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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: DEC 3 1 2014 OFFICE: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as a software consulting and development firm that was established in In order to employ the beneficiary in what it designates as a compensation, benefits and job analysis specialist 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, concluding that the petitioner did not establish that the proffered position is a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial of the petition was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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; (5) the Form I-290B, Notice of Appeal or Motion, and supporting materials; (6) our RFE dated September 11, 2014; (7) the response to our RFE; (8) our RFE dated October 24, 2014; and (9) the response to our second RFE. We reviewed the record in its entirety before issuing our decision.[1]

For the reasons that will be discussed below, we agree with the director's decision that the petitioner has not established eligibility for the benefit sought. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

I. FACTURAL AND PROCEDURAL HISTORY

In the petition, the petitioner indicated that it is seeking the beneficiary's services as a compensation, benefits and job analysis specialist on a full-time basis. In the letter of support, the petitioner stated that the beneficiary's job duties will include the following:

- Collaborate with Recruitment Manager, Delivery Managers, and Practice Head at onshore and offshore to plan recruitment for current and near future resource needs.
- Advise Business Delivery managers on recruitment related issues and recommend appropriate action.
- Understand the clients' technology needs and articulate business requirements and propose staffing solutions.

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

- Manage entire recruiting lifecycle – reviewing and qualifying job orders from Hiring Managers/Account Managers, job posting and advertisement, sourcing, interviewing and selection, job evaluation, work authorization/visa/immigration formalities, and job offer formalities.
- Ensure that the workforce planning and employment activities are compliant with applicable Federal, State, and local laws.
- Conduct HR interviews for potential candidates and decide on salary, grade and joining time.
- Extend employment offers for all candidates, offer follow-up, and addressing candidates' issues/queries about the offer.
- Building, identifying, evaluating, and managing relationships with staffing service providers to manage and mitigate sourcing risk.
- Ensuring all reports and inputs are collated and circulated timely to recruitment management and all the stake holders.

In addition, the petitioner claimed that the proffered position requires "at least a bachelor's degree or its equivalent in Business Management, Computer Science, Engineering, Information Systems, or a directly related field." Further, the petitioner stated that the beneficiary would apply his technical expertise in computer science, analysis and programming to perform the duties of the position.

The petitioner also submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Compensation, Benefits, and Job Analysis Specialists" - SOC (ONET/OES Code) 13-1141.

Upon review of the documentation, the director found the evidence insufficient to establish eligibility for the benefit sought, and issued an RFE. The petitioner responded by providing additional evidence. The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought and denied the petition. Counsel submitted an appeal of the denial of the H-1B petition.

II. MATERIAL FINDING – BEYOND THE DIRECTOR'S DECISION

The primary issue in this matter is whether the petitioner has provided sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, we will make some preliminary findings that are material to the determination of the merits of this appeal.

A. Requirements for the Proffered Position

In the letter of support submitted with the initial petition, the petitioner stated that the proffered position requires "at least a bachelor's degree or its equivalent in Business Management, Computer Science, Engineering, Information Systems, or a directly related field."[2]

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

Here, the petitioner, who bears the burden of proof in this proceeding, reported that the proffered position requires "at least a bachelor's degree or its equivalent in Business Management, Computer Science, Engineering, Information Systems, or a directly related field." Absent evidence to the contrary, the fields are not closely related specialties, and the petitioner fails to establish how these fields are directly related to the duties and responsibilities of the proffered position. Accordingly, as

[2] We observe that in the October 25, 2013 letter, counsel provided additional duties for the proffered position and altered the requirements for the proffered position. The record of proceeding, however, does not indicate the source of the duties, responsibilities, and requirements that counsel attributed to the proffered position. Counsel's letter was not signed by or endorsed by the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Thereafter, in response to our RFE, the petitioner provided a letter which altered the requirements of the position as stated in the original submission. USCIS regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. *See* 8 C.F.R. 103.2(b)(1). A petitioner (or counsel) may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

such evidence 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 occupation, it does not support the particular position proffered here as being a specialty occupation and, in fact, supports the opposite conclusion.

