



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **SEP 04 2013** Office: VERMONT SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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, Vermont 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.

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a "candy confectionary" established in 1993 which currently employs 16 personnel in the United States. In order to continue to employ the beneficiary in what it designates as a logistics 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 denied the petition, determining that the petitioner failed to establish that the position qualifies for classification as a specialty occupation.

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 petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, Notice of Appeal or Motion, counsel's brief, and additional documentation. The AAO reviewed the record in its entirety before issuing its decision.

Upon review of the entire record of proceeding, the AAO finds that the petitioner has failed to overcome the director's determination that the position is not a specialty occupation position. Accordingly, the appeal will be dismissed and the petition will remain denied.

The Law

The issue before the AAO is whether the 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.

Facts and Procedural History

In a letter submitted in support of the petition, the petitioner stated that it was established in 1993 to serve as the U.S. conduit of its foreign parent company, a company founded in 1951 with the purpose of manufacturing high quality food products for consumers worldwide. The petitioner noted that the [REDACTED] is a leading candy manufacturer, maintains global offices and production facilities in Central and South America, employs over 19,000 personnel worldwide, and has gross annual revenue of over \$2.2 billion. The petitioner stated its wish to continue the employment of the beneficiary as a logistics analyst to handle the logistic needs of the domestic side of the company's operations. The petitioner provided the following description of the beneficiary's duties:

- Process and control shipping and delivery information to fulfill customer requirements;
- Analyze [the petitioner's] operations and needs, and collaborate with other departments in order to develop a plan to ensure that the company's domestic operations needs are met;
- Create policies and procedures in the protection and control of the company's proprietary materials;
- Provide sensitive information needed through the EDI System, allowing the efficient delivery of documents between [the petitioner] and some of our customers in electronic format;
- Create and implement customs documentation procedures for the company exportations;

- Supervise and track transportation and delivery of products to the customers in a timely manner;
- Oversee that invoicing procedures are followed in a timely manner;
- Responsible for the monthly revision and control of [the petitioner's] extensive inventories to reduce differences between our various warehouses and our system stocks; and
- Ensure accuracy of information transmitted between our warehouses and provide auditing services to all warehouses semi-annually.

[Bullet points added.]

The petitioner stated that the position involves "highly sophisticated and technical responsibilities requiring the application of management, business, cost administration, statistics, and strategic administration" and that "[k]nowledge in these areas is normally acquired through the attainment of at least a Bachelor's degree or its equivalent in business administration or management related fields." The petitioner provided the required certified Labor Condition Application (LCA) which indicates that the occupational classification for the position is "Logisticians," SOC (ONET/OES) Code 13-1081.00, at a Level I (entry-level) wage.¹

Upon review, the director requested further detail regarding the proposed position, including evidence of personnel previously employed in the proffered position.

In response, the petitioner stated that the logistics analyst "plays a key role in coordinating the timely delivery of [the petitioner's] products services [*sic*] to our customers, through meticulous planning, storage, distribution and information processing." The petitioner added that the logistics analyst "plays an integral part of the supply chain process that plans, implements, and controls the efficient, effective flow, and storage of goods, services, and related information from Arcor's manufacturing plants to our high volume national customers." The petitioner provided a more detailed description for each of the duties initially listed. The lengthy descriptions have been reviewed but will not be repeated in full here. The petitioner noted in summary that the job duties included:

- Managing, tracking, and monitoring the vital task of logistics process in order to optimize shipping, storage, and delivery procedure;
- Provide ongoing analysis in areas including shipping and transportation costs, as well as delivery processes;
- Analyze the optimal way to minimize costs and capability in shipping, transportation, distribution, storage, and handling of our products;

¹ 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.

- Create, manage, monitor, and update customs documentation procedure for the company exportations in accordance with U.S. Customs and Border Protection regulations;
- Supervise and track transportation and delivery of products to the customers in a timely manner; and
- Oversee that invoicing procedures are followed in a timely manner;
- Oversee and manage monthly revision and control of [the petitioner's] inventories to reconcile monthly inventory report, activity report, and sales report.

[Bullet points added.]

The petitioner reiterated that the minimum educational requirement for the position is the attainment of at least a bachelor's degree in business administration, management, a related field, or the equivalent. The petitioner asserted that the logistics functions described require coursework such as control management, business administration and negotiation, marketing, information systems, operation management, statistics, financial accounting, and international economics.

