

(b)(6)

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



U.S. Citizenship
and Immigration
Services

DATE: AUG 05 2014 OFFICE: CALIFORNIA 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a "Data Analytics Services" business. The petitioner states that it was established in 2007, and employs an undetermined number of U.S. employees and is an H-1B dependent employer.¹ It seeks to employ the beneficiary in a position to which it assigned the job title "Analyst" and 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 duties of the proffered position comprise a specialty occupation.

The record of proceeding before us contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B, Notice of Appeal or Motion (Form I-290B), the petitioner's letter and additional documentation.

Upon review of the entire record of proceeding, we find that the petitioner has failed to overcome the director's grounds for denying this petition.² Accordingly, the appeal will be dismissed and the petition will remain denied.

I. FACTS AND PROCEDURAL HISTORY

The petitioner identified the proffered position as an "Analyst" on the Form I-129, and attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Operations Research Analysts," SOC (ONET/OES) Code 15-2031, at a Level I (entry-level) wage.³ The LCA was certified on March 12, 2013, for a validity period from September 1, 2013 to September 1, 2016.

The petitioner identified the DOT (Dictionary of Occupational Titles) code on the Form I-129 H-1B Data Collection Supplement, Part A, Question 5 as 020 "Occupations in Mathematics." See U.S. Dep't of Homeland Security, U.S. Citizenship and Immigration Services, "Form M-746, I-129 Dictionary of Occupational Titles (DOT) Codes," <http://www.uscis.gov/files/form/m-746.pdf> (last visited July 30, 2014).

¹ On appeal, counsel for the petitioner claims that the petitioner employs thirty employees in the United States.

² We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ 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.

The petitioner also listed the North American Industry Classification System (NAICS) Code on the Form I-129 H-1B Data Collection Supplement, Part A, Question 6 as 541990, "All Other Professional, Scientific, and Technical Services." See U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "541990 All Other Professional, Scientific, and Technical Services," <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited July 30, 2014).

The NAICS describes this industry as comprising:

[E]stablishments primarily engaged in the provision of professional, scientific, or technical services (except legal services; accounting, tax preparation, bookkeeping, and related services; architectural, engineering, and related services; specialized design services; computer systems design and related services; management, scientific, and technical consulting services; scientific research and development services; advertising, public relations and related services; market research and public opinion polling; photographic services; translation and interpretation services; and veterinary services).⁴

In the March 29, 2013 letter submitted in support of the petition, the petitioner stated that it "is a leading provider of analytics, statistical modeling and strategy support services that deliver results-driven analytics, optimization and decision management solutions to Fortune 500 clients." The petitioner added:

[It] combines knowledge of Marketing and Customer Management with deep capabilities in analytics, technology, and [redacted] to clients across verticals such as Technology & Communications, Financial Services CPG & Retail.

[It] has a global team of skilled business analysts, analytical modelers and data management experts, united by a passion for analytics, to develop fact-based, hypotheses-driven, rigorous solutions that deliver outstanding value to our clients.

In order to lead engagements and ensure that clients acquire in-depth understanding of [the petitioner's] delivery procedures, thereby bringing to the client site an understanding of its internal tools and platforms, [the petitioner] typically assigns on-site engagement managers who have an advanced level of

⁴ The NAICS listed the following industries as illustrative examples of this industry: Appraisal (except real estate) services; Marine surveyor (i.e., appraiser) services; Arbitration and conciliation services (except by lawyer, attorney, or paralegal offices); Patent broker services (i.e., patent marketing services); Commodity inspector services; Pipeline or power line inspection (i.e., visual) services; Consumer credit counseling services; Weather forecasting services; Handwriting analysis services.

knowledge of [the petitioner's] delivery process/systems, as well as managerial experience on other projects in which [the petitioner's] on-site/offshore methodology was implemented.

[The petitioner] designs, develops and implements cutting-edge statistical-based modeling solutions to drive business decisions. All of [the petitioner's] employees work directly for [the petitioner] on projects designed and built by the company, and under the supervision of one or more [of the petitioner's] Project Managers.

The petitioner again labeled the proffered position an "Analyst" and stated:

The Beneficiary would be responsible to provide analytic solutions, conduct business research, provide keen insights and recommendations as well as overall client business support as part of a larger team that delivers consulting services to large retail and technology organizations. Apart from the project delivery accountability, the Analyst would be also involved in project management activities. As an Analyst, the Beneficiary duties would also include, but will not be limited to the following:

- Attend business meetings with analytics and marketing managers to better understand business problems and arrive at a solution framework;
- Responsible for the conceptualization, design and development of advanced marketing dashboards, marketing campaigns analysis as well as strategic analysis;
- Data mining and work with large amount of unstructured data;
- Build models to better understand and illustrate the results of data analysis;
- Provide deep insights and strategic recommendations about specific business problems faced by client based on sound data analysis;
- Responsible for goal setting, project management and team mentoring;
- Conduct extensive presentations on the analysis done to petitioner's clients as well as the recommendations provided to client managers and discuss the implementation steps.

