



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: FEB 18 2014 OFFICE: CALIFORNIA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center ("the director"), denied the nonimmigrant visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner on the Form I-129, Petition for a Nonimmigrant Worker, describes itself as an "Insurance Agency." The petitioner states that it was established in 2010, and currently employs seven personnel in the United States. It seeks to employ the beneficiary as a financial representative 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 had not provided evidence sufficient to establish that the proffered position is a specialty occupation.

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for 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, counsel's brief, and additional documentation.

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

I. Facts and Procedural History

In the March 26, 2013 letter submitted in support of the petition, the petitioner noted that it is an agency affiliated, as an independent contractor, with [REDACTED] a group of insurance and financial services companies in the United States and Canada. The petitioner also indicated that it "is a full service representative of [REDACTED] and provides financial planning advice to its customers through its agents and financial representatives." The petitioner noted that the duties of the proffered position include: "assisting in the marketing of [REDACTED] health, banking, mutual fund products and other financial services products (hereafter referred to as financial services)." The petitioner stated that the proffered position requires a bachelor's degree in finance or business administration with a concentration in finance. The petitioner also attached a job description of the proffered position which listed the duties and responsibilities of the position as follows:

- o Maintain licenses and/or registrations to market [REDACTED], as requested
- o Assist in developing a financial services marketing plan for the agency
- o Develop qualified leads and set appointments for financial services products

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

- Create and facilitate financial services product presentations to potential and existing clients
- Conduct needs based marketing interviews within the agent's office or client's home or business
- Utilize agency and [REDACTED] computer applications, as required and available
- Accurately prepare forms, policies, endorsements when required
- Follow up with customers and keep the agent informed
- Provide prompt, professional customer service
- Participate in training and team meetings as requested [and]
- Perform other related duties as assigned by the agent.

The job description also listed the experience and knowledge required of the position, including:

- Experience in a variety of computer applications, particularly Windows applications, desirable
- Demonstrated leadership skill preferred
- Experience in marketing and customer service desirable
- Knowledge of the following is desirable: life, health, bank and/or mutual fund products

The job description further listed the skill/abilities of the position, including:

- Ability to become fully licensed to market [REDACTED] financial services products, including life, health, bank and mutual funds.
- Ability to present and solicit financial services products to potential and existing clients
- Ability to conduct needs based marketing interviews with potential and existing clients
- Ability to explain complex financial issues in understandable terms
- Ability to effectively relate to customers
- Strong listening, oral, and written communications skills
- Ability to take initiative and act effectively both individually and as a member of a team with or without direction
- Ability to create and maintain professional business relationships with prospects, policyholders, co-workers, and associates within the [REDACTED] organization
- Ability to learn and become proficient with various computer applications
- Ability to adapt to changing market conditions and a dynamic work environment
- Ability to pay close attention to detail and accuracy
- Ability to handle multiple tasks and maintain strong organizational skills
- Ability to meet deadlines and work under pressure

The job description did not include specific educational requirements.

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a finance analyst position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-2051, Financial Analysts, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

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

In a July 8, 2013 letter in response, counsel for the petitioner asserted that the proffered position is related to two occupations, i.e., personal financial advisor and securities, commodities, or financial services sales agent, and cites to the Department of Labor's (DOL's) *Occupational Outlook Handbook's (Handbook's)* chapters on "Personal Financial Advisors" and "Securities, Commodities, or Financial Services Sales Agents." Counsel noted that the *Handbook* reported that these occupations typically required a baccalaureate degree for entry-level jobs. Counsel observed that a specific degree in a specific single subject area is not required for these occupations and asserted that the lack of this requirement did not make this position any less of a specialty occupation. Counsel noted the beneficiary's "Bachelor's degree in Finance: Financial Services from [REDACTED] and listed several of the courses included in the beneficiary's curriculum. Counsel also cited 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."

