U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

Date: JUN 25 2013 Office: VERMONT SERVICE CENTER

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The visa petition in the instant case was signed by an attorney, who indicated that he had prepared that form. He also submitted a properly executed Form G-28 Notice of Entry of Appearance. The appeal in this matter, however, was submitted by a different attorney, who also submitted a properly executed Form G-28. All representations will be considered, but the decision in this matter will be furnished only to the petitioner and its present counsel of record.

On the Form I-129 visa petition the petitioner stated that it is a mortgage company with two employees. To continue to employ the beneficiary in what it designates as an "underwriter mortgage loan" position, the petitioner endeavors 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 it would employ the beneficiary in a specialty occupation position. On appeal, present counsel asserted that the director's basis for denial was erroneous and contended that the petitioner satisfied all evidentiary requirements.

As will be discussed below, the AAO has determined that the director did not err in his decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and present counsel's submissions on appeal.

The issue on appeal before the AAO is whether the 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 following statutory and regulatory requirements.

Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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;
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> *(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;
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> *(3)* The employer normally requires a degree or its equivalent for the position; or
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> *(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.

The visa petition states that the proffered position is an "Underwriter Mortgage Loan" position. The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position corresponds to Standard Occupational Classification (SOC) code and title 13-2072.00 Loan Officer. In addition, this position of loan officer on the submitted LCA was certified by the United States Department of Labor (DOL) for a Level I position.

With the visa petition, previous counsel provided evidence that the beneficiary has a bachelor's degree in business administration and a master's degree in commerce, both awarded by Sardar Patel University in Gujarat State, India. An evaluation that accompanied them states that they are, respectively, equivalent to a bachelor's degree in business administration and a master's degree in business administration awarded in the United States.

In his August 3, 2010 letter, the petitioner's principal stated that the beneficiary would continue to work as a commercial mortgage underwriter but did not otherwise describe her duties.

On January 13, 2011, the service center issued an RFE in this matter. The service center requested, *inter alia*, additional evidence that the petitioner would employ the beneficiary in a specialty occupation.

In response, previous counsel submitted (1) 22 vacancy announcements; (2) a printout of content from a website maintained by the and (3) a printout of content from education-portal.com.

The director denied the petition on March 21, 2011, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, present counsel provided (1) 22 additional vacancy announcements; (2) a list of three people, including the instant beneficiary, whom the petitioner claims to have employed as underwriters; (3) a description of the duties of an underwriter; and (4) an evaluation of the proffered position.

The list of people whom the petitioner claims to have employed as underwriters indicates that one of the two people on that list (other than the beneficiary) has a bachelor's degree in business administration with a specialization in marketing management, and the other a bachelor's degree in an unspecified subject.

The description of the duties of an underwriter is unsigned and unattributed. No evidential weight can be accorded an unidentified source. In any event, to paraphrase, that document states that underwriters (1) determine property quality; (2) calculate gross scheduled income, effective gross income, net operating income, debt service, debt coverage ratio, debt service income, cash flow, and loan amount; (3) estimate the value of the property to be encumbered based on the its income and the appraisal; and (4) approve the mortgage loan and submit for closing.

The evaluation of the proffered position is dated May 9, 2011. It was prepared by an associate professor of marketing at and states that the proffered position requires a minimum of a bachelor's degree in finance or a related field or the equivalent of such a degree.[1]

The evaluator also stated that he had reviewed and was basing his opinion on "the description of the proposed Underwriter Commercial Mortgages position provided by [the petitioner] . . . ." In so stating, he appeared to be referring to the description of duties described immediately above. His basis for stating that the petitioner provided that description is not stated and is unknown to the AAO.

The AAO notes, initially, that the petitioner has never provided USCIS a description of the duties of the proffered position. None was included in the petitioner's August 3, 2010 letter, submitted with the visa petition. None was submitted in response to the RFE. On appeal, present counsel submitted a description of a loan underwriter position with no indication of its provenance, or whether it refers

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[1] The evaluation of the proffered position, dated May 9, 2011 and submitted on appeal, is not the same document, and was not submitted for the same purpose, as the evaluation of the beneficiary's qualifications, dated July 16, 2004 and submitted with the visa petition.

to loan underwriter positions in general, or specifically to the proffered position, or specifically to some other loan underwriter position.[2] The evaluator, and no one else, indicated that the petitioner generated, or at least provided, or perhaps ratified, that description.

To determine whether a particular job qualifies as a specialty occupation position, the AAO does not rely solely on its job title. A critical factor for consideration is the extent of the evidence about specific duties of the proffered position and about the particular business matters upon which the duties are to be performed. In this pursuit, the AAO must examine the evidence of the substantive work that the alien will likely perform. In the instant case, the record contains no description of the proffered position that has been shown to have been produced by, or provided by, or ratified by, the petitioner.

