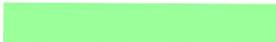


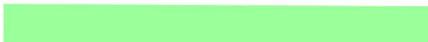


U.S. Citizenship
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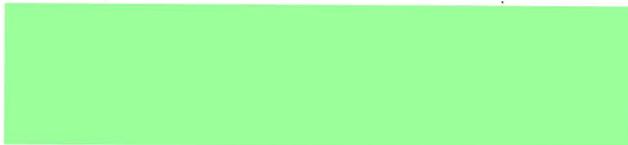


Date: **MAR 08 2013** Office: CALIFORNIA SERVICE CENTER FILE: 

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)

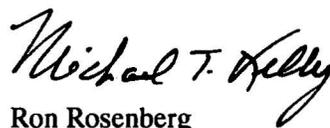
ON BEHALF OF PETITIONER:



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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 
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, the petitioner describes itself as a financial brokerage business established in 1992, with a gross annual income of \$2.95 million, and employing 60 people. In order to employ the beneficiary in what it designates as a human resources specialist position for 23 hours per week, 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 proposed position qualifies for classification as a specialty occupation. On appeal, the petitioner contends that the director's finding was erroneous and submits a brief in support of this contention.

The record of proceeding before the AAO contains: (1) 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) Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

Also in support of the petition, counsel prepared the certified LCA for the proffered position on behalf of the petitioner and selected the occupational category for Human Resources, Training, and Labor Relations Specialists, All Others, with an SOC code of 13-1079.00, for a position offered in Arcadia, California.¹ Notably, the LCA reflects that counsel selected a Level I prevailing wage for the proffered position.

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,

¹ This occupational category is no longer in use, and the current applicable occupational categories are 13-1071.00 for Human Resources Specialists, and 13-1075.00 for Labor Relations Specialists.

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

Consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 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.

In a letter of support dated May 20, 2011, the petitioner's executive vice president provided an overview of the petitioner's organization.² Specifically, the executive vice president stated that the petitioner, a financial brokerage business registered in 26 U.S. states, with plans to expand its business by hiring more employees. The petitioner further claimed to employ 60 people.

Regarding the proffered position, the petitioner stated that it required the services of the beneficiary as a human resources specialist and provided the job duties associated with the position as enumerated below.

Hiring:

1. Collect and examine detailed information about job duties and draft job descriptions and identify core competencies such as training and skills required for the positions.
2. Prepare and post [job] vacancies.
3. Search for qualified candidates according to relevant job criteria using job search websites' databases, job fairs, networking, as well as employee referrals.
4. Support the recruitment function by screening, interviewing, and directing candidates while resuming efficient comments documents (verbatim). Check candidates' references.
5. Coordinate interview[s] with relevant managers.
6. Carry out human resources policies of the company when discussing wages, working conditions, and advancement opportunities with job

² The AAO observes that the petitioner states in the initial support letter that the petitioner was established in 1997, whereas the Form I-129 states that the petitioner was established in 1992. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

candidates.

7. Advise job applicants of the success or failure of their application. Extend job offers [to] highly-qualified candidates.

Employee Benefits:

1. Enroll eligible employees in company's employee benefits program such as health insurance and retirement plans.
2. Be knowledgeable with equal employment opportunity and affirmative action guidelines and laws. Keep abreast of new regulations about human resources and employee rights. Explain company and governmental rules, regulations, and procedures to employees.

Human Relation[s]:

1. Provide personnel assistance in identifying, evaluating, and resolving human relations problems. [Provide assistance] in [resolving] labor relations problems between employees.
2. Discuss with personnel and meet with managers and supervisors to facilitate effective interpersonal communication and ascertain human relations and work related problems (verbatim). Report employees' complain[s] and comment[s] to management and make recommendation[s] for the solutions of worker relation[s] issues.
3. Discuss with employees and observe the work environment in order to evaluate the need of human relation skill training to all employees (verbatim). Research for appropriate training programs for company's employees and recommend it to management (verbatim).

Work Performance Improvement:

1. Review work performance (quota) of independent brokers and report to management. Oversee company's performance management system. Make recommendation[s] to management about how to modify current reward system in order to improve work performance.

To satisfactorily carry out the duties, the petitioner required its candidates to possess a bachelor's degree in human resource management or its equivalent.