The petitioner claimed that "[i]n order to perform the complex job duties described above, the Analyst must apply an in-depth knowledge of analytical principals and their application." The petitioner stated that it "requires at least a Bachelor's degree, or the equivalent, in Computer Science, Science, Information Systems, Information Technology, Operations Research, Business, Engineering, or a related field, for this position." The petitioner noted that the beneficiary in this matter had been awarded a Bachelor of Pharmacy from [REDACTED] in India in 2010. The accompanying credential evaluation report identified this degree

as the U.S. equivalent of a Bachelor of Science Degree from a regionally accredited college or university in the United States.

Upon review of the initial record, the director requested additional information from the petitioner pertaining to the proposed position, among other information.

In an October 8, 2013 letter in response, counsel for the petitioner noted that the position proffered here is that of an "Analyst in the marketing analytics/research function of the client" and that, in part, the beneficiary will deliver advanced analytics insights and decision management solutions and will use advanced, data-driven, optimization methods for executing marketing initiatives and business goals. Counsel divided the work into three broad classifications:

1. Client Engagement Liaison (15%)
2. Marketing Analytics Service Delivery (70%)
3. Offshore Team Liaison (15%)

Counsel also listed the duties the beneficiary would perform under these three classifications as:

Client Engagement Liaison (15%)

- Strengthen the relationship with the client personnel and be the face of [the petitioner] within the client's organization
- Work closely with Business Unit Heads and provide direction to the engagement on both sides (Client and the offshore team)
- Translate the business needs into detailed analytical requirements for the operational team; interpret the delivery output in terms of business value
- Propose new technical offerings for existing as well as new client engagements utilizing knowledge of analytical processes and capabilities

Delivery of Marketing Analytics Services (70%)

- Analyze and evaluate the performance of market spend across different channels with a structured approach
- Explore, classify and visualize the data to help all stakeholders in identifying and understanding key performing indicators and other business metrics
- Extract and analyze data from Teradata, Oracle and other ODBC databases
- Formulate complex statistical and simulation models from business problems, relate constants and variables, constraints, alternatives, conflicting objectives and their numerical parameters:
 - a) Classification – Classification of variables using CART, CHAID, K-nearest neighbor and Random Forests techniques
 - b) Clustering – Building clusters of homogenous variables using K-Means and Hierarchical Based Clustering techniques

- c) Estimation – Estimating the dependent variables using techniques like Linear Regression, GLM, Logistic Regression, ARIMA and Holtz Winter's
 - d) Optimization – Optimize the media spend, product planning, for online services and other brands using Linear and Nonlinear programming
- Perform validation and testing of models to ensure adequacy & compliance; reformulate the proposed models as and when necessary
 - Prepare management reports defining and evaluating problems and recommending solutions:
 - a) Create automated dashboards using visualization tools like [REDACTED]
 - b) Perform the deep-down analysis of the data, generating key metrics and drawing meaningful insights
 - c) Leverage prior experience to bring higher value solution offerings in existing solutions

Offshore Team Liaison (15%)

- Liaise with offshore team and ensure deliverables are aligned to business needs and actionable
- Coordinate with offshore Project Delivery team to ensure the team meets the quality, productivity and turnaround time (Service Level Agreements) objectives
- Assist the offshore teams in building technical and functional competencies for current and future engagements

Counsel asserted: [t]his job requires high technical and business knowledge as well as managerial skills. Typical tasks require knowledge in mathematics, statistics, optimization techniques as well as strong understanding of client's business models in addition to exposure of statistical tools."

Counsel also asserted that the Department of Labor's (DOL) Summary Report from the O*NET classification of "Operations Research Analyst" as a Job Zone 5 (considerable preparation needed) and that DOL's *Occupational Outlook Handbook (Handbook)* indicated that "a bachelor's degree is the typical entry-level requirement for operations research analysts." Counsel submitted job opening announcements and noted that all the postings submitted require a Bachelor's Degree. Counsel averred that "Analysts may have different specialties, depending on the industry they cater to" and that data analytical services are sought by different types of U.S. clients, thus, the Analyst may be expected to have specific knowledge relevant to the client's industry."