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. This is sufficient reason to find that the petitioner has not demonstrated that the proffered position is a specialty occupation position, to dismiss the appeal, and to deny the visa petition. However, in order to continue its analysis of the specialty occupation issue, so as to identify other evidentiary deficiencies that preclude approval of this petition, the AAO will assume, *arguendo*, that the description of duties provided on appeal pertains to the proffered position.

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

The AAO will first discuss the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which is satisfied if a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position.

As noted above, the petitioner provided printouts of web pages from the and education-portal.com websites to support the proposition that a bachelor's degree in a specific specialty or its equivalent is a minimum requirement for underwriter positions. The printout from the website states that, among the things one should do to obtain a position as

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[2] Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

a mortgage underwriter, one should obtain a bachelor's degree with an emphasis on accounting, finance, sales, or economics. It does not state, however, that a degree in one of those fields is a minimum requirement for entry-level underwriter positions.

The same website also states:

> Most entry-level mortgage underwriting positions require an associate or bachelor's degree [citation omitted]. Preference is given to applicants with bachelor's degrees in business [citation omitted] or finance. An associate degree in financial services or mortgage banking also fulfills the education requirements for mortgage underwriting positions.

That a bachelor's degree in business or finance is preferred indicates that such a degree is not a minimum requirement. The website cited makes clear that an associate's degree may also qualify one for an entry-level mortgage underwriter position. Further, that *most* entry-level underwriting positions require either an associate's degree or a bachelor's degree implies that some entry-level positions for underwriters require neither. For both of those reasons, the printout of content from the website does not support the proposition that entry into an underwriter position requires a minimum of a bachelor's degree, let alone a bachelor's degree in a specific specialty.

The printout from education-portal.com states:

> Although some individuals may begin a career as a mortgage underwriter without a formal education, many companies prefer to hire individuals with a 4-year degree. Business, finance or management majors are good choices for a career as a mortgage underwriter.

Elsewhere, that same website states, "Employers often require a bachelor's degree in business, finance, or a related field, or an associate degree in mortgage banking or financial services."

That many companies prefer to hire individuals with a bachelor's degree does not indicate that a bachelor's degree is a minimum requirement, as a preference is not a minimum requirement. Education-portal.com makes clear that an associate's degree is an acceptable educational qualification for underwriting positions, and that some people enter the field without formal education. As such, the printout of education-portal.com content also does not support the proposition that underwriter positions require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Next, the AAO will review the chapter on loan officers in the U.S. Department of Labor's *Occupational Outlook Handbook* (*Handbook*). The AAO recognizes the *Handbook* as an

authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3]

In the "Loan Officers" chapter, the *Handbook* states, "Loan officers evaluate, authorize, or recommend approval of loan applications for people and businesses."

More specifically, the *Handbook* states:

> Loan officers typically do the following:
>
> - Contact companies or people to ask if they need a loan
> - Meet with loan applicants to gather personal information and answer questions
> - Explain different types of loans and the terms of each one to applicants
> - Obtain and verify financial information, such as the applicant's credit rating and income level
> - Analyze and evaluate the applicant's finances to decide if the applicant should get the loan
> - Approve loan applications or refer them to management for a decision

Yet further, the *Handbook* states:

> Loan officers use a process called underwriting to assess whether applicants qualify for loans. After collecting and verifying all the required financial documents, the loan officer evaluates this information to determine the applicant's loan needs and ability to pay back the loan.

As to commercial loan officers in particular, the same chapter of the *Handbook* states:

> ***Commercial loan officers*** specialize in loans to businesses. Businesses often use loans to start companies, buy supplies, and upgrade or expand operations. Commercial loans are often larger and more complicated than other types of loans. Because companies have such complex financial situations and statements, commercial loans usually require human judgment in addition to the analysis by underwriting software. Furthermore, some commercial loans are so large that a single bank will not provide the entire amount requested. In such cases, loan officers may have to work with multiple banks to put together a package of loans.

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[3] The *Handbook,* which is available in printed form, may also be accessed on the Internet, at http://www.bls.gov/oco/. The AAO's references to the *Handbook* are to the 2012 – 2013 edition available online.

Specifically as to loan underwriters, the *Handbook* states:

> ***Loan underwriters*** specialize in evaluating whether a client is credit worthy. They do this by collecting, verifying, and evaluating the client's financial information provided on their loan applications. They may use loan underwriting software, or they may perform the process manually.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook,* 2012-13 ed., "Loan Officers," http://www.bls.gov/ooh/business-and-financial/loan-officers.htm (last visited June 24, 2013).