The petitioner also submitted a two-page letter from the beneficiary dated May 27, 2011, which described the applicability of specific courses within the baccalaureate-level human resources

management curriculum to core competencies within the human resources career environment. Specifically, the beneficiary maintained that each course imparted skills that would be beneficial to her performance in the proffered position, and below is a verbatim excerpt, in pertinent part, of the beneficiary's narrative of the critical courses (underlined for clarity) and the claimed human resources competencies.

[W]hen I studied in [REDACTED] I took the course Legal and Ethical Environment of Business. From the course I know various business-related laws. I also learn legal research and writing, and critical thinking techniques. This information is essential for me to propose legal and ethical policies which is health to the growth of the company. Besides, I studied the course Managing Organizations and People. This provides me the knowledge of mission and goals, organizing work, and managing human performance. The knowledge gained helps me to be a leader in our company and guide the company and staffs improve steps by steps. Moreover, the course Operations Management that I took, gave me the concepts and tools for managing a business operation. I can make use of these concepts and tools to help our company to maximize its productivity.

Apart from learning how to manage a company and employees, communication is also important. I studied the course Developing Team and Interpersonal Skills. It showed us how communication plays an important role in developing teamwork, which in turn grouping the power of every person. Furthermore, I received the knowledge of managing multi-cultural human resources from the International Management Course. As our company has business with people of different culture, I can apply what I learned and create a comfortable environment for our customers. All the skills and knowledge that I learned are not only theories, but also very practical in our daily business. I took a Human Resources Management Capstone course that gave me the opportunity to apply the theories in case studies and real-world exercises. This is important to prepare myself for working in real environment.

Not only do the management knowledge and skills are vital, but also the knowledge of how our company works. In [REDACTED] I took the course Fundamentals of Marketing which gave me concepts ranging from product management to consumer behavior.

The record of proceedings contains the beneficiary's transcript, indicating that the beneficiary had taken each enumerated course.

On June 17, 2011, the director issued an RFE requesting additional evidence pertaining to the proffered position. Specifically, the director requested documentation establishing that the proffered position met at least one of the four criteria set forth under 8 C.F.R. § 214.2(h)(4)(iii)(A). In a response dated July 14, 2011, the petitioner addressed the director's queries. The petitioner provided the following updated description of the duties of the proffered position:

Recruitment and Hiring:

1. Identify the requirements for each existing job with the company and for those jobs to be added during expansion. Interview function managers, employees, obtain industry information online and through professional and other associations to identify skills and abilities required, training, education, and experience for each position. Draft job descriptions. This total review and draft is required due to [the petitioner's] rapid expansion during [the] last 18 to 24 months.
2. Draft updated evaluation forms for new employee recruitment and current employee performance. Incorporate newly drafted job descriptions and performance criteria. Also draft to reflect current EEO, affirmative action and other relevant laws, regulations and policies. Include new hire interview guidelines concerning how to [discuss] wages, working conditions, advancement opportunities in accordance with [the petitioner's] HR policies.
3. Direct recruitment process: prepare and post job vacancy announcements in newspapers and other media, including government and other websites. On a parallel track, search for qualified candidates for professional positions using job search websites, databases, networking and employee referrals. Screen applications and check references (verifying three references from each job applicant). Coordinate candidate interviews with relevant managers. Conduct series of telephone and in-house interviews with each applicant. Notify candidates of results of recruitment process and extend job offers to qualified candidates.

Administer employment benefit programs:

4. Review relevant state and federal HR laws and policies. Enroll eligible employees in company benefit programs including health insurance and retirement plans. Explain government regulations and procedures and available benefit programs to employees through meetings and prepared materials. Explain 3/20 benefits requirement to new employees (enrollment after 3 month probation if working a minimum of 20 hours per week).

Human Relations:

5. Work with management and employees to identify and resolve HR problems including work-related problems between employees, work environment generated problems and employee problems with management. Meet with employees, supervisors and management on regular basis to identify HR issues and establish communication to resolve those issues. Collect and report employee

complaints and comments to management. Make recommendations for solutions to worker relation issues. Evaluate need for HR skill training for all employees. Research appropriate training programs and make recommendations to management to implement.