Counsel submitted an opinion letter, dated August 26, 2013, prepared by Professor [REDACTED] [REDACTED] Ph.D. who is a Professor of Computer Science at [REDACTED]

Dr. [REDACTED] stated that he based his opinion on documents provided by the beneficiary. He listed the evidence he had reviewed to form the basis of his opinion as:

1. A copy of the petition letter from [the petitioner], containing a description of the position Analyst.
2. A separate official company description of the Analyst position.
3. A copy of [the beneficiary's] diploma from the [REDACTED] bestowing on him a Bachelor of Pharmacy in 2010.
4. Transcripts of the academic work leading to the above degree.
5. A document confirming [the beneficiary's] SQ: Certification.
6. A description of [the beneficiary's] service at [the petitioner] for the period from September 2011 to March 2013.

Dr. [REDACTED] also noted that he had consulted the *Handbook* and O*NET Online webpages describing the position Operations Research Analysts. Dr. [REDACTED] listed the generally described duties provided by the petitioner's support letter and listed the duties set out in the *Handbook* for the occupation of operations research analyst and found that the duties of the proffered position corresponded to the occupation of operations research analyst. Based on this information, Dr. [REDACTED] offered the following opinion:

The position analyzed here involves work in what has recently begun to be called Analytics, a role, like many others a CIS (Computer Information Science) degree leads to, involving using computer systems to analyze business problems. Because it is a relatively new position, it has not yet been identified by the [*Handbook*]. It is, however, adequately described by related position Operations Research Analyst which is also described in O*Net Online

Dr. [REDACTED] offered a further opinion regarding his analysis of educational equivalency for an Analytics position:

The bachelor's degree in Computer Information Systems (hereafter CIS) is intended to prepare those who earn it to pursue careers in software development and software management, generally in a business setting. It is less rigorous and mathematically informed than a standard Computer Science Degree which exceeds all of the technical content of a degree in CIS. The curricula for such degrees will consist of (1) instruction in software development technologies and (2) instruction in some application area such as business or manufacturing.

Dr. [REDACTED] concluded that the position proffered by the petitioner "qualifies as a specialty occupation, requiring a minimum of a baccalaureate degree in Computer Information Systems or a closely related degree." Dr. [REDACTED] also found that the beneficiary has the equivalent of a "Bachelor of Computer Information Systems" degree.

Counsel also contended that the petitioner has never hired any individual with less than a bachelor's degree for this position. Counsel submits a list of all individuals hired for the Analyst

position by the petitioner along with a listing of their educational background, copies of their educational documents, and wage reports. Counsel asserted that the "petitioner requires Analysts to have a minimum of a Bachelor's degree or higher in Computer Science, Science, Information Systems, Information Technology, Operations Research, Business, Engineering, or a related field." The record also included the petitioner's advertisement for an Analyst located in India which indicated its ideal candidate needed "an academic degree in Engineering from a premier institute or a degree in Math, Statistics, Operations Research, Econometrics."

Counsel also claimed that the nature of the duties of the position proffered here is specialized and complex as "[a]part from the requisite technical knowledge, in order to perform the duties listed, an Analyst must have in-depth understanding of data analysis and predictive modeling services," and "must be able to effectively communicate with team members as well as current and prospective clients."

The record before the director included, among other things, copies of reports from U.S. universities that had established master's programs in data and business analytics and information regarding the petitioner's analytics capabilities. The record further included copies of the petitioner's master services agreement dated August 2, 2010, with [REDACTED] a business unit of [REDACTED] and a July 31, 2013 letter prepared by [REDACTED] Senior Director Procurement, of [REDACTED]. Mr. [REDACTED] provided an overview of the petitioner's analytics services requested and stated that "[t]his is a complex assignment and requires personnel with a minimum of a Bachelor's degree in a relevant field."

Upon review of the record, the director denied the petition, determining the petitioner had not established the proffered position as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director apparently disregarded the detailed description of the proffered position, job responsibilities and requirements provided in response to the RFE. Counsel reiterates his opinion that the O*NET's Online Summary Report and the *Handbook* establish that a baccalaureate degree requirement is common in the industry for the occupation of operations research analyst. Counsel asserts, by analogy, that the *Handbook* reports that a bachelor's degree in computer or information science is common for a computer systems analyst position and that "the maximum number H-1B petitions approved in recent times have been for Computer Systems Analyst" positions.⁵

Counsel also avers that the position of "Software Engineer has been continuously recognized by [U.S. Citizenship and Immigration Services] USCIS as a specialty occupation even though the position may be filled by professionals holding degrees in a number of academic fields, such as computer science, information technology, engineering, physics, computer information systems, or mathematics." Counsel cites several unpublished decisions in support of this claim. Counsel also cites *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is

⁵ Counsel submits an Internet printout from the Office of Foreign Labor Certification for fiscal year 2013, listing Computer Systems Analyst as the top position certified in support of this claim.