To the extent that a distinction is made between mortgage loan officers and mortgage underwriters, it appears that the loan officer gathers the necessary documents and information and makes an initial decision on the loan, whereas the underwriter makes the final decision on whether to approve the loan. Based on the assumptions that (1) the description of duties provided on appeal pertains to the proffered position and (2) the petitioner only provides commercial mortgage loan services, the proffered position appears to combine the duties of both a commercial loan officer and a commercial underwriter position, and the AAO will assume, *arguendo*, based on these assumptions, that the proffered position is a commercial loan officer/underwriter position as described in the *Handbook* chapter pertinent to loan officers in order to analyze whether the proffered position as described would qualify as a specialty occupation position.[4]

The *Handbook* states in pertinent part the following about the educational requirements of loan officer positions, including commercial loan officer/underwriter positions:

> Loan officers need at least a high school diploma. Some positions, particularly commercial loan officers, require a bachelor's degree in finance, business, economics, or a related field. Because commercial loan officers analyze the finances of businesses applying for credit, they need to understand general business accounting, including how to read financial statements.

Id. at http://www.bls.gov/ooh/business-and-financial/loan-officers.htm#tab-4 (last visited June 24, 2013).

Whether the writers of the *Handbook* intended to state that all commercial loan officers require a bachelor's degree in finance, business, economics, or a related field, or only that some such

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[4] While the AAO will make these assumptions, *arguendo*, it is noted that the petitioner's designation of this proffered position as a Level I, entry-level loan officer position on the LCA raises serious credibility issues with regard to the petitioner's claims that the proffered position is in fact a commercial loan officer position. As regular residential loan officers are classified together with commercial loan officers and given that the *Handbook* indicates that commercial loan officers are higher-level positions than residential loan officer positions, it would appear based on the Level I designation on the LCA that either (1) the proffered position is not a commercial loan officer or (2) the LCA does not correspond to the petition in that it was not certified for the proper wage level, *infra*.

positions, or most such positions, require such a degree, is unclear. However, even if the *Handbook* is taken as stating that all commercial loan officer positions require a bachelor's degree in one of those subjects, or a related subject, that would not demonstrate that commercial loan officer positions, as an occupational category, qualify as specialty occupation positions, as it indicates that an individual with a general degree in business could perform the duties of this occupation.

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 or business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.[5]

Therefore, the *Handbook*'s recognition that a general, non-specialty "background" in business is sufficient for entry into a commercial loan officer position strongly suggests that a bachelor's degree *in a specific specialty* is not a normal, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a commercial loan officer 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.

Further, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. *See* Employment and Training Administration (ETA), *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009). The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that entry-level loan officer positions, and even commercial loan officer positions, do not require such a degree.

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent,

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[5] 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 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: elsewise, 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.

in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

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

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

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

As was noted above, previous counsel provided 22 vacancy announcements, and present counsel submitted another 22 vacancy announcements. They are for positions entitled Underwriter, Mortgage Underwriter, Mortgage Loan Processor/Underwriter, Mortgage Underwriter 2, Mortgage Underwriter (Level II), Mortgage Underwriter II – Seasonal, Underwriter II – Commercial Mortgage, Underwriter III, Underwriter II or III, Mortgage Underwriter III, Mortgage Underwriter 3 – General, Senior Mortgage Underwriter, Reverse Mortgage Underwriter III, Mortgage Quality Assurance Underwriter, Commercial Underwriter, Commercial Real Estate Underwriter, MultiFamily-Closing Manager/Loan Underwriter, Senior Commercial Mortgage Underwriter (Construction), Commercial Mortgage Underwriter (Senior Living), Portfolio Management Center Commercial Underwriter, Mortgage Underwriter Team Lead, and Senior Level Railroad Underwriter.

Not all of the companies that placed those announcements are lenders or mortgage brokers, as the petitioner apparently is. One is a real estate investment trust. Some are insurance companies. One of the announcements placed by an insurance company appears to be seeking an insurance underwriter, specializing in rail cargo, rather than a mortgage loan underwriter. One appears to be seeking a person with mortgage underwriting experience to work with a team of analysts in writing enhancements to existing mortgage underwriting software. As such, they are not all in the petitioner's industry or cannot be found to be in the petitioner's industry due to the fact that some of the advertising organizations did not identify their industries.