Counsel also contended that the petitioner normally requires a degree or its equivalent for the position. In support of this contention, counsel submitted a statement from the petitioner as well as three other identical statements from other [REDACTED] agents. The petitioner indicated in its attached April 25, 2013 statement that it "hires energetic and motivated individuals who have graduate degrees pertaining to the field of finance to help grow our high volume insurance agency" and "[i]nsurance licensing training is a prerequisite including a bachelor's degree as all our services require a knowledge base in the financial services sector." Counsel also claimed that 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. Counsel repeated excerpts from the *Handbook's* chapters on personal financial advisors and securities, commodities, or financial services sales agents in support of his claim.

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

On appeal, counsel for the petitioner asserts that the proffered position shares characteristics of the occupational categories of personal financial consultant, financial services sales agent, as well as, financial analyst. Counsel notes the director's statement that the position of financial analyst qualifies as a specialty occupation and asserts that the director improperly determined

that the petitioner's type of business could not support a financial analyst. Counsel now also claims that while the proffered position has many similarities to the financial analyst occupation, the proffered position is most similar to the occupation of financial services sales agent as set out in the *Handbook's* chapter on Securities, Commodities, or Financial Services Sales Agent. Counsel asserts that the *Handbook* makes clear that a bachelor's degree in a related area is required for entry into this occupation. Counsel also takes issue with the director's interpretation of the *Handbook's* report that a personal financial advisor is an occupation that does not require a baccalaureate degree in a specific specialty. Counsel avers that this is an overly restrictive interpretation of the pertinent chapter in the *Handbook*. Counsel also contends that the LCA filed in this matter identifying the occupational classification as a financial analyst position should not be dispositive on the issue of whether the proffered position is a specialty occupation.

Counsel again cites *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services, supra*, and asserts that the petitioner has established that the proffered position requires highly specialized knowledge and the beneficiary has attained the credentialing indicating possession of that knowledge. Counsel again avers: "a specific degree in a specific single subject area is not a requirement for those occupations does not make this position any less of a specialty occupation." Finally, counsel contends that regardless of the occupational category to which the proffered position is compared, the petitioner normally requires a degree or its equivalent for the position. Counsel references the previously submitted letters from the petitioner and three other State Farm agents in support of this claim. Counsel also provides personal statements from the petitioner's clients who have worked with the beneficiary.

II. Law

The issue in this matter is whether the proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the following statutory and regulatory requirements.

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

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

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

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

specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

III. Analysis

The evidence of record in this matter presents a broad overview of the petitioner, its business operations, the duties that the petitioner ascribes to the proffered position, and the position itself. Consequently, as will be evident below, the AAO finds that the evidence of record does not present the proffered position or its constituent duties in sufficient detail to establish that the substantive nature of either the position or its duties as actually performed within the context of the petitioner's business operations would be so specialized, complex, and/or unique as to require the need for at least a bachelor's degree level of a body of highly specialized knowledge.

According to the entries on the Form I-129 at the time of the petition's filing, the petitioner had been doing business as an "Insurance Agency" since 2010, and employed seven persons. The petitioner does not reveal its gross or net annual income on the Form I-129. In addition to its March 26, 2013 letter submitted in support of the petition, the petitioner included a photocopy of its Missouri incorporation certificate, receipts for payment of its corporate fees, its State of Missouri Insurance License, and a copy of its office lease.

The AAO finds that the petitioner provides little by way of substantive information about its particular business operations. Rather, it provides the brief statement that it "is a full representative of [redacted] products and provides financial planning advice to its customers through its agents and financial representatives" as noted above. The evidence does not convey substantive details of the petitioner's planning and management services, or of how they would manifest themselves in terms of specific, substantive work that the beneficiary would perform. As noted earlier and as clear in the plain language of the controlling definitions of an H-1B specialty occupation, at section 214(i)(1) of Act, and at 8 C.F.R. § 214.2(h)(4)(ii), the determinative element is whether the evidence of record establishes that 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 a specific specialty as the minimum for entry into the occupation, as required by the Act.