The petitioner also provided a copy of the "Corporate Global Job Acquisition" and job description for the logistics analyst position which provided a broad overview of the duties of the proffered position. The form also listed the educational requirement for the position as "Bachelor [sic] Degree: Management / Foreign Commerce / Logistics." The record further included copies of 11 job postings for various companies for the position of logistics analyst.

The petitioner also provided samples of the beneficiary's work including importer security filings, electronic mail to resolve a customs border protection hold, research for new carrier options, broker negotiations, work relating to the resolution of an FDA container hold, work relating to a liquidated damages matter, compilation of orders and payment controls and processing, corrections to labeling, approval of shipping lines extra charges, resolution of UPC codes for a customer, work with collection agencies, setting up accounts, and work on various other projects.

Based upon the evidence of the record, the director determined that the proposed position did not qualify for classification as a specialty occupation as defined in section 214(i)(1) of the Act.

On appeal, counsel for the petitioner asserts that the request for evidence issued by the director was unwarranted as the petitioner is requesting an extension of a previously approved petition and there was no material error, substantial change, or new material information contained in the extension filing. Counsel cites a USCIS memorandum authored by William R. Yates (hereinafter Yates memo) as establishing that USCIS must give deference to those prior approvals or provide detailed explanations why deference is not warranted. Memorandum from William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*, HQOPRD 72/11.3, (Apr. 23, 2004). Counsel also contends

that the specific RFE issued was more appropriate in the context of an L-1 intra-company transferee visa petition than an extension petition for H-1B classification.

Counsel contends that the director misinterpreted the regulatory requirements and applied the wrong standard when determining that the proffered position does not satisfy the criteria for a specialty occupation. Counsel asserts that the director has misinterpreted the Department of Labor's (DOL) Specific Vocational Preparation (SVP) stratification and Job Zone classification language, specifically the language which indicates that "most of these occupations require a four-year bachelor's degree, but some do not." Counsel avers that the DOL's O*NET report indicates that over 76 percent of logistics analysts hold a bachelor's or master's degree, confirming the normally minimum requirement for the proffered position and establishing it as a specialty occupation. Counsel references the USCIS approval rate in the 2011 fiscal year of over 134,000 petitions for computer related occupations, occupations that also have a Job Zone 4 rating. Counsel contends that using the director's reasoning these approvals would have been erroneous.

Counsel asserts that nothing in the Statute, Federal Regulations, the Adjudicator's Field Manual (AFM), Policy Memoranda, or case law requires a petitioner to demonstrate that the occupation needs to be in a specific field of study. Rather, counsel avers that the degree must be attained in a specialized course of study in relation to the proffered position, that is, it is the course of study, not the title of the degree that meets the statutory requirement. Counsel contends that in that regard the job postings submitted did stipulate specific degree requirements such as business administration, management science, or logistics management, thus, also establishing the proffered position is a specialty occupation.

Counsel further asserts that the director failed to consider all of the evidence submitted in support of the petition. Counsel notes that the director referenced only one electronic mail transmission when determining that the petitioner had not established that the proffered position was complex or unique. Counsel references the "copious documentation" submitted to show the beneficiary's work product and argues that such documentation demonstrates the complex, specialized and unique nature of the job and moreover corroborates the petitioner's detailed job description provided in response to the director's RFE.

Counsel also references and re-submits a letter authored by the [REDACTED] which states that the minimum educational requirement for the position is a "Bachelor's degree in business administration, management, or a related field." The petitioner provides a spreadsheet listing over eighty of the [REDACTED]'s logistics analysts stationed worldwide and identifies their business unit and title, active status and location, and their education degree. The employees' degrees listed are in business administration, business and finance, international trade and commerce, logistics, chemical engineering, industrial engineering, and information technology. The spreadsheet includes two logistics analysts located in the United States and lists the two employees' degrees in (1) business administration and (2) in business and finance.

Counsel concludes that the above information demonstrates the proffered position is a specialty occupation under all four criteria enumerated at 8 C.F.R. § 214.2(h)(4)(iii)(A). Counsel asserts that because USCIS applied the incorrect legal standards and failed to consider all the evidence submitted, the petition should be approved.

Analysis

In this matter, the petitioner seeks to continue the beneficiary's employment as a "logistician" SOC (ONET/OES) Code 13-1081, at a Level I (entry-level) wage for the specified period of three years.