what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

Counsel contends that the degree requirement is common to the industry in parallel positions among similar organization but that USCIS has adopted an unduly narrow and incorrect interpretation of the regulations when requiring a bachelor's degree in one specific academic discipline to satisfy the specialty occupation standard. Counsel also emphasizes that Professor [REDACTED] August 26, 2013 opinion supports the proposition that the position proffered here qualifies as a specialty occupation. Counsel reiterates that the petitioner has never hired any individuals with less than a bachelor's degree for this position and re-submits the information previously provided in support of this claim. Counsel again lists the number of disciplines the petitioner finds acceptable to perform the duties of the proffered position. Counsel further contends that the performance of the job duties detailed entail "technically complex skills and knowledge that can only be fulfilled by individuals who have knowledge of marketing strategy, customer and sales analyses, optimization techniques, statistical programming as well as problem-solving and analytical skills, combined with a strong understanding of the client's business models."

Counsel finally asserts that USCIS failed to apply the correct adjudication standard of proof, which is the preponderance of the evidence standard.

II. LAW AND ANALYSIS

A. Standard of Proof

In light of counsel's references to the requirement that USCIS apply the "preponderance of the evidence" standard, we affirm that, in the exercise of its appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010). In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

* * *

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

* * *

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.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. See *INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claims are "more likely than not" or "probably" true.

B. Specialty Occupation

To meet its burden of proof on this issue, 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, supra*. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as stating additional requirements that a position must meet, supplementing the statutory and regulatory definitions of specialty occupation.

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), 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 notes that, as recognized by the court in *Defensor, supra*, where the work is to be performed for entities other than the petitioner, evidence of the client companies' job requirements is critical. *See Defensor v. Meissner*, 201 F.3d at 387-388. The court held that the former Immigration and Naturalization Service had reasonably interpreted the statute and regulations as requiring the petitioner to produce evidence that a proffered position qualifies as a specialty occupation on the basis of the requirements imposed by the entities using the beneficiary's services. *Id.* at 384. Such evidence must be sufficiently detailed to demonstrate the type and educational level of highly specialized knowledge in a specific discipline that is necessary to perform that particular work.

1. The Petitioner's Requirement to Perform the Duties of the Position

Upon review of the record of proceeding, the petitioner in this matter stated that it "requires at least a Bachelor's degree, or the equivalent, in Computer Science, Science, Information Systems, Information Technology, Operations Research, Business, Engineering, or a related field for this position."⁶ 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 (or its equivalent)" requirement of

⁶ The petitioner noted that it will assign the beneficiary to work on a project for [REDACTED] a business unit of [REDACTED]. In that regard, the petitioner submitted a July 31, 2013 letter signed by the senior director of procurement for [REDACTED] who stated that the assignment was complex and required personnel with a minimum of a bachelor's degree in a relevant field. As the author of the [REDACTED] letter does not identify a relevant field of study, we cannot discuss the requirement of any specific degree. As is discussed in this section, the requirement of a general bachelor's degree to perform the expected duties is inadequate to establish a position as a specialty occupation.

section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," we do not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

As noted above, the petitioner finds broad categories of degrees acceptable for this position, including a general degree in science, or in business, or in engineering.

However, acceptance of a general degree in "Science" is insufficient to establish that the position proffered here requires a precise and specific course of study that relates directly and closely to such position. Moreover, the petitioner accepts a general business degree, without specialization, as adequate to establish that the proposed position qualifies as a specialty occupation. However, 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).

In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring a degree in a specific specialty that is directly related to the proposed position. 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*, 484 F.3d 139, 147 (1st Cir. 2007).

Further, the petitioner accepts a degree in the general field of "Engineering" as adequate to perform the duties of the proffered position. 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 general degree in engineering or one of its other sub-specialties, is closely related to an analytic operations research position or that engineering or any and all engineering specialties are directly related to the duties and responsibilities of the particular position proffered in this matter. The petitioner, who bears the burden of proof in this proceeding, fails to provide sufficient evidence to establish that (1) computer science, information systems, information technology, operations research, general business/science and engineering (including any and all engineering specialties) are closely related fields, or (2) a degree in engineering (including any and all engineering specialties) is directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards. Accordingly, as the evidence of record fails to establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty*, or its equivalent, for entry into the particular position, it does not support the proffered position as being a specialty occupation and, in fact, supports the opposite conclusion.

