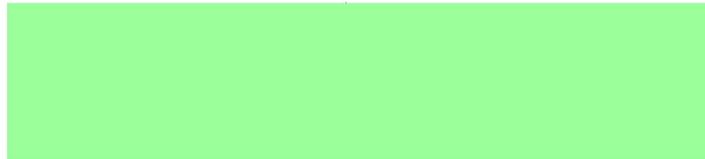




U.S. Citizenship
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Services

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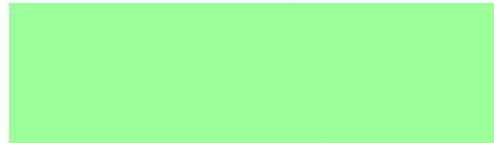
DATE: **NOV 25 2013** OFFICE: CALIFORNIA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("the 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 petitioner on the Form I-129, Petition for a Nonimmigrant Worker, describes itself as a provider of environmental analytical laboratory testing and consulting for manufacturing plants and waste disposal facilities. The petitioner states that it was established in 1994, and currently employs 49 personnel in the United States. In order to employ the beneficiary in what it designates as a financial analyst position in a part-time capacity, 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 determining that the petitioner had not provided evidence sufficient to establish that the proffered position is a specialty occupation.

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, Notice of Appeal or Motion, counsel's brief, and additional documentation.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition.¹ Accordingly, the appeal will be dismissed and the petition will remain denied.

Facts and Procedural History

In the May 22, 2012 letter in support of the petition, the petitioner listed the following proposed duties of the beneficiary as a financial analyst (bullet points added):

- Conduct quantitative analysis of information affecting our company's financial resources and interests, which entails drawing charts and graphs, using computer spreadsheets;
- Analyzing financial information to forecast our business, industry and economic conditions;
- Monitoring developments in the fields of industrial technology and business finance and theory;
- Interpreting data, including future risks, trends, economic influences and other factors;
- Monitoring economic, industrial and corporate developments and analyzing information from various sources and publications; and,
- Making recommendations and preparing plans and reports.

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

The petitioner stated that the beneficiary has a foreign bachelor's degree with a major in accounting. In addition, the petitioner indicated that she has completed all course requirements for her master's degree in public administration from the [REDACTED] Ohio, and will be awarded her master's degree in August 2012. The petitioner also included the required Labor Condition Application (LCA) which indicates that the occupational classification for the position is "Financial Analysts," SOC (ONET/OES) Code 13-2051, at a Level I (entry-level) wage.²

Upon review of the initial record, the director requested additional information from the petitioner to demonstrate that the position's duties constitute the duties of a specialty occupation.

In a December 18, 2012 letter in response, the petitioner stated:

Nearly 100 percent of the assignments given to the incumbent Financial Analyst will entail reviewing, analyzing, and performing duties required to effectively consider complex revenue and expenses, across multi[-]functional groups, customers and projects, and performing statistical, cost and financial analysis of data with the goals/specific responsibilities listed below. Nearly 100% of her time will be shared equally working towards each of these goals/specific responsibilities.

1. Facilitate various corporate initiatives and projects,
2. Provide financial perspective and overall impact,
3. Improve operational and financial effectiveness of product line,
4. Interpret data related to past financial performance and/or project a financial probability,
5. Make recommendations and prepare corporate reports and requirements, including reports that forecast such variable as revenues and costs,
6. Perform cost benefit analysis related to projects and/or programs,
7. Develop financial models, including for forecasts, trends and results, with charts, graphs and computer spread sheets,
8. Interpret financial data, and
9. Analyze multi-state business, industry and economic conditions affecting the company's financial perspective.

The petitioner stated that the beneficiary "will be expected to perform at a high level of professional responsibility associated with a baccalaureate degree in accounting or finance."

The petitioner also provided a December 18, 2012 letter, prepared by [REDACTED] Ph.D., president of [REDACTED] to support its claim that the proffered position is a specialty

² See U.S. Dept of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

occupation for which a bachelor's degree in accounting or finance or its equivalent is the industry standard. Dr. [REDACTED] noted that his review was based on the position description with reference to the petitioner's unique industry and business, the beneficiary's background, the Department of Labor's *Occupational Outlook Handbook (Handbook)*, O*NET Online, and the expert opinions of [REDACTED] Ph.D., and [REDACTED] MBA. Dr. [REDACTED] provided an overview of the petitioner's business and repeated the duties of the position described by the petitioner. He further noted that the origin of all but one of the listed duties corresponded with either the *Handbook* or O*NET's discussion of the occupation of a financial analyst. Dr. [REDACTED] indicated that the focus of the proffered position is "conducting quantitative analysis of information affecting [the petitioner's] financial resources and interests, and [the beneficiary] must have a detailed understanding of business and finance theory and economic trend forecasting." He stated: "[B]ecause of the sophisticated nature of [the petitioner's] business, the Financial Analyst must not only have a substantial understanding of basic finance and accounting, but additionally must grasp the financial issues associated with the environmental analytical laboratory testing industry." Dr. [REDACTED] concluded that because the specific duties of the offered position are so complex and sophisticated, the duties can be performed only by an individual holding a bachelor's degree in finance, accounting or closely related field. Dr. [REDACTED] also included excerpts from comments made by two other individuals.