Preliminarily, we address counsel's assertion that as the proffered position is the same position in job title and duties as the previously approved H-1B petition filed by the petitioner on behalf of the beneficiary, an RFE was unwarranted. The regulations state that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary in the adjudication of the petition. *See* 8 C.F.R. §§ 103.2(b)(8); 214.2(h)(9)(i). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. § 103.2(b)(1), (8), and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Counsel's reference to the April 23, 2004 Yates memo is noted. However, we observe that the Yates memo specifically states as follows:

[A]djudicators are not bound to approve subsequent petitions or applications seeking immigration benefits where eligibility has not been demonstrated, merely because of a prior approval which may have been erroneous. *Matter of Church Scientology International*, 19 I&N 593, 597 (Comm. 1988). Each matter must be decided according to the evidence of record on a case-by-case basis. *See* 8 C.F.R. § 103.8(d). . . . Material error, changed circumstances, or new material information must be clearly articulated in the resulting request for evidence or decision denying the benefit sought, as appropriate.

Thus, the Yates memo does not advise adjudicators to approve an extension petition when the facts of the record do not demonstrate eligibility for the benefit sought. On the contrary, the memorandum's language quoted immediately above acknowledges that a petition should not be approved, where, as here, the petitioner has not demonstrated that the petition should be granted. The RFE in this matter specifically noted that the prior petition may have been granted in error based on the submitted description of job duties. The director properly requested evidence that the actual job duties of the proffered position constituted a specialty occupation.

Upon review of the current record, we find that if the previous nonimmigrant petition was approved based on the same description of duties and assertions that are contained in the current record, it would constitute material and gross error on the part of the director. It would be absurd

to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). A prior approval does not compel the approval of a subsequent petition or relieve the petitioner of its burden to provide sufficient documentation to establish current eligibility for the benefit sought. 55 Fed. Reg. 2606, 2612 (Jan. 26, 1990). A prior approval also does not preclude USCIS from denying an extension of an original visa petition based on a reassessment of eligibility for the benefit sought. *See Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved nonimmigrant petitions on behalf of a beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Additionally, the Yates memo clearly states that each matter must be decided according to the evidence of record. If a petitioner wishes to have prior decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i).

When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Each nonimmigrant and immigrant petition is a separate record of proceeding with a separate burden of proof; each petition must stand on its own individual merits. There is no requirement either in the regulations or in USCIS procedural documentation requiring nonimmigrant petitions to be combined in a single record of proceeding.² Accordingly, the director was not required to request and obtain a copy of the prior H-1B petition.

Again, the petitioner in this matter failed to submit copies of the prior H-1B petition and its supporting documents. As the record of proceeding in the instant matter does not contain the evidence supporting approval of the prior petition, there were no underlying facts to be analyzed and, therefore, no prior, substantive reasons could have been provided to explain why deference to the approvals of the prior H-1B petition was not warranted. The burden of proving eligibility

² USCIS does not engage in the practice of reviewing previous nonimmigrant petitions when adjudicating extension petitions. Given the various and changing jurisdiction over various nonimmigrant petitions and applications, requiring previously adjudicated nonimmigrant petitions to be reviewed before any newly filed application or petition could be adjudicated would result in extreme delays in the processing of petitions and applications. Furthermore, such a suggestion, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361.

for the benefit sought remains entirely with the petitioner. Section 291 of the Act. For this additional reason, the Yates memo does not apply in this instance.

Counsel also takes issue with the director's application of the statute and regulations by alleging that the director misinterpreted the DOL's SVP stratification and Job Zone classification language, specifically the language which indicates that "most of these occupations require a four-year bachelor's degree, but some do not."

The AAO finds that the *DOT* does not support the assertion that assignment of an SVP rating of 7 is indicative of a specialty occupation. This is obvious upon reading Section II of the *DOT*'s Appendix C, Components of the Definition Trailer, which addresses the Specific Vocational Preparation (SVP) rating system.³ The section reads:

II. SPECIFIC VOCATIONAL PREPARATION (SVP)

Specific Vocational Preparation is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation.

This training may be acquired in a school, work, military, institutional, or vocational environment. It does not include the orientation time required of a fully qualified worker to become accustomed to the special conditions of any new job. Specific vocational training includes: vocational education, apprenticeship training, in-plant training, on-the-job training, and essential experience in other jobs.

Specific vocational training includes training given in any of the following circumstances:

- a. Vocational education (high school; commercial or shop training; technical school; art school; and that part of college training which is organized around a specific vocational objective);
- b. Apprenticeship training (for apprenticeable jobs only);
- c. In-plant training (organized classroom study provided by an employer);
- d. On-the-job training (serving as learner or trainee on the job under the instruction of a qualified worker);
- e. Essential experience in other jobs (serving in less responsible jobs which lead to the higher grade job or serving in other jobs which qualify).