Work Performance Improvement:

6. Review work performance of independent brokers and report to management. Oversee company performance management system. Make recommendations about modifying current reward system to improve work performance.

Additionally, the petitioner stated that the beneficiary would report directly to the petitioner's president.

The petitioner also submitted a copy of one job posting for a position it deemed parallel to the proffered position in the petitioner's industry, along with copies of pages from the State of California Employment Development Department Internet site reporting the statewide and the Los Angeles county minimum level of education reported by California employers for the Human Resources, Training, and Labor Relations Specialists, All other occupational category.

On June 26, 2011, the director denied the petition, based upon his determination that the evidence of record did not establish the proffered position as a specialty occupation. On appeal, counsel, on behalf of the petitioner, maintains that the director's reliance on the language contained in the U.S Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* was erroneous, since the language contained therein states that a bachelor's degree is a typical path of entry into HR occupations. In addition, counsel states that the director's determination that a diverse, non-specific educational background cannot be considered to meet the education requirement in the statutory and regulatory scheme is incorrect, because other AAO decisions have found certain occupations to be specialty occupations despite varying and broad educational paths. The petitioner makes additional arguments that will be discussed in more detail below, and concludes by stating that the proffered position is a specialty occupation by virtue of the *Handbook* reporting the requirement of a bachelor's degree for human resources specialist positions.

To make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), which requires that a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position. 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

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

To determine whether the duties of the proffered position support the petitioner's characterization of its proposed employment, the AAO turns to the 2012-2013 online edition of the *Handbook* for its discussion of this occupational category.⁴

Also, the AAO must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. Thus, a crucial aspect of this matter is whether the petitioner has adequately described the duties of the proffered position; such that USCIS may 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 in a specific discipline. The AAO finds that the petitioner has not done so.

The AAO turns to the 2012-2013 online edition of the *Handbook* for its discussion of this occupational category.⁵ A review of the petitioner's description of the duties of the proffered position reveals that the position is akin to that of a human resources specialist. According to the *Handbook*, this occupation is described in relevant part as follows:

Human resources specialists recruit, screen, interview, and place workers. They also may handle human resources work in a variety of other areas, such as employee relations, payroll and benefits, and training.

Duties

Human resources specialists typically do the following:

Consult with employers to identify employment needs and preferred qualifications

Interview applicants about their experience, education, training, and skills

Contact references and perform background checks on job applicants

Inform applicants about job details, such as duties, benefits, and working conditions

Hire or refer qualified candidates for employers

Conduct or help with new employee orientation

Keep employment records and process paperwork

⁴ Since the issuance of the director's decision, an updated version of the *Handbook* has become available.

⁵ Many Occupation Codes changed with the July 2011 update to the revised Standard Occupational Classification system. At the time of filing the petition, the petitioner correctly used the *Handbook's* closest occupational classification of Human Resources, Training, and Labor Relations Specialists, All Other. At present, the *Handbook* now has an occupational classification for Human Resource Specialists.

Many specialists are trained in all human resources disciplines and do tasks throughout all areas of the department. In addition to recruiting and placing workers, these specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

Employment interviewers work in an employment office and interview potential applicants for job openings. They then refer suitable candidates to employers for consideration.

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll and benefits, training, and administration of human resources policies, procedures, and programs.

Labor relations specialists interpret and administer a labor contract, regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices. They also handle grievance procedures, which are a formal process through which employees can make complaints.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as **personnel recruiters**, find, screen, and interview applicants for job openings in an organization. They search for job applicants by posting job listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers.

U.S. Dep't of Labor, Bureau of Labor Statistics, Occupational Outlook Handbook, 2012-13 ed., Human Resources Specialists, <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-2> (last visited January 3, 2013).

A review of the *Handbook's* education and training requirements for this occupation, however, indicates that it does not require a bachelor's degree in a specific specialty or its equivalent for entry into the position. According to the *Handbook*:

Most positions require that applicants have a bachelor's degree. However, the level of education and experience required to become a human resources specialist varies by position and employer.

Education and Work Experience

Most positions require a bachelor's degree. When hiring a human resources generalist, for example, most employers prefer applicants who have a bachelor's degree in human resources, business, or a related field.

Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

Some positions, particularly human resources generalists, may require work experience. Candidates often gain experience as human resources assistants, in customer service positions, or in other related jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Human Resources Specialists, <http://www.bls.gov/ooh/Business-and-Financial/Human-resources-specialists.htm#tab-4> (last visited January 3, 2013). Although the *Handbook* states that most human resources specialist positions require a bachelor's degree for entry into the occupational category, it also indicates that candidates with high school diplomas can qualify for various positions, and that several years of work experience can be substituted for education.⁶ Accordingly, as the *Handbook* indicates that working as a human resources specialist 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. For the reasons set forth above, the petitioner has failed to establish that it has satisfied 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.

⁶ The statement that "most human resources specialists have a bachelor's degree" does not support the view that any human resources specialist position qualifies as a specialty occupation, as "most" is not indicative that a particular position within the wide spectrum of human resources specialist jobs normally requires at least a bachelor's degree, or its equivalent, in a specific specialty. For instance, the first definition of "most" in *Webster's New Collegiate College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "Greatest in number, quantity, size, or degree." As such, if merely 51% of the positions require at least a bachelor's degree in specific specialty, it could be said that "most" of the positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of four advertisements as evidence that its degree requirement is standard amongst its peer organizations for parallel positions in the finance industry. The advertisements provided, however, establish no more than that the recruiting employers are requiring for advertised positions a bachelor's degree, but not necessarily one in any *specific specialty* or its equivalent. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry.

For instance, the first vacancy announcement submitted in response to the RFE was for a Human Resources Generalist position with a company named [REDACTED] that showed yearly revenues in the range of \$10 to 20 million, with 50-99 employees. The AAO notes that, while the organization might appear to be similar to that of the petitioner, the job title, and the position description accompanying the job vacancy, differs from that of the proffered position. Moreover, while the vacancy states that a "BA" is required, it does not require the degree to be in a specific specialty. Thus, this advertisement does not reflect an industry practice of requiring at least a bachelor's degree in a specific specialty.

The second and third job vacancy announcements that counsel submits on appeal are for senior level human resources director positions for business entities in the finance industry. The second vacancy specifies a minimum education level of a bachelor's degree in numerous fields of specialty, including finance, human resources management, or accounting, while the third vacancy specifies specialization fields in business, personnel management or a related field.⁷ Even though these are

⁷ In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as accounting and human resources management, or business or personnel management 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) (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). As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Even if this evidence of job vacancy announcements were considered, however, it only supports the implied assertion of the petitioner that the proffered position can be performed by individuals with a bachelor's or higher degree accounting or human resources management, or business and personnel management. Absent

ads for other finance organizations, it is not clear whether they are true peer organizations because there is no evidence that the organizations are financial brokerage businesses. Also, the vacancies represent positions more senior than the proffered position, and both of these announcements state various fields of study without any discussion as to the relevance of the varied specialties. As stated above, requiring a degree in a range of different specialties will not establish that these positions are for parallel positions in similar organizations.

Moreover, while the fourth job posting is for a position in the same industry, it is a position that requires at least three years of experience working as an HR generalist with an organization known for a high-performing HR function, and for an organization noted for superior management practices and excellent customer service. As with the other job vacancy announcements, the petitioner fails to demonstrate through documentary evidence that the organization is similar to the petitioner, or more specifically, that the advertising entity is also a general securities broker/dealer. Counsel did not advance any discussion analogizing the proffered position to the HR generalist job vacancy, and therefore, it cannot be found to be a parallel position in a similar organization.⁸

As a result, for the reasons outlined above, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.

evidence to the contrary, the fields are not closely related specialties, and the petitioner fails to establish how each of these fields are directly related to the duties and responsibilities of the proffered position. Accordingly, as such evidence fails to establish a minimum requirement of 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 and, in fact, supports the opposite conclusion.

