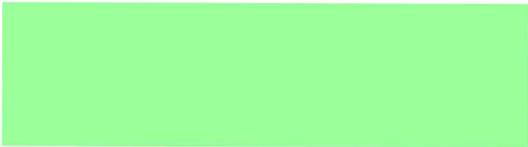


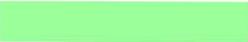


U.S. Citizenship
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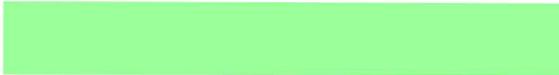
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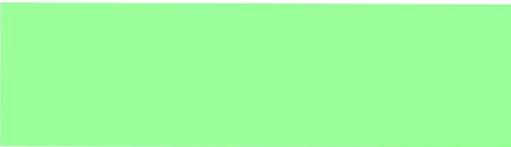
Petitioner:

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 of the Vermont Service Center (hereinafter "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 petition will be denied.

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a retail business established in 2008. In order to employ the beneficiary in what it designates as a management analyst position, the petitioner seeks to classify him 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 found that the petitioner failed to establish that the proffered position was a specialty occupation, and counsel for the petitioner filed an appeal. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and that the petitioner satisfied all evidentiary requirements.

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

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

In a support letter dated December 30, 2011 (submitted with the petition), the petitioner stated that it is "an acquisition, management and development firm, primarily in the business of final distribution and other retail sales operations." It claimed to require the services of the beneficiary as a management analyst, and stated the following regarding the duties and responsibilities of the proffered position:

In this position, [the beneficiary's] responsibilities will consist of (i) analyzing procedures to devise most efficient methods of accomplishing company goals; (ii) studying financial planning, organizational change and cost analysis of the organization; (iii) gathering and organize information on problems or procedures including present operating procedures; (iv) designing systems and procedures for work simplifications and measurement studies, and prepare operations and procedures manuals to assist management in operating more efficiently and effectively; (v) analyzing data gathered, develop information and proposes available solutions or alternative methods of proceedings to management; (vi) organizing and document findings of studies and recommend to the management on implementation of new systems, procedural changes, and company goals; (vii) interact with other managers and executives to assure smooth functioning of newly implemented systems and procedures; (viii) preparing cost estimate reports to determine accurate and competitive pricing of products and services; (ix) producing and analyzing

monthly budgets and activity reports; (x) reviewing market trends and competition in the insurance industry;¹ and (xi) preparing reports and graphic illustrations of findings.

Regarding the petitioner's academic requirements for the proffered position, the petitioner claimed that the incumbent must possess a bachelor's degree in business administration or a related field.

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

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The petitioner was asked to submit additional information. The director outlined the specific evidence to be submitted.

Subsequently, the director received a response to the RFE from counsel. In addition to previously-submitted documents, the response included additional details regarding the proffered position, job vacancy announcements, the petitioner's quarterly tax return for the third quarter of 2012, a copy of its commercial lease, copies of various permits and invoices, and copies of educational credentials for another employee of the petitioner counsel claims was previously employed in the proffered position.

Regarding the duties associated with the proffered position, counsel provided the following updated description in response to the RFE:

<u>DESCRIPTION</u>	<u>TIME %</u>
Analyzing procedures to devise most efficient methods of accomplishing company goals	20%
Studying financial planning, organizational change & cost analysis of the organization	15%
Gathering and organizing information on problems or procedures including present operating procedures. Analyzing data gathered, developing information and proposing available solutions or alternate methods of proceedings to management	30%
Organizing and documenting findings of studies and recommending to the management on implementation of new systems, procedural changes, and company goals	15%

¹ No explanation was given for what relevance, if any, "reviewing market trends and competition in the **insurance industry**" (emphasis added) has to the proffered position.

Interacting with other managers and executives to assure smooth functioning of newly implemented systems and procedures 20%

Analyzing procedures to devise most efficient methods of accomplishing company goals (20%)

[The beneficiary] will have overall responsibility for analyzing and proposing ways to improve organization's structure, efficiency, and profits for Petitioner. [The beneficiary's] responsibilities primarily include increasing service quality, workforce efficiency and to control costs. [The beneficiary] would be spending majority of his time in preparing, reviewing, and evaluating company operations, implementing cost management techniques, Petitioner's internal management operations to ensure integration on systems and operations, managing wide range of commercial contracts to ensure quality performance and recommending improvements that contribute to financial success for Petitioner.