Further, of the lenders who placed the remaining announcements, some appear to be ordinary single family residential lenders, at least one is a multifamily residential lender. One states that it "is a niche investment and mortgage banking firm offering a full range of real estate-based, capital funding services directed towards the senior living, healthcare and affordable housing sectors." As such, they do not appear to be similar to the petitioner.

Even so, one of those vacancy announcements states that the position announced requires "a college education." It does not indicate that the position requires a minimum of a bachelor's degree or that, if it does, the requisite degree must be in any specific specialty. That vacancy announcement does not indicate that the position announced requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, sixteen vacancy announcements state that the positions they announce require bachelor's degrees, and one indicates that it requires a four-year degree. Those announcements, however, do not indicate that the requisite degrees must be in any specific specialty. Those announcements do not, therefore, indicate that the vacancies they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states that the position announced requires a bachelor's degree in a related field. What fields the hiring authority might deem to be sufficiently closely related, and whether, considered together, those fields would delineate a specific specialty, is unknown. Whether that position requires a minimum of a bachelor's degree in a specific specialty or its equivalent is therefore unclear.

Another vacancy announcement states, "Preferred Qualifications: Bachelor's Degree in Business or related field." Two other announcements state, "A Bachelor's degree in Business with/without commensurate experience, is preferred." The AAO observes that a preference is not a minimum requirement.

Further, even if the announcements stated that the positions announced required a bachelor's degree in business administration, that would not constitute a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Again, since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty within the meaning of the pertinent statutes and regulations, and does not establish the position as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Another vacancy announcement states that the position it announces requires a "Bachelor's degree in Business Administration or equivalent job related experience." Again, the requirement of a general bachelor's degree in business administration, without more, is not a requirement of a bachelor's degree in a specific specialty or its equivalent. *See id.*

Another vacancy announcement states that the position it announces requires a bachelor's degree in "Finance, Business, Accounting or a related field." As was explained above, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a degree in a specific specialty. *See id.*

One announcement states that the position announced requires a "BA/BBA/MBA." It does not indicate that the required degree must be in business administration and, even if it did, a requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a degree in a specific specialty. For both reasons, that announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Another vacancy announcement states, "Bachelor's degree or higher in business, finance or real estate preferred." Again, a preference is not a requirement, and even an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a degree in a specific specialty or its equivalent. For both reasons, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

One vacancy announcement states that the position it announces requires "Post secondary education (diploma/degree) preferably in business or finance." It does not indicate that the requisite degree must be a bachelor's degree. In addition, an educational requirement that may be satisfied by an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Without detailing the deficiencies of each of the remaining job postings, the AAO will summarize the rest by just noting that only one of the 44 vacancy announcements provided may arguably state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. As 43 of the announcements state no such requirement, however, this evidence actually supports the opposite of what it was submitted to establish; i.e., it indicates that a bachelor's degree in a specific specialty or its equivalent is not required for entry into loan officer positions.

Further, even if all of the vacancy announcements were placed by lenders, which they were not, and all were placed by companies similar to the petitioner, which they were not, and all indicated that a bachelor's degree in a specific specialty or its equivalent is a prerequisite for the vacancies they announce, which only one, at the most, does, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 44 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.[6]

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[6] Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from 44 job postings with regard to determining the common educational requirements for entry into parallel positions in similar lenders or mortgage brokers. *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

As the vacancy announcements provided do not establish that the petitioner has satisfied the requirement of the first alternative prong of 8 C.F.R. 214.2(h)(4)(iii)(A)(2), further analysis of the specific information contained in each of the vacancy announcements is unnecessary. That is, not every deficit of every vacancy announcement has been addressed.

Finally, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I loan officer positions, entry-level positions requiring only a basic understanding of a loan officer position, require such a degree or equivalent, which proposition is not supported by the *Handbook*.

The petitioner has not demonstrated that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations, and has not, therefore, 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 establishes that the particular position proffered in the instant case 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.

The May 9, 2011 position evaluation produced by the [redacted] associate professor of marketing states that, based on the description of duties provided on appeal, the proffered position requires "at least a Bachelor's degree or equivalent in Finance or a related field as a job qualification."

The evaluator further stated:

> I have used the position duties and qualifications for the parallel position of Loan Officer contained in the [*Handbook*], O*Net (Occupational Information Network) and job requirements in job announcements of similar positions as reference points.

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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 the position of loan officer, or commercial loan officer, or mortgage loan underwriter, or commercial mortgage loan underwriter, or commercial loan officer/underwriter for a lender or mortgage broker required 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 may have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position may not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The evaluator provided no explanation of the analysis pursuant to which he found that those sources support his conclusion. The *Handbook* chapter to which he refers and the job announcements support no such conclusion, for reasons explained in detail above. Further, O*Net assigns loan officer positions to "Job Zone Three: Medium Preparation Needed, which indicates that "Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree." How the evaluator could divine from O*Net that the proffered position requires a minimum of a bachelor's degree in a finance or a related field or its equivalent is unsupported by the record.