The following is an explanation of the various levels of specific vocational preparation:

³ The Appendix can be found at the following Internet website: <http://www.oalj.dol.gov/PUBLIC/DOT/REFERENCES/DOTAPPC.HTM>.

Level	Time
1	Short demonstration only
2	Anything beyond short demonstration up to and including 1 month
3	Over 1 month up to and including 3 months
4	Over 3 months up to and including 6 months
5	Over 6 months up to and including 1 year
6	Over 1 year up to and including 2 years
7	Over 2 years up to and including 4 years
8	Over 4 years up to and including 10 years
9	Over 10 years

Note: The levels of this scale are mutually exclusive and do not overlap.

DOT provides only general information regarding the tasks and work activities associated with a particular occupation, as well as the education, training, and experience required to perform the duties of that occupation. An SVP rating is meant to indicate only the total number of years of vocational preparation required for a particular occupation. It does not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require. Thus, an SVP rating of 7 does not indicate that at least a four-year bachelor's degree is required, or more importantly, that such a bachelor's degree must be in a specific specialty closely related to the occupation to which this rating is assigned. Therefore, the *DOT* information is not probative of the proffered position being a specialty occupation.

Counsel's reference to DOL's O*NET report indicates that over 76 percent of logistics analysts hold a bachelor's or master's degree and USCIS' approval rate in the 2011 fiscal year of over 134,000 petitions for computer related occupations, occupations that also have a Job Zone 4 rating, does not support a determination that a Job Zone 4 occupation is categorically a specialty occupation. The Job Zone 4 -- Education and Training Code indicates that such a position requires considerable preparation. It does not state that a bachelor's degree in any specific specialty is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). See O*NET OnLine Help Center, at <http://www.onetonline.org/help/online/zones>, for a discussion of Job Zone 4, which explains that this Zone signifies only that most but not all of the occupations within it require a bachelor's degree. Further, the Help Center's discussion confirms that Job Zone 4 does not indicate any requirements for particular majors or academic concentrations.

Thus, counsel's argument that the director misinterpreted the SVP and Job Zone designations fails for at least two reasons. First, neither the SVP rating nor the Job Zone rating states that a particular occupation requires a precise and specific course of study that relates directly to that occupation. Rather, both the SVP and Job Zone designations amalgamate numerous occupations into one designation (in this matter a SVP rating of 7 and a Job Zone designation of 4) and provide a broad overview of a level of degree or training that are generally acceptable to perform any occupation that falls under the rating or designation. The ratings and designations do not

reference particular majors or academic concentrations that are required to perform the duties of the specific occupations. Such general ratings and designations applicable to a variety of unrelated occupations are insufficient to establish that a specific occupation requires the theoretical and practical application of a body of highly specialized knowledge attained through study resulting in 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. Counsel's reference to USCIS' approval rate in the 2011 fiscal year for computer related occupations with a Job Zone 4 rating underscores the inadequacy of such designations. The approval rate referenced does not include within it the identity of the specific computer related occupations approved. An approval rate for a general group of occupations does not reveal the whole story and thus does not provide a basis to conclude that all Job Zone 4 occupations necessarily are specialty occupations.

Second, counsel's argument that the statement "most of these occupations require a four-year bachelor's degree, but some do not" requires a conclusion that any occupation that includes this reference is a specialty occupation is misguided. Not only does this statement reference a general four-year bachelor's degree with no specific field of study listed, but the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of logistics analyst positions require at least a bachelor's degree in a specific or a closely related field, it could be said that "most" logistics analysts positions require such a degree.⁴ It cannot be found that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "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." Section 214(i)(1) of the Act.

As we observed above, for an occupation to be considered a specialty occupation the petitioner must establish that the occupation requires a specialized course of study that results in at least a bachelor's degree or its equivalent in a specific discipline. Counsel's assertion that it is the course of study not the title of the degree that meets the statutory requirement is incomplete. It is correct to say that a specialty occupation requires highly specialized knowledge attained through a level of study in concentrated areas at a bachelor's or higher level; however, such study must also result in the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent). In other words, we agree that 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. However, since there must be a close correlation between the required specialized studies and the position; the mere requirement of a degree, or a degree with a generalized title such as business administration, without further specification, does not establish

⁴ As will be discussed below, the record does not establish that the occupation of logistics analyst requires a bachelor's degree with the requisite precise and concentrated coursework resulting in a bachelor's degree in a specific field of study as required to constitute a specialty occupation.

the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988) ("The mere requirement of a college degree for the sake of general education, or to obtain what an employer perceives to be a higher caliber employee, also does not establish eligibility."). 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).