Studying financial planning, organizational change & cost analysis of the organization (15%)

[The beneficiary] will be interacting with management regarding investigating and evaluating procedures and marketing products and making recommendations. [The beneficiary] will also be reporting to the Vice President on the management and operational progress of the Company.

[The beneficiary] will be continuously updating all operating procedures, implementing systems on new training methodology, and formulating and implement[ing] new procedures on enhancing efficiency for Petitioner so to be able to surpass company's benchmarks which would lead to growth opportunities.

Gathering and organizing information on problems or procedures including present operating procedures; Analyzing data gathered, developing information and proposing available solutions or alternate methods of proceedings to management (30%)

[The beneficiary] will gather and organize information on problems or procedures. Analyze data gathered and develop solutions or alternative methods of proceeding. Meet with personnel concerned to ensure successful functioning of newly implemented systems or procedures. Develop and implement records management program for filing, protection, and retrieval of records, and assure compliance with program. Review forms and reports and discuss with management and users about format, distribution and purpose, and to identify problems and improvements. Interview personnel and conduct on-site observation to ascertain unit functions, work performed, and methods, equipment and personnel used. Document findings of study and prepare recommendations for implementation of new systems, procedures, or organizational changes.

Organizing and documenting findings of studies and recommending to the management on implementation of new systems, procedural changes, and company goals (15%)

[The beneficiary] will provide analysis on marketing problems based on the current marketing manager's recommendations keeping up with requirements and procedures to Upper Management. He will analyze Petitioner in key performance areas as compare[d] to industry standards. [The beneficiary] will be responsible to update operational manuals for Petitioner in use of training employees and staff. He will ensure that proper training procedures are put into place for area managers so they can be trained in minimizing wastage and shrinkage and reducing employee theft. He will be implementing procedures for area managers on monitoring and analyzing Point-of-Sales.

Interacting with other managers and executives to assure smooth functioning of newly implemented systems and procedures (20%)

[The beneficiary] will be working with managers on operating each location efficiently and more effectively. He will also be advising area managers and retail managers on the requirements of the industry and how to implement these organizational requirements and policies. He will be interacting with each area manager[] to ensure compliance with company policies.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit. The director denied the petition January 25, 2013, and the matter is now before the AAO on appeal. The AAO reviewed the record in its entirety.

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

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a

specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).² Again, the petitioner in this matter claims that the duties of the proffered position can be performed by an individual with only a general-purpose bachelor's degree, i.e., a bachelor's degree in business administration. This assertion is tantamount to an admission that the proffered position is not in fact a specialty occupation. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Moreover, it also cannot be found that the proffered position is a specialty occupation due to the petitioner's failure to satisfy any of the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

² Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. See, e.g., *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

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.

The AAO first turns to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." *See Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

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 As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Management Analysts."

The AAO reviewed the chapter of the *Handbook* entitled "Management Analysts," including the sections regarding the typical duties and requirements for this occupational category.⁴ As set forth

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

⁴ For additional information regarding management analyst positions, *see* U.S. Dep't of Labor, Bureau of

above, the petitioner provided a list of duties for the proffered position that encompasses two areas: management and analysis and customer service. A review of the recited duties, however, demonstrates that they are vague and generic, and fail to specifically articulate the nature of the beneficiary's duties on a day-to-day basis. Although counsel submitted a more detailed overview of the nature of these duties in response to the RFE, counsel's submission lacks sufficient detail regarding the day-to-day duties associated with the proffered position.

Such generalized information does not in itself establish a necessary correlation between any dimension of the proffered position and a need for a particular level of education, or educational equivalency, in a body of highly specialized knowledge in a specific specialty. To the extent that they are described by the petitioner, the AAO finds, the proposed duties do not provide a sufficient factual basis for conveying the substantive matters that would engage the beneficiary in the actual performance of the proffered position for the entire three-year period requested, so as to persuasively support the claim that the position's actual work would require the theoretical and practical application of any particular educational level of highly specialized knowledge in a specific specialty directly related to the demands of the proffered position.