In the excerpt from Dr. [REDACTED] comments, Dr. [REDACTED] a professor of accounting at the [REDACTED] stated that he reviewed the proffered position and determined that the position requires high-level analytical thinking, excellent quantitative data analysis, and strong written and verbal communication, and that these requirements are "met through completion of a bachelor's degree course of study in Accounting, Finance, or closely related field." Dr. [REDACTED] asserted:

[The petitioner's] Financial Analyst must possess a solid understanding of the environmental analytical laboratory testing market, and understand how her analysis relates to the business. She must know the company's major revenue sources (products, customers), computer systems, workflow processes, and geographic distribution. This provides insight in the components of revenue and expense that should be analyzed. The Financial Analyst reviews [the petitioner's] key financial and performance measures and determines how to make more money and grow market share. She must find opportunities and threats, and locate innovative ways to answer key questions, actively offering points of view to management.

Dr. [REDACTED] listed the courses that may be taught in accounting and finance majors and noted the courses he has taught at the undergraduate level. Dr. [REDACTED] opined: "[A] specialized bachelor's degree in accounting or finance is the typical and appropriate requirement for this position." In the excerpt from Mr. [REDACTED] statement, Mr. [REDACTED] added: "There is so much the incumbent needs to know to satisfy the requirements of this position." Mr. [REDACTED] noted that the beneficiary must anticipate changes in the industry and how that will affect the petitioner's business. Mr. [REDACTED] noted further that the beneficiary must recognize the impact of competitor and government actions and create models and scenarios based on possible outcomes

and report these to top management. Mr. [REDACTED] and Dr. [REDACTED] both observed that the beneficiary's academic background provided her with the proper qualifications to fulfill the responsibilities of the proffered position.

Upon review, the director denied the petition. The director determined that the petitioner had not established the proffered position is a specialty occupation.

On appeal, counsel for the petitioner asserts the evidence submitted establishes the proffered position meets the definition of specialty occupation. Counsel specifically claims that the petitioner has established the industry standard and that the nature of the specific duties of the position are so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a degree in accounting, finance or a closely related field. Counsel contends that the director failed to give proper weight to the evidence submitted. Counsel specifically references the expert opinions offered in response to the RFE and avers that the director failed to consider that the experts were recognized and well known in their fields and that the experts found the proffered position to be a specialty occupation. Counsel re-submits the opinions of Dr. [REDACTED] and Mr. [REDACTED] in a different format. Counsel also provides a copy of a December 22, 2010 policy memorandum revising the Adjudicator's Field Manual regarding evidence submitted in support of certain Form I-140s (Immigrant Petition for Alien Worker).

Analysis

The issue in this matter 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)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

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

to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

Preliminarily, we observe that the petitioner has provided a broad description of the proffered position. The duties track the brief descriptions of duties found in the *Handbook* and the O*NET's reports on the duties of a financial analyst. *See* U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last visited Nov. 6, 2013); Nat'l Ctr. for O*NET Dev., O*NET OnLine, "Financial Analysts," 13-2051.00, <http://www.onetonline.org/link/summary/13-2051.00> (last visited Nov. 6, 2013). Such general descriptions are necessary when defining the range of duties that may be performed within an occupation, but cannot be relied upon by a petitioner when discussing the duties attached to specific employment. In establishing a position as a specialty occupation, a petitioner must describe the specific duties and responsibilities to be performed by a beneficiary in relation to its particular business interests. In the instant matter, the petitioner has offered little information regarding the specific duties the beneficiary will perform that are directly related to its environmental testing and laboratory analysis business. The petitioner has not detailed the actual work to be performed for this position. The petitioner's descriptions of the proposed duties are limited to generic and generalized functions which, even when read in the context of the evidence submitted in support of the petition, do not convey the educational level of any body of highly specialized knowledge that the beneficiary would apply theoretically and practically.

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 satisfies 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.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the

beneficiary would perform. Without a meaningful job description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not credibly supported by the job descriptions or substantive evidence.