We recognize that the petitioner desires an employee with a strong analytical background who will deliver advanced analytics insights and decision management solutions and will use advanced, data-driven, optimization methods for executing marketing initiatives and business goals and that "[t]his job requires high technical and business knowledge as well as managerial skills" and that "[t]ypical tasks require knowledge in mathematics, statistics, optimization techniques as well as strong understanding of client's business models in addition to exposure of statistical tools." However, the petitioner does not substantiate that only a bachelor's degree in "mathematics, statistics, optimization techniques" would provide the specialized knowledge to perform the duties it ascribes to the proffered position. Moreover, counsel in response to the director's RFE, claimed that the occupation of "Analysts" may have different specialties depending on the industry they cater to and that data analytical services are sought by different types of U.S. clients, thus, the Analyst may be expected to have specific knowledge relevant to the client's industry." Although counsel makes this claim, counsel does not provide any evidence that the analyst position proffered here requires specific knowledge relevant to a web-based financial exchange, such as [REDACTED], the organization requesting the petitioner's services and to which the petitioner claims the beneficiary will be assigned.

We have also considered counsel's citation to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." As just discussed, 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 (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. As in such a case, the required

"body of highly specialized knowledge" would essentially be the same. However, the petitioner in this matter has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.⁷ In addition, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Similarly, counsel's citation to the unpublished decisions analogizing the facts here to matters involving a software engineer does not establish the position proffered here is a specialty occupation. We note that 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 benefit. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972). Any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the director nor the AAO was required to request and/or obtain a copy of the unpublished decisions cited by counsel.

If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant case, the petitioner failed to submit a copy of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. Furthermore, while 8 C.F.R. § 103.3(c) provides that our precedent decisions

⁷ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. We further note that the service center director's decision was not appealed to us. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by our own *de novo* review of the matter.

are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon review, the petitioner has not provided evidence to establish a factual basis demonstrating that a general science, business, or engineering degree, or any of the degrees it finds acceptable to perform the duties of the position proffered here, meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)." The petitioner has not established how each of the acceptable fields is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). Rather, the petitioner finds a general educational standard sufficient to perform the duties of the proffered position. A general degree without a specific specialty designated as being required is tantamount to an admission that the proffered position is not in fact a specialty occupation. Again, absent evidence of a 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. For the reasons discussed above, the petitioner has not established the position proffered here as a specialty occupation.

The material deficiencies in the evidentiary record are decisive in this matter and they conclusively require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that would also require dismissal of the appeal.

2. Expert Opinion

Here we discuss the opinion submitted by Dr. [REDACTED] in support of the petitioner's claim that the proffered position is a specialty occupation. We agree that the position proffered here corresponds generally to the position of an Operations Research Analyst, as that position is described in the *Handbook*.⁸

As noted above, Dr. [REDACTED] opined:

The bachelor's degree in Computer Information Systems (hereafter CIS) is intended to prepare those who earn it to pursue careers in software development and software management, generally in a business setting. It is less rigorous and mathematically informed than a standard Computer Science Degree which exceeds all of the technical content of a degree in CIS. The curricula for such degrees will consist of (1) instruction in software development technologies and (2) instruction in some application area such as business or manufacturing.

⁸ Our references to the *Handbook*, are references to the 2014-2015 edition of the *Handbook*, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

Dr. [REDACTED] concluded that the position proffered by the petitioner "qualifies as a specialty occupation, requiring a minimum of a baccalaureate degree in Computer Information Systems or a closely related degree."

First, although Dr. [REDACTED] indicated he had reviewed the petitioner's description of the duties of the proffered position and a separate official company description, he does not provide a copy of the "separate official company description" for our review. Moreover, Dr. [REDACTED] does not indicate whether he visited the petitioner's business premises or spoke with anyone affiliated with the petitioner, so as to ascertain and base his opinions upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. Further, no statements in his opinion submission indicate the extent to which the author reviewed the particular position upon which he opined. For example, it is unclear whether Dr. [REDACTED] was aware the beneficiary would be assigned to work on a project for a third party.

In regard to his review of the petitioner's initial description, the duties described are general. Dr. [REDACTED] fails to provide a substantive statement of specific duties that the beneficiary would actually perform within the context of the petitioner's particular business operations. Rather, it appears that Dr. [REDACTED] bases his opinion upon generalized and relatively abstract descriptions of functions that could relate to a general analytic occupation and without regard to actual educational requirements. The content of his opinion is not indicative of more than a cursory and superficial consideration of the proffered position. The extent of meaningful analysis involved in the formulation of the position-evaluation opinion, therefore, is questionable.

Next, we find that Dr. [REDACTED] fails to establish a sufficient basis so that we may accord any deference to his opinion with regard to the particular area for which the petitioner offers it, namely, the minimum education requirements for the performance of the particular position that is the subject of this petition. Dr. [REDACTED] attested that he participates in the [REDACTED]'s Computer Science Department's Industry Advisory Board, the purpose of which is to keep current with industry standards and needs. He also noted that he has authored research papers in the field of Computer Science, and has taught at the [REDACTED] while working as technical staff for various companies. Dr. [REDACTED] indicated that he is the primary curricular designer of his University's Minor in Internet Resource Creation and Management. Dr. [REDACTED] attached his curriculum vitae which included his employment history and publications. The documents attached to Dr. [REDACTED] opinion letter also included [REDACTED] overview of the Computer Science degree.