The evaluator appears not to have based his opinion on any objective evidence, but instead to have relied on his own subjective judgment in asserting that the proffered position requires a bachelor's degree in finance or a related field. 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 Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). In this case, the opinion of the evaluator conflicts with the evidence upon which he asserts that he relied, and his opinion will be accorded little to no evidentiary weight.

The record contains no evidence that would differentiate the work of the proffered position from the work of commercial loan officer/underwriter positions in general. The duties attributed to the proffered position (such as determining property quality, performing calculations pertinent to income and debt service, and estimating the value of property based on an appraisal and the property type and income) are described in terms of functions common to commercial loan officer/underwriter positions in general, and so have not been shown to be more complex or unique than the duties of other loan officer positions, some of which, the *Handbook* indicates, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, 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. While related courses may be beneficial in performing some of the proposed duties, 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 record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

Finally, as was also noted above, the LCA submitted to support the visa petition is approved for a Level I loan officer, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the duties of a loan officer. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that entry-level loan officer positions may only require a high school degree.

For all of the reasons explained above, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

The AAO will next consider the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*), which is satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.[7] To address this criterion, the petitioner provided a list of three people, including the beneficiary, whom it claims to have employed as commercial loan underwriters.

The two other people whom the petitioner claims to have employed in the proffered position are , who is the petitioner's principal, and . The list states that has a master's of commerce degree with a concentration in accounting. It states that has a bachelor's degree, but does not disclose the subject in which he has a degree. Further, the record contains no evidence to corroborate either degree.

A master's degree in commerce, with a specialization in accounting, would likely qualify as a degree in a specific specialty that would qualify one to work in some specialty occupation. Assuming that has such a degree, as represented, he would likely be qualified to work in a specialty occupation. A master's degree in commerce with a specialization in accounting has not, however, been shown by the petitioner to be in a specific specialty directly related to the duties of a commercial loan officer/underwriter position.

Further, even assuming that worked as a commercial loan officer/underwriter for the petitioner, and assuming that he then had a bachelor's degree, the petitioner has not even alleged that the degree was in any specific specialty. The record does not show, nor have the petitioner and present counsel alleged, that has a minimum of a bachelor's degree in a specific specialty or its equivalent.

The evidence in the record is insufficient to show that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and the petitioner has not, therefore, provided any evidence for analysis under the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*3*).

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[7] While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The nature of the duties of determining property quality, performing calculations pertinent to income and debt service, and estimating the value of property based on an appraisal and the property type and income has not been shown to be so specialized and complex that the knowledge to perform those duties is usually associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than loan officer or even commercial loan officer positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Further, as was noted above, the petitioner filed the instant visa petition for a Level I loan officer position, a position with only a basic understanding of such positions. This does not support the proposition that the duties of the position are so specialized and complex relative to other loan officer or commercial loan officer positions that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, closely-related to loan officer duties.

For the reasons discussed above, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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.

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition. As was noted above, the LCA provided in support of the instant petition lists a Level I prevailing wage level, which is appropriate for basic, entry-level loan officer positions. As noted above, however, this indicates that the LCA, which is certified for an entry-level position, is at odds with the petitioner's claims that its particular position is a higher-level commercial loan officer position.

Given that the LCA submitted in support of the petition is for a Level I wage, it must therefore be concluded that either (1) the position is a low-level, entry position relative to other loan officers and, thus, based on the findings of the *Handbook*, the proffered position is not a commercial loan officer position; or (2) the LCA does not correspond to the petition. In other words, even if it were determined that the proffered position is a commercial loan officer position, the petition would have to be denied on the additional basis that the supporting LCA does not correspond to that likely Level III or IV position.

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 the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

> For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation or whether the individual is a fashion model of distinguished merit and ability, and whether the qualifications of the nonimmigrant meet the statutory requirements of H-1B visa classification.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed Level III or IV position, and the petition must be denied for this additional reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the position is a specialty occupation. In other words, the 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 did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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

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

The AAO recognizes that this is an extension petition. The director's decision does not indicate whether he reviewed the prior approvals of the previous nonimmigrant petitions filed on behalf of the beneficiary. If the previous nonimmigrant petitions were approved based on the same evidence

contained in the current record, those 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). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990).

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 instant nonimmigrant petition on behalf of the beneficiary, 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). The prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of petitioner's qualifications. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004).

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

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