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:

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.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998).

Without statements of work describing the specific duties the petitioner requires the beneficiary to perform, as those duties relate to specific projects, USCIS is unable to discern the nature of the position and whether the position indeed requires the theoretical and practical application of a body of highly specialized knowledge attained through a baccalaureate program. Again, going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without a meaningful job description within the context of non-speculative employment, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The AAO acknowledges the petitioner's assertion that the position of senior business analyst requires a theoretical and practical application of highly specialized knowledge; however, an assertion without supporting evidence is insufficient for a petitioner to satisfy its burden of proof. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the

second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

In the instant case, the petitioner submitted several documents in support of its petition, including a brief description of four completed projects, a brochure, written statements from the petitioner's employees, a template employment agreement, printouts from its website, a document entitled [REDACTED] dated June 30, 2010, and a job description. However, the documents do not establish the substantive nature of the work to be performed by the beneficiary and that the proffered position qualifies as a specialty occupation. Specifically, the documents do not indicate that the beneficiary would be working on any particular petitioner's projects described therein.

In the written statement, submitted in response to the RFE, [REDACTED] states that "[i]n our hiring, we must consider our revenue, our projected revenue and our Master Service Agreements, as well as Statements of Work for each individual." [REDACTED] further states that "[b]ased on all of this data, [the petitioner] has determined [that] we have sufficient work for the term of the H-1B Petition for the beneficiary." However, the petitioner failed to submit its Master Service Agreements and Statements of Work (which the AAO notes were requested by the director in the RFE). Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

On appeal, counsel submitted a written statement from [REDACTED], Chief Financial Officer for the petitioning company. [REDACTED] claims that the petitioner "currently has 32 project in progress, and 49 projects in the development stage." She provided a "list of open positions from [the petitioner's] website" in support of her statement. However, she did not provide any probative documentation of the claimed projects and the beneficiary's specific role in the project(s). In addition, she provided a "Role Description." The document provides several categories of jobs but does not provide any information regarding the proffered position of "Senior Business Analyst." The AAO will not attempt to "guess" which of the categories corresponds to the proffered position.

Furthermore, the AAO reiterates that the written statement from [REDACTED] indicates that the proffered position "requires at [a] minimum a Bachelors [sic] of Degree [sic] in Business or equivalent." As discussed, the petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558.

The AAO observes that the petitioner claims that USCIS has previously approved H-1B cases on behalf of the petitioner for the proffered position. Notably, the petitioner did not submit copies of the petitions and supporting documents. If a petitioner wishes to have unpublished service center or AAO decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a

Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

As the record of proceeding does not contain copies of the petitions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [ . . . ] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the AAO was not required to request and/or obtain a copy of the petitions cited by the petitioner.

Nevertheless, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

For the reasons discussed above, it cannot be found that the proffered position qualifies as a specialty occupation. The AAO therefore finds that the petitioner failed to establish that the proposed position qualifies for classification as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Next, the AAO will consider whether the petitioner failed to establish that it had sufficient work during the requested validity period for the beneficiary to perform when the petition was filed. By not submitting evidence demonstrating the work that the beneficiary will perform, the petitioner precluded the director from establishing whether the petitioner has made a *bona fide* offer of employment to the beneficiary and that it has sufficient work for the beneficiary to perform for the

duration of the petition. Furthermore, there are no contracts or other evidence in the record demonstrating that the petitioner had projects or other work during the requested validity period. Therefore, beyond the decision of the director, the AAO finds that the petitioner has failed to establish that it has made a *bona fide* offer of employment to the beneficiary.

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

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