Even considered in the aggregate, the curriculum vitae, the lists of publications, the lists of memberships, and all of the other documents submitted by Dr. [REDACTED] to support his claim of expertise do not establish that he has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - to equip him to render an opinion that we should regard as authoritative or expert in that particular area. While Dr. [REDACTED] claims expertise on the basis of his position and the contents of his curriculum vitae, he does not persuasively articulate - and the documents that he presents do not show - exactly how his

background so informs his knowledge of H-1B specialty occupation requirements or of the minimum educational requirements for operations research analysts that we should accord probative value to his opinion in this matter. 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. 1972)).

In the same vein, on its face, neither the curriculum vitae nor any other document submitted by Dr. [REDACTED] indicates that he has expertise or has been recognized as an authority in the area on which he presented his opinion, that is, in the area of the minimum educational requirements for an operations research analyst or "Analyst" positions or in the area of a position's qualification for H-1B specialty occupation recognition in accordance with the governing statutes and USCIS regulations.

Further, Dr. [REDACTED] does not specify or discuss any relevant research, studies, surveys, or other authoritative publications as part of their review and or as a foundation for his opinion other than the *Handbook* and the O*NET. In that regard, as will be discussed more fully below, the *Handbook* does not list a degree in computer information systems, a degree Dr. [REDACTED] acknowledges is less rigorous and mathematically informed than a standard Computer Science Degree, as a typical degree for operations research analysts.

Finally, Dr. [REDACTED] does not discuss the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.⁹

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable,

⁹ The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) issued by DOL states the following with regard to Level I wage rates:

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 [emphasis in original].

The petitioner does not indicate that the proffered position is for a research fellow, a worker in training, or an internship, but appears to believe that the beneficiary will be expected to perform high-level tasks, inconsistent with this LCA designation.

we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

For all of these reasons, we find that the opinion letter from Dr. [REDACTED] does not merit recognition or weight as an expert opinion, and that it is probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

3. Failure to Satisfy any Criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)

As a preliminary matter and as recognized in *Defensor v. Meissner*, it is necessary for the end-client to provide sufficient information regarding the proposed job duties to be performed at its location(s) in order to properly ascertain the minimum educational requirements necessary to perform those duties. *See Defensor v. Meissner*, 201 F.3d at 387-388. In other words, as the nurses in that case would provide services to the end-client hospitals and not to the petitioning staffing company, the petitioner-provided job duties and alleged requirements to perform those duties were irrelevant to a specialty occupation determination. *See id.*

Here, the record of proceeding in this case is similarly devoid of sufficient information from the end-client, [REDACTED] regarding the specific job duties to be performed by the beneficiary for that company. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary, therefore, 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. For this reason, the appeal will be dismissed and the petition denied.

Assuming for the sake of argument that the proffered duties as generally described by the petitioner in its initial letter and expanded upon in response to the RFE, would in fact be the duties to be performed by the beneficiary, we will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation.

To make its determination as to whether the employment described above qualifies as a specialty occupation, we turn first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position. We recognize the DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.

In this matter, the petitioner provides a generic label of "Analyst" for the proffered position but then attests on the LCA that the occupation most closely corresponds to the occupation of an operations research analyst. Upon review of the general descriptions provided, the descriptions appear to generally correspond to the *Handbook's* report on operation research analysts.

In regard to the education and training for an operations research analyst, the *Handbook* reports:

Applicants need a master's degree for most operations research positions, but a bachelor's degree is enough for many entry-level positions. Since few schools offer bachelor's and advanced degree programs in operations research, analysts typically have degrees in other related fields.

Although some employers prefer to hire applicants with a master's degree, many entry-level positions are available for those with a bachelor's degree. Although some schools offer bachelor's and advanced degree programs in operations research, many analysts typically have degrees in other technical or quantitative fields, such as engineering, computer science, mathematics, or physics.

Because operations research is based on quantitative analysis, students need extensive coursework in mathematics. Courses include statistics, calculus, and linear algebra. Coursework in computer science is important because analysts rely on advanced statistical and database software to analyze and model data. Courses in other areas, such as engineering, economics, and political science, are useful because operations research is a multidisciplinary field with a wide variety of applications.

Continuing education is important for operations research analysts. Keeping up with advances in technology, software tools, and improved analytical methods is vital.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Operations Research Analysts," <http://www.bls.gov/ooh/math/operations-research-analysts.htm#tab-4> (last visited July 30, 2014).