B. Work Site Location

On the Form I-129, the petitioner provided inconsistent information regarding the beneficiary's work site. More specifically, the petitioner indicated on page 4 that the beneficiary would be employed at its office in Illinois and specifically indicated that the beneficiary would not be employed off-site. However, on page 19 of the form, the petitioner stated that the beneficiary would be assigned to work at an off-site location for all or part of the period for which H-1B classification was sought. No explanation was provided.

III. ISSUE ON APPEAL

Specialty Occupation

We will now discuss the director's basis for denying the petition. Section 214(i)(l) of the Act, 8 U.S.C. § 1184(i)(l), 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 387. To avoid this 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), 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.

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*), which requires that a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the particular position.

We recognize the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereafter the *Handbook*) as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.[3] As previously noted, the petitioner asserted in the LCA that the proffered position falls under the occupational category "Compensation, Benefits, and Job Analysis Specialists."

We reviewed the chapter of the *Handbook* entitled "Compensation, Benefits, and Job Analysis Specialists" but are not persuaded that the duties of the proffered position are encompassed by the duties of this occupational classification. The *Handbook* describes the duties of "Compensation, Benefits, and Job Analysis Specialists" in the subsection entitled "What Compensation, Benefits, and Job Analysis Specialists Do" and states the following about the duties of this occupation:

> Compensation, benefits, and job analysis specialists conduct an organization's compensation and benefits programs. They also evaluate job positions to determine details such as classification and salary.
>
> **Duties**
> Compensation, benefits, and job analysis specialists typically do the following:
>
> - Research compensation and benefits policies and plans to ensure the organization's offerings are up-to-date, cost effective, and competitive
> - Monitor important compensation and benefits trends
> - Compare benefits plans, job classifications, or salaries through data and cost analyses
> - Prepare job descriptions, salary scales, and occupational classifications
> - Evaluate job positions to determine classification and salary
> - Ensure company compliance by adhering to federal and state laws
> - Collaborate with outside partners such as benefits vendors and investment brokers

[3] The *Handbook*, which is available in printed form, may also be accessed on the Internet, at http://www.stats.bls.gov/oco/. Our references to the *Handbook* are to the 2014 – 2015 edition available online. We hereby incorporate into the record of proceeding the chapter of the *Handbook* regarding "Compensation, Benefits, and Job Analysis Specialists."

- Design and prepare reports summarizing the research and analysis
- Present recommendations to compensation, benefits, human resources, or other managers

Some specialists perform tasks within all areas of compensation, benefits, and job analysis. Others specialize in a specific area.

Compensation specialists assess the organization's pay structure. They research compensation trends and review compensation surveys to see how their organization's pay compares with that in other organizations. To evaluate compensation policies, they often perform complex data or cost analyses. For example, they may research and analyze the cost of different pay-for-performance strategies, which offer rewards such as bonuses, paid leave, or other incentives.

Compensation specialists also must ensure that the organization's pay practices comply with federal and state laws and regulations, such as workers' compensation or minimum wage laws.

Benefits specialists administer the organization's benefits programs, which include retirement plans, leave policies, wellness programs, and insurance policies, such as health, life, and disability. They research and analyze benefits plans, policies, and programs, and make recommendations based on their analysis. They must frequently monitor government regulations, legislation, and benefits trends to ensure that their programs are legal, current, and competitive.

Benefits specialists also work closely with insurance brokers and benefits carriers and manage the enrollment, renewal, and distribution processes for an organization's employees.

Job analysis specialists, also known as***position classifiers***, evaluate job positions by writing or assigning job descriptions, determining position classifications, and preparing salary scales. When an organization introduces a new job or reviews existing jobs, specialists must research and make recommendations to managers on the status, description, classification, and salary of those jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Compensation, Benefits, and Job Analysis Specialists, on the Internet at http://www.bls.gov/ooh/business-and-financial/compensation-benefits-and-job-analysis-specialists.htm#tab-2 (last visited December 22, 2014).

Upon review of the petitioner's job description, we note that it did not provide any information with regard to the order of importance and/or frequency of occurrence with which the beneficiary will perform the described functions and tasks. Thus, the petitioner failed to specify which tasks were major functions of the proffered position and it did not establish the frequency with which each of

the duties would be performed (e.g., regularly, periodically or at irregular intervals). As a result, the petitioner did not establish the primary and essential functions of the proffered position.