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

Wage levels should be determined only after selecting the most relevant O*NET occupational code classification. Then, a prevailing-wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation. It is important to note that prevailing wage determinations start with an entry level wage (i.e. Level I) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent worker) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.³ The U.S. Department of Labor (DOL) emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

The "Prevailing Wage Determination Policy Guidance" issued by DOL provides a description of the wage levels. A Level I wage rate is described by DOL as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment.

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

The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

In the instant case, the petitioner claims that the nature of the proffered position's duties are "complex" and require performance at a "high level." However, the AAO must question the level of complexity, independent judgment and understanding required for the proffered position as the LCA is certified for a Level I entry-level position. The characterization of the position and the claimed duties and responsibilities as described by the petitioner and counsel conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

This aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

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

While DOL is the agency that certifies LCA applications before they are submitted to USCIS,

DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position, that is, specifically, that corresponds to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with the pertinent LCA regulations.

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

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

Assuming *arguendo* that the beneficiary will perform the generally described duties of a financial analyst, the AAO will review the record and other resources to determine if there is sufficient evidence that the occupational classification of a financial analyst position is a specialty occupation. In that regard we turn to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. The AAO recognizes the

DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁴

Regarding the education and training for financial analysts, the *Handbook* states:

Many positions require a bachelor's degree in a related field, such as accounting, business administration, economics, finance, or statistics. Employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

See U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last visited Nov. 6, 2013).

In this matter the petitioner initially does not specify a particular degree requirement to perform the duties of the position, noting only that this specific beneficiary has a foreign bachelor's degree in accounting and will soon receive a master's degree in public administration. 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. In response to the director's RFE, the petitioner stated that the beneficiary "will be expected to perform at a high level of professional responsibility associated with a baccalaureate degree in accounting or finance."

The *Handbook*, however, does not limit the academic disciplines suitable to perform the duties of a financial analyst to accounting or finance but rather indicates that a disparate group of disciplines, varying from a generalized business administration degree to a degree in economics, are acceptable for employment as a financial analyst. To satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must demonstrate that a baccalaureate or higher degree in a specific discipline is normally the minimum requirement for entry into the particular position. Thus, the proffered position must require a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Although a general-purpose bachelor's degree, or a degree in a variety of fields, may be acceptable for a particular occupation, such general requirements do not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position. Accordingly, the *Handbook* does not identify a degree in a specific discipline as required to perform the duties of a financial analyst.

⁴ The AAO references to the *Handbook*, are references to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

As the *Handbook* does not support the proposition that the proffered position is one that normally requires a minimum of a bachelor's degree in a specific specialty, or the equivalent, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise qualifies as a specialty occupation under this criterion, notwithstanding the absence of *Handbook* support on the issue.

Turning to the petitioner's reference to O*NET's overview of the occupation of a financial analyst and the Job Zone 4 – Education and Training Code designation for this occupation, we note that a Job Zone designation does not specify that a bachelor's degree in any specific specialty is required to perform the duties of the occupation. Therefore, the O*NET information does not demonstrate that a Job Zone 4 position is a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). More specifically, the actual discussion regarding the Job Zone 4 designation explains that this Zone signifies only that most but not all of the occupations within it require a general bachelor's degree. The Help Center's discussion further confirms that Job Zone 4 positions do not specify any requirements for particular majors or academic concentrations. See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>. Therefore, the O*NET information is not probative of the proffered position qualifying as a specialty occupation.

In this matter, counsel for the petitioner asserts that the opinions provided should be given considerable weight when determining whether or not a financial analyst position is a specialty occupation. Upon review of the opinions submitted by Dr. [REDACTED], Dr. [REDACTED] and Mr. [REDACTED], we note that each relies on the broad position description provided by the petitioner. Dr. [REDACTED] notes specifically that the petitioner's description of duties corresponds closely to the duties set out in the *Handbook* and O*NET's reports on financial analysts. Although Dr. [REDACTED] as does Dr. [REDACTED] note that the duties may be performed by an individual who has completed a bachelor's degree course of study in accounting or finance or a closely related field, neither Dr. [REDACTED] nor Dr. [REDACTED] acknowledges that the duties may also be performed by an individual with a general business administration degree. In this matter, we do not disagree that the duties may be performed by an individual with a bachelor's level degree in accounting or finance but we do find that as set out in the *Handbook*, the duties, as generally described, may also be performed by an individual with a bachelor's degree in business administration. As noted above, although a general-purpose bachelor's degree, such as a degree in 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.