Furthermore, the petitioner indicates on the Form I-129 that it has 6 employees. The AAO notes that it is reasonable to assume that the size of an employer's business has or could have an impact on the duties of a particular position. *See EG Enterprises, Inc. d/b/a/ Mexican Wholesale Grocery v Department of Homeland Security*, 467 F. Supp. 2d 728 (E.D. Mich. 2006). Thus, the size of a petitioner may be considered as a component of the nature of the petitioner's business, as the size impacts upon the duties of a particular position. In matters where a petitioner's business is relatively small, the AAO reviews the record for evidence that its operations, are, nevertheless, of sufficient complexity to indicate that it would employ the beneficiary in position requiring the theoretical and practical application of a body of highly specialized knowledge that may be obtained only through a baccalaureate degree or higher in or its equivalent in a specific specialty. In the instant case, the petitioner has failed to establish how the beneficiary will be relieved from performing non-qualifying duties.

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. Further, the expanded duties of the proffered position provided in both the response to the RFE and again on appeal were submitted by counsel, not the petitioner, and are not supported by independent evidence. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Without further clarification by the petitioner, it appears that the beneficiary will be employed in a lesser capacity or serving in a different position. The record of proceeding lacks (1) evidence corroborating that the petitioner has work that exists as an ongoing endeavor generating definite employment for the beneficiary's services (e.g., documentary evidence regarding the scope, staging, time and resource requirements, supporting contract negotiations, documentation regarding the business analysis and planning to support the work, a business plan); and (2) evidence that the beneficiary's duties ascribed would actually require the theoretical and practical application of at least a baccalaureate level of a body of highly specialized knowledge in a specific specialty, as required by the Act.

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

The petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or substantive evidence regarding the actual work that the beneficiary would perform. Further, counsel for the petitioner submits the same generalized overview of duties on appeal. 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 the actual work that the beneficiary would perform; the complexity, uniqueness and/or specialization of the tasks; and/or the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty.

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.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), 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.

Moreover, even assuming that the day-to-day duties of the proffered position would fall under the occupational category "Management Analysts," the AAO notes that the *Handbook* does not indicate that "Management Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry.

The subchapter of the *Handbook* entitled "How to Become a Management Analyst" states in pertinent part the following about this occupational category:

Education

A bachelor's degree is the typical entry-level requirement for management analysts. However, some employers prefer to hire candidates who have a master's degree in business administration (MBA). In 2010, 28 percent of management analysts had a master's degree.

Few colleges and universities offer formal programs in management consulting. However, many fields of study provide a suitable education because of the range of areas that management analysts address. Common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering.

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

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., Management Analysts, <http://www.bls.gov/ooh/business-and-financial/management-analysts.htm#tab-4> (last visited Oct. 22, 2013).

When reviewing the *Handbook*, the AAO must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA. This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.⁵ That is, in

⁵ The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is described as follows:

Level I (entry) wage rates are assigned to job offers for beginning level employees who have only a basic understanding of the occupation. These employees perform routine tasks that require limited, if any, exercise of judgment. The tasks provide experience and familiarization with the employer's methods, practices, and programs. The employees may perform higher level work for training and developmental purposes. These employees work under close supervision and receive specific instructions on required tasks and results expected. Their work is closely monitored and reviewed for accuracy. Statements that the job offer is for a research fellow, a worker in training, or an internship are indicators that a Level I wage should be considered.

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 and carries expectations that the beneficiary perform routine tasks that require limited, if any, exercise of judgment; that he would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

The *Handbook* does not support the assertion that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into this occupation. Rather, the *Handbook* states that many fields of study provide a suitable education for management analysts. The *Handbook's* narrative indicates that common fields of study include business, management, accounting, marketing, economics, statistics, computer and information science, and engineering. According to the *Handbook*, a range of programs can help people prepare for jobs in this occupation. However, the *Handbook* does not conclude that normally the minimum requirement for entry into these positions is at least a bachelor's degree in a *specific specialty*, or its equivalent.