Nevertheless, upon review of the petitioner's description and the chapter regarding "Compensation, Benefits, and Job Analysis Specialists" in the *Handbook*, we find that the petitioner has not provided sufficient evidence to demonstrate that its compensation, benefits and job analysis specialist position has the same or similar duties, tasks, knowledge, work activities, requirements that are generally associated with "Compensation, Benefits, and Job Analysis Specialists." For example, the petitioner does not claim that the beneficiary will research compensation and benefits policies and plans to ensure the organization's offerings are up-to-date, cost effective, and competitive. In addition, the petitioner does not claim that the beneficiary will monitor important compensation and benefits trends.

Further, the petitioner does not assert that the beneficiary will compare benefits plans, job classifications, or salaries through data and cost analyses. The record of proceeding does not establish that the beneficiary will prepare job descriptions, salary scales, and occupational classifications. Moreover, it does not appear that the beneficiary will evaluate job positions to determine classification and salary. Additionally, the duties of the proffered position do not indicate that the beneficiary will collaborate with outside partners such as benefits vendors and investment brokers. There is no evidence that the beneficiary will design and prepare reports summarizing the research and analysis, and present recommendations to compensation, benefits, human resources, or other managers.

The duties of the proffered position, to the extent that they are depicted by the petitioner, indicate that the beneficiary may, at best, perform a few tasks in common with this occupational group, but not that the beneficiary's duties would constitute a compensation, benefits and job analysis specialist position, and not that the tasks would require the range of specialized knowledge that characterizes this occupational category.

In the instant case, the petitioner has not demonstrated that the proffered position falls under the occupational category of "Compensation, Benefits, and Job Analysis Specialists." Therefore, we will not further address this occupational category as it is not relevant to this proceeding.

The director reviewed the job description provided by the petitioner and found that the proffered position is a "Recruitment Specialist," which falls under the occupational classification of "Human Resources Specialists and Labor Relations Specialists." The subchapter of the *Handbook* entitled "How to Become a Human Resources Specialist or Labor Relations Specialist" states, in part, the following about this occupation:

> **Education**
> Applicants seeking positions as human resources specialists or labor relations specialists must usually have a bachelor's degree in human resources, business, or a related field.

> Coursework should include business, professional writing, human resource management, and accounting.
>
> **Work Experience in a Related Occupation**
> Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.
>
> Some positions, particularly human resources generalists, may require previous work experience. Candidates can gain experience as human resources assistants, in customer service positions, or in other related jobs.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Human Resources Specialists and Labor Relations Specialists, on the Internet at http://www.bls.gov/ooh/business-and-financial/human-resources-specialists-and-labor-relations-specialists.htm#tab-4 (last visited December 22, 2014).

According to the *Handbook*, the level of education and experience required to become a human resources specialist or labor relations specialist varies by position and employer. Further, the *Handbook* reports that a high school diploma and several years of work experience are sufficient minimum education for entry into the occupation, particularly those positions that include interviewing and recruiting duties. Thus, the *Handbook* does not support the claim that this occupational category is one for which normally the minimum requirement for entry is a baccalaureate degree (or higher) in a specific specialty, or its equivalent. Even if it did, the record lacks sufficient evidence to support a finding that the particular position proffered here would normally have such a minimum, specialty degree requirement or its equivalent.

In response to the director's RFE, counsel submitted an Occupational Information Network (O*NET) OnLine Summary Report for the occupational category "Compensation, Benefits, and Job Analysis Specialists." However, as discussed above, the petitioner has not sufficiently established that the duties and responsibilities of the proffered position fall under this occupational category. Nevertheless, we reviewed the documentation in its entirety but find that it is insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree in specific specialty, or its equivalent, for entry into the occupation.

More specifically, the occupational category "Compensation, Benefits, and Job Analysis Specialists" has a designation of Job Zone 4. The O*NET OnLine Help Center indicates that occupations with this designation require considerable preparation. *See* the O*NET OnLine Help Center, at http://www.onetonline.org/help/online/zones. It does not, however, demonstrate that a bachelor's degree in a *specific specialty* is required, and does not, therefore, demonstrate that a position so designated qualifies as a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). That is, the Help Center's discussion does not indicate that these occupations (designated as Job Zone 4) have any requirements for particular majors or academic

concentrations. *See id.* Therefore, the O*NET information is not probative of the proffered position qualifying as a specialty occupation.