Regarding the opinion letters submitted by counsel in response to the RFE and on appeal, they do not explain how this particular position is different from or more complex or specialized than the financial analyst occupation described in the *Handbook*. As a matter of discretion, USCIS may accept expert opinion testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). The *Handbook*, offers an overview of national hiring practices, draws on personal interviews with

individuals employed in the occupation or from websites, published training materials and interviews with the organizations granting degrees, certification, or licenses in the field, to reach its conclusions regarding the nation's employment practices. The opinions submitted by the petitioner and counsel are insufficient to overcome the *Handbook's* finding that not all financial analysts positions require an individual with a bachelor's degree in a specific, not general, discipline to perform the duties of the position. In this matter, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that there is a requirement for at least a bachelor's degree in a specific specialty. Thus, the petitioner failed to satisfy the first criterion of 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 requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102). As already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* or O*NET reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. The petitioner does not submit letters from its industry's professional association or letters or affidavits from other firms or individuals in the industry for consideration.

Although the petitioner has submitted opinions from Dr. [REDACTED] Dr. [REDACTED] and Mr. [REDACTED] as determined above, these individuals do not provide the necessary evidence to overcome the *Handbook's* report regarding the academic qualifications necessary to perform the duties of a financial analyst. Moreover, these individuals have not established that a financial analyst position is common in the petitioner's environmental analytical laboratory testing business or that organizations similar to the petitioner hire only individuals with a bachelor's degree or higher in a specific discipline to perform duties that are parallel to the general duties of the proffered position.

Accordingly, based upon a complete review of the record, the petitioner has not established that at least a bachelor's degree in a specific specialty is the norm for entry into positions that are (1) parallel to the proffered position; and, (2) located in organizations similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position

is so complex or unique that it can be performed only by an individual with a degree." The petitioner in this matter provided an overview of the duties of the proffered position, repeating many of the elements directly from the *Handbook* and/or the O*NET. Thus, it is not possible to ascertain what the beneficiary will actually do on a routine basis. In that regard we note, for example, that the petitioner states that the beneficiary will spend a little over ten percent of her time improving operational and financial effectiveness of the product line. However, the petitioner does not identify the "product line" nor describe the specific tasks the beneficiary as the financial analyst will perform as those tasks relate to improving its operational and financial effectiveness. Similarly, the petitioner indicates that the beneficiary will spend a little over ten percent of her time performing cost benefit analysis related to projects and/or programs. The petitioner, however, does not describe any particular projects or programs. 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)). The remaining general description of the beneficiary's proposed duties is insufficient to correlate to any specific concern for which the petitioner might require a degreed financial analyst. Upon review, the petitioner fails to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position of financial analyst.

We have again reviewed the testimony of Dr. [REDACTED] Dr. [REDACTED] and Mr. [REDACTED] to ascertain the specific duties the beneficiary will perform. In this matter, Dr. [REDACTED] notes that the petitioner's financial analyst "must grasp the financial issues associated with the environmental analytical laboratory testing industry." Dr. [REDACTED] however, fails to describe what particular financial issues, if any, are relevant only to the petitioner's business. Likewise, Dr. [REDACTED] notes that the petitioner's financial analyst must possess a solid understanding of the environmental analytical laboratory testing market and understand how her analysis relates to the business, including having knowledge of the petitioner's major revenue sources, computer systems, workflow processes, and geographic distribution. Dr. [REDACTED] however, does not explain how possessing knowledge of a particular business makes the proffered position more complex or unique than financial analysts who perform these same or similar tasks related to any particular business. Similarly, Dr. [REDACTED] indication that the petitioner's financial analyst must review key measures, determine how to make more money, and find ways to answer key questions reveal nothing particular or specific about the petitioner's business or the actual role of the financial analyst in the business. Mr. [REDACTED] also indicates that the beneficiary must anticipate changes in the industry and recognize the impact of competitors and government actions. Again, these generally described tasks do little to define the actual day-to-day duties of the petitioner's financial analyst.

Therefore, the evidence of record does not establish that this position is significantly different from other financial analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for financial analyst positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than

financial analyst positions or other closely related positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent. Consequently, as the petitioner fails to demonstrate how the proffered position of financial analyst is so complex or unique relative to other financial analyst positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Turning to the third criterion, the AAO notes that the petitioner has not indicated that it previously employed anyone to perform the duties of the proffered position. Accordingly, the petitioner's recruiting and hiring history cannot be examined. We also observe that while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, 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 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. Again, 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 a financial analyst position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. Counsel's assertion on appeal that the proffered position qualifies as a specialty occupation on the basis that its duties are so specialized and complex is not persuasive. In addition to the lack of sufficient specificity to distinguish the proffered position from other financial analyst positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.⁵ Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the

⁵ See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagric. Immigration Programs* (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

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).

Upon review of the totality of the record, 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.

Accordingly, the appeal will be dismissed for the above stated reason. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

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