In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in disparate fields (such as business, management, accounting, marketing, economics, statistics, computer and information science and engineering) 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.⁶ Section 214(i)(1)(B) of the Act (emphasis added).

Here, although the *Handbook* indicates that a bachelor's degree is the typical entry-level requirement, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. In addition to recognizing degrees in disparate fields (i.e., business, management, accounting, marketing, economics, statistics, computer and information science and engineering), the *Handbook* also states that a degree in business is acceptable. As noted above, although a general-purpose bachelor's degree, such as a degree in business administration, may be a

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.

⁶ Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. As just stated, this also includes even seemingly disparate specialties provided the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

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. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not normally the minimum requirement for entry into this occupation.

Furthermore, the narrative of the *Handbook* indicates that a degree in engineering is also acceptable for management analyst positions. The issue here is that the field of engineering is a broad category that covers numerous and various specialties, some of which are only related through the basic principles of science and mathematics, e.g., nuclear engineering and aerospace engineering. Therefore, it is not readily apparent that a degree in any and all engineering specialties is directly related to the duties and responsibilities of a management analyst. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. Accordingly, as the *Handbook* indicates that working in these positions 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.

It is incumbent upon the petitioner to provide persuasive evidence that the proffered position qualifies as a specialty occupation under this criterion, notwithstanding the absence of the *Handbook's* support on the issue. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." As previously mentioned, 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)).

In response to the RFE and again on appeal, counsel provides a list of prior decision it claims demonstrate that related occupations have been deemed specialty occupations. The list includes unpublished AAO decisions as well as U.S. district court cases. However, counsel fails to assert how the facts in these decisions are analogous to the instant petition. Simply providing a citation to a case with the words "investment analyst" followed by "degree is sufficient" will not satisfy the petitioner's burden of proof here. 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. at 165.

The burden is on the petitioner to establish eligibility, and for the reason set for the above, the brief references to these prior decisions is not persuasive evidence that the proffered position in this case is a specialty occupation. Regardless, even if the facts of those cases were analogous to those in this matter, many of the cases listed are unpublished decisions by the AAO which, are not binding on the AAO. 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.

Moreover, counsel's reliance on *Hong Kong T.V. Video Program, Inc. v. Ilchert*, 685 F. Supp. 712 (N.D. Ca. 1988) and *Arctic Catering, Inc. v. Thornburgh*, 769 F.Supp. 1167 (D. Colo. 1991), for example, pertains to immigrant visa petitions and whether the beneficiaries are members of the professions as defined in section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), and as interpreted at those times. The issue before the AAO is whether the petitioner's proffered position qualifies as a nonimmigrant H-1B specialty occupation and not whether it is a profession. Absent more specific references and discussions of these cases and how counsel contends they are relevant here, the matters cited by counsel must be deemed irrelevant to the instant petition.⁷

The fact that a person may be employed in a position designated as that of a management analyst and may apply analytical principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that its particular position would necessitate accounting services at a level requiring the theoretical and practical application of at least a bachelor's degree level of knowledge in a specific specialty. This, the petitioner has failed to do.

The petitioner, therefore, has not established that the proffered position falls under an occupational category for which the *Handbook*, or other authoritative source, indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO reviews the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

As stated earlier, 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).

⁷ The AAO notes that the current, primary, and fundamental difference between qualifying as a profession and qualifying as a specialty occupation is that specialty occupations require the U.S. bachelor's or higher degree, or its equivalent, to be in a specific specialty. Thus, while "teachers in elementary or secondary schools" are specifically identified as qualifying as a profession as that term is defined in section 101(a)(32) of the Act, that occupation would not necessarily qualify as a specialty occupation unless it met the definition of that term at section 214(i)(1) of the Act.

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports a standard industry-wide requirement of at least a bachelor's degree in a specific specialty or its equivalent. Thus, the AAO incorporates by reference its previous discussion on the matter. The record does not contain any letters from the industry's professional association, indicating that it has made a degree a minimum entry requirement.