In support of the proffered position qualifying as a specialty occupation, counsel provided a letter from in response our RFE. The letter is dated September 18, 2014. In the letter, Mr. claimed that the proffered position is a specialty occupation and, requires a bachelor's degree in business administration or a closely related field. First, we note that Mr. statement regarding the requirements of the position is not in accordance with the petitioner's claims regarding the requirements for the position.[4] Further, it must be noted that Mr. conclusion that a degree in business administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation.[5] Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

Mr. provided a summary of his education and experience and attached a copy of his curriculum vitae. He described his qualifications, including his professional experience. Based upon a complete review of Mr. letter, we note that, while Mr. may be a recognized authority on various topics, he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. Mr. claims that he is qualified to comment on the position of compensation, benefits, and job analysis specialist because of the positions he holds at various universities and colleges, as well as his professional experience. However, without further clarification, it is unclear how his experience would translate to expertise or specialized knowledge regarding the current hiring practices of software consulting and development firms in the custom computer programming services industry (as designated by the petitioner in the Form I-129 and

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[4] The petitioner stated in its letter of support that the position requires "at least a bachelor's degree or its equivalent in Business Management, Computer Science, Engineering, Information Systems, or a directly related field."

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

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

Id.

with the North American Industry Classification System code) similar to the petitioner for compensation, benefits, and job analysis specialist positions (or parallel positions).[6]

Mr. opinion letter does not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the educational requirements for compensation, benefits, and job analysis specialists (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. The opinion letter contains no evidence that it was based on scholarly research conducted by Mr. in the specific area upon which he is opining. In reaching this determination, Mr. provides no documentary support for his ultimate conclusion regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). Mr. asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. His statements are not supported by copies or citations of the research material used.[7]

Upon review of the opinion letter, there is no indication that Mr. possesses any knowledge of the petitioner's proffered position beyond the job description. Mr. does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. For instance, there is no evidence that Mr. has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Mr. provides general conclusory statements regarding human resource specialist positions, but he does not provide a substantive, analytical basis for his opinion and ultimate conclusions.

In summary, and for each and all of the reasons discussed above, we conclude that the advisory opinion rendered by Mr. is not probative evidence to establish the proffered position qualifies as a specialty occupation. The conclusions reached by Mr. lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which

[6] The North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity, and each establishment is classified to an industry according to the primary business activity taking place there. *See* U.S. Dep't of Commerce, U.S. Census Bureau, NAICS, on the Internet at http://www.census.gov/eos/www/naics/ (last visited December 22, 2014).

[7] We note that the term recognized authority means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. 8 C.F.R. § 214.2(h)(4)(ii). A recognized authority's opinion must include how the conclusions were reached, as well as the basis for the conclusions supported by copies or citations of any research material used. *Id.*

he reached such conclusions. There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record.

We may, in our discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International,* 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion, and for the reasons discussed above, we find the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding Mr. opinion letter into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the instant case, the duties and requirements of the position as described in the record of proceeding do not indicate that this particular position proffered by the petitioner is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*1*).

Next, we will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) 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 previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference our previous discussion on the matter.[8] The record does not contain any letters from the industry's professional association, indicating that it has made a degree a minimum entry requirement.

[8] We here incorporate our discussion regarding Mr. opinion letter above and reiterate that we decline to defer to his letter and ultimate conclusions, and further find that his opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Counsel submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the documents, we find that counsel's reliance on the job announcements is misplaced.

In the Form I-129 petition and supporting documentation, the petitioner stated that it is a software consulting and development firm. The petitioner designated its business operations under the NAICS code 541511. This NAICS code is designated for "Custom Computer Programming Services." The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating, "This U.S. industry comprises establishments primarily engaged in writing, modifying, testing, and supporting software to meet the needs of a particular customer." *See* U.S. Dep't of Commerce, U.S Census Bureau, 2012 NAICS Definition, 541511 – Custom Computer Programming Services, on the Internet at http://www.census.gov/cgi-bin/sssd/naics/naicsrch (last visited December 22, 2014).