Finally, we address counsel's assertion that the director failed to consider all of the evidence submitted in support of the petition. In this matter, the petitioner submitted voluminous documentation of the beneficiary's past work product. Requiring the director to list every document and the beneficiary's input into each decision made is impractical and inefficient. The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989)). In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. As will be discussed below, upon review of the totality of the evidence the director properly determined that the petitioner failed to establish that the job duties are the duties of a specialty occupation.

We turn now to a discussion of the actual proffered position and the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). Turning to the specific position proffered by the petitioner, the AAO will first review the record of proceeding in relation to 8 C.F.R. § 214.2(h)(4)(iii)(A)(1). To satisfy this criterion, the evidence must establish that a baccalaureate or higher degree, or its equivalent, in a specific specialty is normally the minimum requirement for entry into the particular position that is the subject of the petition. The AAO recognizes the Department of Labor's *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁵ As will now be discussed, the *Handbook* does not indicate that logisticians constitute an occupational group that requires a specialty-occupation level of education, that is, at least a U.S. bachelor's degree, or the equivalent, in a specific specialty.

The *Handbook* reports: "Logisticians analyze and coordinate an organization's supply chain—the system that moves a product from supplier to consumer. They manage the entire life cycle of a product, which includes how a product is acquired, distributed, allocated, and delivered." U.S. Department of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed.,

⁵ All of the AAO's references are to the 2012-2013 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/oco/>.

"Logisticians," <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-2> (last visited Aug. 30, 2013).

The *Handbook* notes that logisticians typically do the following:

- Develop business relationships with suppliers and customers
- Work to understand customers' needs and how to meet them
- Direct the allocation of materials, supplies, and finished products
- Design strategies to minimize the cost or time required to move goods
- Review the success of logistical functions and identify areas for improvement
- Present performance data to management
- Propose improvements to management and customers
- Stay current on advances in logistics technology and incorporate new technologies into procedures

The *Handbook* adds: "[l]ogisticians oversee activities including purchasing, shipping and transportation, inventory, warehousing, and delivery. They may direct the movement of a range of goods, people, or supplies, from common consumer goods to military supplies." The duties of the proffered position as described correspond generally to the *Handbook's* overview of the job duties of a logistician and correspond to the petitioner's designation of the proffered position as a logistician on the required LCA. Regarding the educational requirements to perform the duties of a logistician, the *Handbook* states "[a]lthough an associate's degree is sufficient for many logistician jobs, candidates increasingly need a bachelor's degree to advance beyond entry-level positions." See *id.* at <http://www.bls.gov/ooh/business-and-financial/logisticians.htm#tab-4> (last visited Aug. 30, 2013). The *Handbook* further indicates:

Logisticians can qualify for positions with an associate's degree in business or engineering or by taking courses on logistics. However, as logistics becomes increasingly complex, more companies prefer to hire workers who have at least a bachelor's degree. Many logisticians have a bachelor's or master's degree in business, finance, industrial engineering, or supply chain management.

Accordingly, not every logistician position requires at least a bachelor's degree level of knowledge. We observe as well that employer preference for a particular degree is not synonymous with the normally minimum requirement for entry into the particular position as set out at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I). Such a preference is not sufficient to establish that a bachelor's degree *in a specific field of study* is a common minimum entry requirement.

In this matter as observed above, the petitioner specifies only that it requires a bachelor's degree in business administration or management or a related field for the above position. The *Handbook* indicates that a disparate group of disciplines, varying from a generalized business administration degree to a degree in industrial engineering, are acceptable for employment as a logistician. Again, we reiterate that 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 to establish a position as a specialty occupation. The requirement of a degree with a generalized title, such as business administration, without further specification, will not suffice in establishing a position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). The petitioner's claim 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, is tantamount to an admission that the proffered position is not in fact a specialty occupation.

Based on the above analysis of the evidence contained in the record, the AAO finds that the petitioner has failed to demonstrate that the proffered position normally requires the incumbent to possess a high level of specialized knowledge that may be obtained only through at least a baccalaureate degree in a specific discipline or its equivalent for entry into that particular position. Accordingly, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the petitioner has not satisfied the first of the two alternative prongs at 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, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proposed 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 1151, 1165 (D. Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

As discussed *supra*, the petitioner has not established that its proposed position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty. Nor has the petitioner submitted evidence that the industry's professional associations have made a degree in a specific specialty a minimum requirement for entry.