In response to the director's RFE, counsel submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the evidence, the AAO finds that the petitioner's reliance on the job announcements is misplaced.

On the Form I-129, the petitioner stated that it is a "retail" business established in 2008. In its letter of support, the petitioner provides more details regarding the nature of its business, stating that it is an "acquisition, management and development firm, primarily in the business of final distribution and other retail sales operations." The petitioner also stated that it has 6 employees and a gross annual income of approximately \$2.4 million. The petitioner designated its business operations under the corresponding North American Industry Classification System (NAICS) code 447190 designated for "Other Gasoline Stations" on the H-1B Data Collection and Filing Fee Exemption Supplement.⁸ The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This industry comprises establishments known as gasoline stations (except those with convenience stores) primarily engaged in one of the following: (1) retailing automotive fuels (e.g., diesel fuel, gasohol, gasoline, alternative fuels) or (2) retailing these fuels in combination with activities, such as providing repair services; selling automotive oils, replacement parts, and accessories; and/or providing food services.

U.S. Dep't of Commerce, U.S Census Bureau, 2007 NAICS Definition, 447190 – Other Gasoline Stations on the Internet at <http://www.census.gov/econ/industry/def/d423130.htm> (last visited Oct. 22, 2013).

Moreover, illustrative examples of the types of businesses including in this category are listed as follows:

- Gasoline stations without convenience stores
- Truck stops
- Marine service stations

⁸ According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited Oct. 22, 2013).

See id.

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner.

The AAO notes that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, the AAO finds that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner and counsel submitted copies of advertisements in response to the RFE.⁹ Upon review of the documentation, the petitioner fails 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.

For instance, the advertisements include positions with a cellular telephone services company, a jewelry wholesaler, and MRI and radiology services provider, a premium cable and satellite television network, a credit solutions provider, and a clothing retailer. Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. Furthermore, the petitioner and counsel submitted job postings for which little or no information regarding the employers is provided. Consequently, the record is devoid of sufficient information regarding the advertising organizations to conduct a legitimate comparison of the organizations to the petitioner. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations.

Moreover, most of the advertisements do not appear to be for parallel positions. For instance, some of the positions require a degree and "5+ years" of experience. As previously discussed, the petitioner designated the proffered position on the LCA through the wage level as a Level I low, entry-level position. Furthermore, some of the positions do not appear to have similar duties to the proffered position. For these postings, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

⁹ The AAO notes that the petitioner and counsel did not provide the entire job advertisements for some of the positions. That is, portions of the text are missing or have been cut-off. Consequently, information regarding the advertising employer, duties and responsibilities of the position, requirements, etc. cannot be ascertained.

Out of the over 30 advertisements submitted, only five are for positions in industries that appear similar to that of the petitioner (i.e., gasoline stations). However, four of those five advertisements are for the position of financial analyst, which is an occupational category that differs from that of the proffered position of management analyst in this matter. Specifically, as previously noted, the proffered position corresponds to the occupational category SOC (ONET/OES Code) 13-1111, "Management Analysts," whereas the occupation of financial analyst corresponds to the occupational category SOC (ONET/OES Code) 13-2051, "Financial Analysts." Therefore, while these postings may be advertised by companies similar to the petitioner, they are recruiting for a different occupational category and therefore these positions cannot be considered parallel to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or the equivalent, is required for the positions. For example, some of the postings state that a bachelor's degree is required, but they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. Additionally, the petitioner submitted advertisements in which a bachelor's degree in disparate fields is acceptable. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. Moreover, the AAO observes that many of the advertisements indicate that a bachelor's degree in business administration is acceptable. As previously discussed, 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 support the assertion that a position is a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The AAO reviewed all of the submitted advertisements. As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that similar organizations in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.¹⁰

¹⁰Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these advertisements with regard to determining the common educational requirements for entry into parallel positions in similar architectural and interior design companies. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of management analyst for gas stations (that are similar to the petitioner) require a bachelor's or higher degree in a specific specialty or

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To begin with and as discussed previously, the petitioner itself does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. In addition, the petitioner failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. Furthermore, the petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