⁸ 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 four job postings with regard to the common educational requirements for entry into parallel positions in similar religious organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job vacancy announcements supported the finding that the position of human resources specialist for a 60 person financial brokerage business required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of job vacancies that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

Next the AAO will consider the Internet web pages from the State of California Employment Development Department. Counsel alleges that this evidence makes it very clear that a degree is the normal requirement for all human resources jobs in California. Both of the pages reflect the educational requirement for the occupational category of Human Resources, Training, and Labor Relations Specialists, All Other; one page is for the State of California, the other page is for Los Angeles County. The AAO finds that the petitioner's reliance on this evidence is misplaced because it simply states that employers are usually looking for candidates with a bachelor's degree, but the evidence fails to report whether employers normally require this level of education in a specific specialty for the occupational category. Therefore, this evidence does not demonstrate that the proffered position is a specialty occupation.

Finally, counsel advances an analogy on appeal and claims that the specialty occupations should not be limited to those where a petitioner can show the beneficiary possesses education in the specific specialty that is directly related to the proffered position. Alternatively, counsel states, "The issue is not whether there is more than one educational specialty but whether they meet the 'directly related' requirement." In support of this contention, counsel claims that the AAO has repeatedly held that accountants, fashion designers, health services managers, and many others, have been held to be specialty occupations even though such fields have had multiple educational paths that might be appropriate for the occupation.

Counsel refers to unpublished decisions in which the AAO determined that various accounting positions, fashion designers, market research analysts, and health services managers proffered in those matters qualified as specialty occupations. 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; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 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, neither the director nor the AAO was required to request and/or obtain a copy of the unpublished decisions cited by counsel.

If a petitioner wishes to have unpublished 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 through its own legal research 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). In the instant case, the petitioner failed to submit a copy of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, 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.

As previously discussed, USCIS consistently interprets the term “degree” to mean not just any baccalaureate or higher degree, but one in a *specific specialty* that is directly related to the position. An occupation is not a specialty occupation if a bachelor's degree in any field of study, or in a general field of study, or varying fields of study is acceptable. Since there must be a close correlation between the required specialized studies and the position, the evidence showing acceptance of college graduates with a business background, accounting, finance, or human resources management, without further specification, does not establish the position as a specialty occupation. *See Matter of Michael Hertz Associates*, 19 I&N Dec. 558.

For the aforementioned reasons, the petitioner has failed to satisfy the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

In the alternative, the petitioner may submit evidence to establish the position is so complex or unique that only an individual with a degree in a specific specialty can fill the position. The AAO observes that the petitioner and the beneficiary have indicated that the beneficiary's educational background and her prior experience in the industry will assist her in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area. On appeal, counsel declares that the job is complex and unique because the petitioner has rapidly expanded; it is a new position that is critical to set a proper course for the petitioner's future; and the core of the duties rest on law and regulations. The AAO finds that these are valid reasons for employing an experienced individual in the role of human resources specialist. However, the AAO also finds that the petitioner has not supported counsel's arguments with persuasive, concrete and substantive explanations and documentation establishing that, in fact, the cited factors have produced the level of relative complexity or uniqueness required to satisfy this criterion.

The petitioner provides no documentary evidence to support this contention that the job is distinguishable from other non-qualifying human resources specialist positions. 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)).

Moreover, the petitioner has designated the proffered position as a Level I position on the submitted LCA, a designation for 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). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner has thus failed to establish the proffered position as satisfying either prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

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

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

As the record contains insufficient information on point, the petitioner has not met the burden at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

The AAO finds that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than human resources specialist positions with duties of such a nature that their performance does not require knowledge usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner, through counsel, simply provides its own unsupported opinions with regard to the qualifications necessary for an individual to perform the duties of the proffered position. Moreover, the description of the duties of the proffered position does not specifically identify any tasks that are so specialized or complex that only a specialty degreed individual could perform them. The fact that the beneficiary, possesses a bachelor's degree in human resources management and gained some experience in the industry does not establish that this position is inherently more specialized or complex than other similar but non-specialty-degreed employment.

Consequently, to the extent that they are depicted in the record, the duties have not been demonstrated as being so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position meets the requirements of

8 C.F.R. § 214.2(h)(4)(iii)(A)(4).⁹

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 AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient documentation 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 that it is a specialty occupation and, therefore, the issue of whether it will require a baccalaureate or higher degree, or its equivalent, in a specific specialty also cannot be determined.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

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

⁹ Moreover, the AAO incorporates its earlier discussion regarding the wage-level designation on the LCA, which is appropriate for duties whose nature is less complex and specialized than required to satisfy this criterion.