Here, the *Handbook* indicates that "many analysts typically have degrees in other technical or quantitative fields, such as engineering, computer science, mathematics, or physics." Accordingly, as discussed above, a bachelor's degree in a *specific* discipline is not the minimum requirement necessary to enter into the occupation. Moreover, identifying typical degrees in a given occupation does not equate to a normal minimum entry requirement for that occupation. 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.

We recognize that the *Handbook* reports that "operations research is a multidisciplinary field with a wide variety of applications." Thus, the issue here is whether the petitioner in this matter has adequately described the proffered position and identified the specific closely-related disciplines necessary to perform the duties of its particular position. The petitioner has failed in this regard. As discussed in detail above, the petitioner has not identified the highly specialized knowledge associated with closely-related degrees in the specific specialty. For example, the petitioner does not identify mathematics and computer science as the only acceptable degrees and then provide specific evidence establishing how each of these fields are 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. See section 214(i)(1)(B) of the Act. Rather, the petitioner, through counsel, emphasizes that the position requires basic analytical and quantitative skills and then lists a myriad number of degrees, including degrees of general application, as acceptable to perform the duties of its position.

Further, the petitioner in this matter has provided such a broad overview of duties without relating specific duties to the project to which it claims the beneficiary will be assigned that it is not possible to discern what pertinent specific degrees, if any, would be required for the beneficiary to perform operations research related to that particular industry. Upon review of the generality of the different descriptions, there is simply not enough information regarding the actual duties of the proffered position to ascribe a specific occupational title, with the attendant requirement of a degree in a specific discipline, to the actual duties.

To satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must demonstrate that a baccalaureate or higher degree in a specific discipline is normally the minimum requirement for entry into the particular position. Thus, the proffered position must require a precise and specific course of study that relates directly and closely to the position in question. Although a general-purpose bachelor's degree, or a degree in a variety of fields, may be acceptable for a particular occupation, such general requirements do not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position. Accordingly, the *Handbook* does not identify a degree in a specific discipline as required to perform the duties of an operations research analyst as here generally described.

We find counsel's analogy and conclusion regarding the proffered position and the *Handbook's* report on the education requirements for a computer systems analyst position which include both computer science and engineering and "the maximum number H-1B petitions approved in recent times have been for Computer Systems Analyst" positions, unpersuasive. First, counsel submits an Internet printout from the Office of Foreign Labor Certification for fiscal year 2013, listing Computer Systems Analyst as the top position certified by the DOL. However, the number of certified LCAs is not equivalent to the number of USCIS H-1B approvals.¹⁰ Second, as

¹⁰ While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether the content of an LCA filed for a

explained above, we do not find that the occupation of computer systems analysts, as a category, qualifies for classification as a specialty occupation. Third, as the petitioner has not submitted evidence establishing that its position of operations research analyst requires the theoretical and practical application of a body of highly specialized knowledge and the 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, we cannot conclude that the position proffered here is a specialty occupation.

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

The petitioner here references the O*NET as supporting a conclusion that the position proffered here is a specialty occupation. On July 30, 2014, we accessed the pertinent section of the O*NET OnLine Internet site relevant to 15-2031.00 – Operations Research Analysts. Contrary to the assertions of counsel, O*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Five" rating, Extensive Preparation Needed, which groups it among occupations of which "most," but not all, "require graduate school." Accordingly, the petitioner's requirement of only a bachelor's degree does not remove its position from consideration as an operations research analyst. However, O*NET OnLine does not indicate that Job Zone Five occupations must be in a specific specialty directly related to the occupation. Therefore, O*NET OnLine information is not probative of the proffered position being a specialty occupation.

As the evidence in the record of proceeding does not establish that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

particular Form I-129 actually supports that petition. See 20 C.F.R. § 655.705(b), which states, in pertinent part (emphasis added):

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* reports an industry-wide requirement for at least a bachelor's degree in a specific specialty or its equivalent. Also, there are no submissions from professional associations, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions. Finally, the petitioner's reliance upon the job vacancy advertisements is misplaced.

Counsel avers that it is not possible to establish that the advertisers identified in the job announcements are similar to the petitioner, as businesses do not provide detailed information regarding their organizational size or complexity or gross annual income in job announcements. Counsel contends that the job postings include sufficient information, however, to establish that the requirement for a baccalaureate degree is common to the industry for the position of analyst. We have reviewed the job announcements in the record and disagree. First, the petitioner has not identified the particular industry to which counsel refers. The petitioner states that it is a data analytics services business but lists its NAICS Code as 541990, a classification that excludes: management, scientific, and technical consulting services; scientific research and development services; and advertising, public relations and related services, among others. Thus, the record does not consistently identify the petitioner's industry. Second, the job announcements submitted include companies hiring for various positions in India, a data storage company, AT&T, a company that addresses threat scenarios, staffing companies, several unidentified companies and one staffing company that is hiring to staff its client, a major e-commerce company. The variety of the companies hiring precludes a determination of a specific standard amongst similar organizations. To reiterate, the job announcements do not establish that the advertisers are organizations that are similar to the petitioner.