Specifically, the petitioner failed to demonstrate how the duties of the proffered position as described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While related courses may be beneficial, or even essential, in performing certain duties of a management analyst position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

This is further evidenced by the LCA submitted by the petitioner in support of the instant petition. Again, the LCA indicates a wage level based upon the occupational classification "Management Analysts" at a Level I (entry level) wage. The wage level of the proffered position indicates that the beneficiary is only required to have a basic understanding of the occupation; that he will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results.¹¹

its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the statistics-based findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

¹¹ For additional information on wage levels, see U.S. Dept of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at

Without further evidence, it is simply not credible that the petitioner's proffered position is complex or unique as such a position would likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For instance, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

Therefore, the evidence of record does not establish that this position is significantly different from other management analyst positions such that it refutes the *Handbook's* information to the effect that degrees not in a specific specialty are acceptable for management analyst positions. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than management analyst positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent.

Moreover, 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 the instant case, the petitioner and counsel do not establish which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner failed to demonstrate that its particular position is so complex or unique that it can be performed only by an individual with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, 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).

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. Upon review of the record of proceeding, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may believe or otherwise assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to

perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty, or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must therefore show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

Counsel claims that in the past, the petitioner's manager, [REDACTED] has performed the duties of a management analyst, and submits a copy of [REDACTED]¹² foreign Bachelor of Commerce degree in English from [REDACTED]. Consequently, counsel concludes that this evidence establishes that the petitioner routinely hires only specialty-degreed individuals for the proffered position and thus satisfies this criterion.¹³ The AAO disagrees.

In support of this contention, the petitioner submitted a copy of Mr. [REDACTED] foreign diploma and payroll records evidencing his employment with the petitioner. However, the mere fact that the petitioner previously hired another individual with a foreign degree to perform the duties of the proffered position does not establish eligibility under this criterion. As stated earlier, 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

¹² Although counsel refers to this individual as [REDACTED] his educational credentials identify him as [REDACTED]

¹³ In making this reference, counsel claims that "Mr. [REDACTED] has the education and experience equivalent to U.S. Bachelor in Business Administration." (Emphasis added). Counsel provides no explanation regarding the identity of Mr. [REDACTED] or his relevance to this matter.

specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In any event, even if it were established that Mr. [REDACTED] holds a bachelor's degree in a specific specialty, or its equivalent, previously hiring only one employee with such a degree does not establish a pattern that the petitioner normally requires, as opposed to simply prefers to hire, someone with at least a bachelor's degree in a specific specialty, or the equivalent, for the proffered position. Moreover, the petitioner did not submit an evaluation of this foreign degree or sufficient evidence to establish that the degree is the equivalent of a U.S. bachelor's degree in a specific specialty. As such, since evidence was not presented that this individual has at least a U.S. bachelor's degree in a specific specialty or its equivalent, the petitioner has not satisfied this criterion.

Moreover, the fact that a petitioner may have established a practice of demanding certain educational requirements for the proffered position – in this case, a business administration or related degree – does not establish that the proffered position is a specialty occupation. In addition to this deficiency, the petitioner did not submit any documentation regarding its hiring practices. This, coupled with the lack of evidence regarding the true nature of the position and whether it actually requires the theoretical and practical application of a body of highly specialized knowledge, precludes a finding of eligibility under this criterion.

The AAO reviewed the record of proceeding but finds that the petitioner has not provided evidence to establish that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The AAO again notes that the petitioner itself does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. Further, the AAO notes that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. In the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

Furthermore, the AAO incorporates its earlier discussion and analysis regarding the duties of the proffered position, and the designation of the proffered position in the LCA as a low, entry-level position relative to others within the occupational category of "Management Analysts." The petitioner designated the position as a Level I position (the lowest of four assignable wage-levels), which DOL indicates is appropriate for "beginning level employees who have only a basic understanding of the occupation." Without further evidence, it is simply not credible that the petitioner's proffered position is one with specialized and complex duties as such a position would

likely be classified at a higher-level, such as a Level IV (fully competent) position, requiring a substantially higher prevailing wage. As previously discussed, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."

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

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

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation. In other words, the beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

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.