The job vacancy announcements submitted by the petitioner also do not satisfy the first alternative prong described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). Counsel's contention that as the advertisements listed acceptable degrees in business administration, management science, or logistics management, the proffered position is a specialty occupation is noted. However, seven of the advertisements submitted only required that the successful incumbent possess a four-year degree without specification as to the particular course of study required. Three of the advertisements specified that a bachelor's degree in business administration or logistics and supply management would qualify for the advertised position and one advertisement listed a bachelor's degree in business plus a number of other disciplines as acceptable. As observed above, a variety of acceptable degrees is insufficient to establish that the position requires a precise and specific course of study that relates directly and closely to the proffered position.

Moreover, the petitioner in this matter has not provided probative evidence that a general degree in business administration incorporates a common and specific course of study sufficient to elevate the proffered position to a specialty occupation. 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 addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. The petitioner also fails to submit any evidence of how representative these advertisements are of the advertisers' usual recruiting and hiring practices. Further, as they are only solicitations for hire, they are not evidence of the employers' actual hiring practices. It must be noted that even if all of the job postings indicated that a bachelor's degree in a specific specialty is common to the industry in parallel positions among similar organizations (which they do not), the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these few advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

Turning to the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), counsel references the copious documentation submitted to show the beneficiary's work product and argues that such documentation demonstrates the complex, specialized and unique nature of the job and moreover corroborates the petitioner's detailed job description provided in response to the director's RFE. A review of the job description provided shows that the position requires the successful applicant to apply general organizational skills, provide some cost analysis, prepare forms for customs, maintain confidentiality, coordinate order and delivery processing through the use of electronic transmissions, resolve issues that arise between orders placed and the timely delivery of goods, and reconcile monthly reports. A review of the documentation submitted shows the beneficiary filed required customs forms, interacted with government agencies, resolved issues, performed research and some negotiations, and worked with collection agencies, set up accounts, and complied orders and payment controls. The petitioner, however, has not established how these duties 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. The petitioner does not specify which of the beneficiary's duties will be complex or unique. The petitioner noted that coursework in control management, business administration and negotiation, marketing, information systems, operation management, statistics, financial accounting, and international economics would be beneficial in

performing these functions; however, 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 any duties claimed to be so complex and unique. While several courses in business and management may be beneficial in performing certain duties of a logistics 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.

The evidence of record does not establish that this position is significantly different from other logistics analyst positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such a position, 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 logistics analysts 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 logistics analyst is so complex or unique relative to other logisticians 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).

Next, we consider whether the petitioner's prior history of recruiting and hiring for the proffered position establishes the proffered position as a specialty occupation.⁶ We have reviewed the letter authored by the [REDACTED] Human Resources Manager which states that the minimum educational requirement for the position is a bachelor's degree in business administration, management, or a related field as well as the spreadsheet listing over eighty of the [REDACTED]'s logistics analysts stationed worldwide. The petitioner claims that it and the companies affiliated with it worldwide hire individuals for the proffered position who have degrees in business administration, business and finance, international trade and commerce, logistics, chemical engineering, industrial engineering, and information technology. The variety of degrees acceptable to perform the duties of the proffered position precludes its designation as a specialty occupation as that term is defined in the statute and regulation. Absent evidence of a

⁶ We note 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").

direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. 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. We observe here that the only two United States employees included on the spreadsheet provided hold degrees in business administration and business and finance. USCIS has consistently stated that, 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, supra*. Moreover, the petitioner has not provided documentary evidence substantiating the degrees held by its United States logistics analysts. Without documentary evidence to support the claim, the record is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*. Here, the petitioner has failed to establish the referenced criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) based on its normal hiring practices.

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 logistician position, a position that is not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.⁷ Upon review of the petitioner's lengthy job description of the proffered position and the beneficiary's past work product, the petitioner has shown that the beneficiary performs duties of a logistician; however, this information does not demonstrate that this particular position is more specialized and complex than other logisticians. The record does not support that the proffered position is one with specialized and complex duties when the petition was filed. The AAO, therefore, concludes that the proffered position failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

⁷ We observe that the petitioner in this matter 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. *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. 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 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).

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 will remain denied for this reason.

The AAO does not need to examine the issue of the beneficiary's qualifications, because the petitioner has not provided sufficient 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.