In this matter, the petitioner refers to the proffered position by the job title "Financial Representative" while identifying the position on the LCA as a "Financial Analyst" occupation. In response to the RFE and on appeal counsel for the petitioner claims that the proffered position more closely resembles the occupations of personal financial advisor and/or securities, commodities, financial services sales agent. However, when responding to an RFE or on appeal, a petitioner may not make material changes to the 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). If significant changes are made to the initial request for approval, the petitioner must file a new petition rather than seek approval of a petition that is not supported by the facts in the record. The claim by counsel that the proffered position incorporated duties associated with two additional occupations is not supported by the LCA submitted with the petition and will be further discussed below.

Where a petitioner seeks to employ a beneficiary in two or more distinct occupations, the petitioner should file two separate petitions, requesting concurrent, part-time employment for each occupation. While it is not the case here, if a petitioner does not file separate petitions and if only one aspect of a combined position qualifies as a specialty occupation, USCIS would be required to deny the entire petition as the pertinent regulations do not permit the partial approval of only a portion of a proffered position and/or the limiting of the approval of a petition to perform only certain duties. *See generally* 8 C.F.R. § 214.2(h). Furthermore and as is the case here, the petitioner would need to ensure that it separately meets all requirements relevant to each occupation and the payment of wages commensurate with the higher paying occupation.² Thus, filing separate petitions would help ensure that the petitioner submits the requisite evidence pertinent to each occupation and would help eliminate confusion with regard to the proper classification of the position being offered.

In this matter, the broadly described proposed duties suggest the beneficiary will primarily market and sell the petitioner's financial products and perform the administrative tasks associated with accurately preparing forms, policies, and endorsements when required. These broadly cast duties may be associated, to some extent, with the occupational categories referenced by counsel, as well as the occupation attested to on the LCA submitted with the petition. However, the duty descriptions are not sufficiently detailed to identify any substantive aspects that would distinguish the proposed duties, or the position that they comprise, as so specialized, complex, and/or unique that their actual performance would require at least a bachelor's degree in a specific specialty or its equivalent. As clearly evident in the record's duty descriptions, they describe the proposed duties exclusively in terms of general functions that the beneficiary would perform. As such, they do not inform the AAO of the substantive nature of the work that the beneficiary would perform, the substantive application of specialized knowledge that performance of those duties would involve, or any particular level of educational attainment in any specialty that would be required to perform them.

² *See generally* 8 C.F.R. § 214.2(h); U.S. Dept of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4. Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation. The appeal will be dismissed and the petition denied for this reason.

Nevertheless, the AAO will analyze the broadly stated duties and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation. To that end and to make its determination as to whether the employment described above qualifies as a specialty occupation, the AAO turns first 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 the normal minimum requirement for entry into the particular position. The AAO recognizes the DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

As noted above, the petitioner claims in the LCA that the proffered position falls under the occupational category "Financial Analysts." Regarding the education and training for financial analysts, the *Handbook* states:

Most positions require a bachelor's degree. A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering. For advanced positions, employers often require a master's in business administration (MBA) or a master's degree in finance. Knowledge of options pricing, bond valuation, and risk management are important.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited Feb. 12, 2014).

Here, although the *Handbook* indicates that most financial analyst positions require a bachelor's or higher degree, it also indicates that degrees in various fields are acceptable for entry into the

³ The AAO 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/>.

occupation. 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.⁴ Section 214(i)(1)(B) of the Act (emphasis added).

The *Handbook* does not limit the academic disciplines suitable to perform the duties of a financial analyst to finance but rather indicates that a disparate group of disciplines, varying from a generalized business administration degree to a degree in engineering, are acceptable for employment as a financial analyst. 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. Therefore, the *Handbook's* recognition that a general, non-specialty degree in business administration is sufficient for entry into the occupation strongly suggests that a bachelor's degree *in a specific specialty* is not a standard, minimum entry requirement for this occupation. Accordingly, as the *Handbook* indicates that working as a financial analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the particular position proffered here as being a specialty occupation.

The director's conclusion that a "financial analyst" position is a specialty occupation, is therefore withdrawn.