Counsel asserts that most employers who require data analytical services expect the data analyst to have specific knowledge relevant to the client's industry and the fact that the petitioner may accept various majors depending on the client's industry does not undermine the specialty occupation nature of the position. Counsel contends that the numerous job announcements submitted demonstrate the variety of academic disciplines acceptable to perform the duties of executive-level positions and that USCIS has adopted an unduly narrow and incorrect interpretation of the

regulations in requiring a bachelor's degree in one specific academic discipline to satisfy the "specialty occupation" standard.

As discussed in detail above, the statute requires that the degree be "in *the* specific specialty (or its equivalent)." We noted above that if the petitioner establishes that each of its acceptable bachelor-level fields 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, the position may be determined to be a specialty occupation. However, in this matter, the petitioner has not submitted a description of duties that demonstrates the position proffered here requires a limited and specific body of highly specialized knowledge. Moreover, the petitioner, itself accepts degrees of general application to perform the duties of the occupation. Further, the petitioner does not detail the client's industry to which the beneficiary would be assigned and furthermore, does not identify specific majors that are necessary to perform the duties for that particular industry. Thus, the petitioner has not provided a factual foundation to support a claim that it requires knowledge in specific closely-related specialties.

Moreover, as the job announcements describe positions that are not parallel to the position proffered here, except in the most general way, the job announcements have little probative value. The job announcements submitted include a variety of titled occupations with various requirements, duties, and responsibilities. The petitioner has not established that the job announcements submitted pertain to positions that are parallel to the position offered here.¹¹

Upon review of the job announcements, we observe again that USCIS "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." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

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

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree."

¹¹ The petitioner also includes its announcement for an "Analyst" to be located in India and lists its ideal candidate as having an academic degree in Engineering from a premier institute or a degree in Math, Statistics, Operations Research, Econometrics.

The petitioner in this matter provided a broad description of the duties of the proffered position. As determined above, it is not possible to ascertain what the beneficiary will actually do on a daily basis. Again, absent supporting documentary evidence the petitioner has not met its burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Thus, the petitioner fails to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

We also observe that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. Paying a wage-rate that is only appropriate for a low-level, entry position relative to others within the occupation, is inconsistent with the analysis of the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance, Nonagricultural Immigration Programs* (rev. Nov. 2009), which is accessible at the Department of Labor Internet site http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Additionally, given the *Handbook's* indication that operations research analysts positions, the position the petitioner claims is mostly aligned with its position, do not normally require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement.¹² Thus, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than 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 is so complex or unique relative to other operations research analysts 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).

¹² It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ him at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Computer Systems Analysts," <http://www.flcdatacenter.com/OesQuickResults.aspx?code=15-2031&area=41940&year=13&source=1> (last visited July 30, 2014). Even if the petitioner pays the beneficiary \$70,000 per year, the wage it specifies on the Form I-129, the petitioner still would not meet the minimum wage requirement for the prevailing Level II wage of \$79,102.

Turning to the third criterion, the petitioner has not submitted sufficient evidence establishing that it normally hires only degreed individuals with degrees in a distinct discipline based on its normal hiring practices. The record includes a list of all individuals the petitioner claims it hired for the Analyst position along with a listing of their educational background, copies of their educational documents, and wage reports. The five employees hold degrees that have been evaluated to be equivalent to: (1) a bachelor's of science in engineering and a bachelor's of business administration (two employees); (2) a bachelor's of science in electrical engineering and a master of business administration; (3) a bachelor's of science in computer science; and (4) a bachelor's of science in engineering. As explained above, degrees in general engineering and computer science are not degrees in the specific specialty. Therefore, absent evidence of a 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.

We also observe that while a petitioner may believe and 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. 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* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation"). 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 the duties of operations research analyst positions that are not usually associated with attainment of at least a bachelor's degree in a specific specialty or its equivalent.

In addition, as we observed above, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who

has only basic understanding of the occupation.¹³ This aspect of the petition confirms that the requirements for the position proffered here is similar to a research fellow, a worker in training, or an internship, and thus is materially inconsistent with a position whose duties' performance would require knowledge usually associated with at least a bachelor's degree in a specific specialty.

Upon review of the totality of the record, the petitioner has failed to establish that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and, therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

III.CONCLUSION

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

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

¹³ 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.