For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). Notably, it is not sufficient for the petitioner to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion.

Upon review of the documentation, the petitioner fails to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

For instance, the advertisements include positions with (a company involved in the "delivery of parcel and express shipments"); ("one of the nation's largest apparel and home furnishing retailers"; and . Without further information, the advertisements appear to be for organizations that are not similar to the petitioner and the petitioner has not provided any probative evidence to suggest otherwise. The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided sufficient information regarding which aspects or traits (if any) it shares with the advertising organizations.

Further, the evidence does not establish that the advertisements are for parallel positions. For example, the senior compensation analyst position with Another submission is for a manager, divisional and international human resources position with which requires a candidate to possess a degree and "8+ years [of]

experience in the area of Human Resources." The advertised positions appear to be for more senior positions than the proffered position. More importantly, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

In addition, contrary to the purpose for which the advertisements were submitted, some job postings do not indicate that a bachelor's degree in a directly related specific specialty is required. For example, some of the advertisements require a bachelor's degree, but they do not indicate a specific specialty. In addition, counsel submitted advertisements that indicate that a bachelor's degree in business administration is acceptable.[9]

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.[10]

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common for positions that are identifiable as being (1) in the petitioner's industry, (2) parallel to the proffered position, and also (3) located in organizations that are similar to the petitioner.

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

To begin with and as discussed previously, the petitioner itself does not require a baccalaureate or higher degree in a specific specialty, or its equivalent. In addition, the petitioner failed to

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[9] Again, although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.

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

demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined.

In support of its assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted documentation regarding the proffered position and its business operations. Upon review, we find that the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties it may believe are so complex and unique. While a few related courses may be beneficial, or even required, in performing certain duties of the position, the evidence does not 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 proffered position. The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them.

The petitioner has indicated that the beneficiary's educational background and work experience will assist him in carrying out the duties of the proffered position. However, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself qualifies as a specialty occupation. In the instant case, the petitioner has not established which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. The petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(*2*).

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

To satisfy this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

Also, while a petitioner may assert that a proffered position requires a specific degree that opinion alone without corroborating evidence cannot establish the position qualifies as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is

overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The petitioner stated in the Form I-129 petition that it has over 420 employees and was established in (approximately 22 years prior to the filing of the H-1B petition). However, upon review of the record, the petitioner did not provide any documentary evidence regarding current or past recruitment efforts for this position. Furthermore, the petitioner did not submit any information regarding employees who currently or previously held the position. The record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

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

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

Upon review of the entire record of proceeding, we find that the submitted documentation fails to support the assertion that the proffered position satisfies this criterion of the regulations. More specifically, in the instant case, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. The petitioner has submitted inadequate probative evidence to satisfy the criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A)(*4*).

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

IV. BEYOND THE DIRECTOR'S DECISION

Finally, beyond the decision of the director, we will enter an additional basis for denial, i.e., the petitioner's failure to comply with the itinerary requirement at 8 C.F.R. § 214.2(h)(2)(i)(B). The regulation at 8 C.F.R. § 214.2(h)(2)(i)(B) states, in pertinent part:

> *Service or training in more than one location.* A petition that requires services to be performed or training to be received in more than one location must include an itinerary with the dates and locations of the services or training and must be filed

> with USCIS as provided in the form instructions. The address that the petitioner specifies as its location on the Form I-129 shall be where the petitioner is located for purposes of this paragraph.

The itinerary language at 8 C.F.R. § 214.2(h)(2)(i)(B), with its use of the mandatory "must" and its inclusion in the subsection "Filing of petitions," establishes that the itinerary as there defined is a material and necessary document for an H-1B petition involving employment at multiple locations, and that such a petition may not be approved for any employment period for which there is not submitted at least the employment dates and locations. Here, on the Form I-129, the petitioner indicated (on page 4) that the beneficiary would be employed on-site at its office in Illinois, as well as (on page 19) off-site for all or part of the period for which H-1B classification was sought. Given the indication in the record that the beneficiary will work at multiple locations at some point during the requested period of employment and as the petitioner failed to provide this initial required evidence when it filed the Form I-129 in this matter, the petition must also be denied on this additional basis.

V. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that we abused our discretion with respect to all of the enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd.* 345 F.3d 683.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.