Although the petitioner did not attest to the occupational classification of "Personal Financial Advisor" or "Financial Services Sales Agents" on the submitted LCA, counsel contends that the proffered position shares characteristics with personal financial advisors and financial services sales agents. We will briefly review the education and training for such positions. With respect to personal financial advisors, the *Handbook* states:

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

Personal financial advisors typically need a bachelor's degree. Although employers usually do not require a specific field of study for personal financial advisors, a degree in finance, economics, accounting, business, mathematics, or law is good preparation for this occupation. Courses in investments, taxes, estate planning, and risk management are also helpful. Programs in financial planning are becoming more available in colleges and universities.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Personal Financial Advisors," <http://www.bls.gov/ooh/business-and-financial/personal-financial-advisors.htm#tab-4> (last visited Feb. 12, 2014).

For this occupation, the *Handbook* reports that there is no specific field of study necessary. A preference for a particular background in one or more fields of study is not the same as a minimum requirement for a baccalaureate or higher degree in a specific discipline to perform the duties of a position. The record does not establish that a personal financial advisor position is a specialty occupation.

In the chapter on Securities, Commodities, or Financial Services Sales Agents, the *Handbook* states generally:

Securities, commodities, and financial services sales agents generally must have a bachelor's degree to get an entry-level job. Studies in business, finance, accounting, or economics are important, especially for larger firms. Many firms hire summer interns before their last year of college, and those who are most successful are offered full-time jobs after they graduate.

Numerous agents eventually get a master's degree in business administration (MBA), which is often a requirement for high-level positions in the securities industry. Because the MBA exposes students to real-world business practices, it can be a major asset for jobseekers. Employers often reward MBA holders with higher level positions, better compensation, and large signing bonuses.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Securities, Commodities, and Financial Services Sales Agents," <http://www.bls.gov/ooh/sales/securities-commodities-and-financial-services-sales-agents.htm#tab-4> (last visited Feb. 12, 2014).

Again, the *Handbook* reports that there is no specific field of study necessary. To satisfy the first criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) the petitioner must demonstrate that a baccalaureate or higher degree in a specific discipline is normally the minimum requirement for entry into the particular position. Thus, the proffered position must require a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558

(Comm'r 1988). Although a general-purpose bachelor's degree, or a degree in a variety of fields, may be acceptable for a particular occupation, such general requirements do not establish a standard, minimum requirement of at least a bachelor's degree *in a specific specialty* or its equivalent for entry into the particular position. Accordingly, the *Handbook* does not identify a degree in a specific discipline as required to perform the duties of a financial services sales agent as here described.

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. In that regard, the AAO acknowledges counsel's citation to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services, supra*, 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." The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, in this matter the petitioner has not established that the described position requires highly specialized knowledge. Counsel seems to assert that as the beneficiary has a bachelor's degree in finance, the beneficiary's degree results in the proffered position being established as a specialty occupation. That is not the case. The test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires the theoretical and practical application of a body of highly specialized knowledge obtained by at least baccalaureate-level knowledge in a specialized area.

In any event, no evidence was furnished to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.⁵ The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is 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 the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In conclusion, 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

⁵ 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. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO 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 the AAO in its *de novo* review of the matter.

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)(1).

Next, the AAO finds that the petitioner has not satisfied the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively requires a petitioner to establish that a bachelor's degree, in a specific specialty, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

The petitioner has submitted an undated and unsigned letter on the letterhead of [REDACTED], which is identical to the petitioner's April 25, 2013 letter. The record also includes an undated and unsigned letter on the letterhead of [REDACTED] as well as an undated and unsigned letter on the letterhead of [REDACTED] Agent, with a name stamp. A review of these three letters finds that the letters refer generally to hiring "individuals who have graduate degrees pertaining to the field of finance." The letters do not identify particular positions with the attendant duties of the position. The letters do not specify that the graduate degree must be in a specific discipline, but only that the degree somehow pertains to the field of finance. These letters, with verbatim language as the petitioner's letter, also raise questions regarding the actual authorship of the letters. As noted, the letters do not include actual signatures or dates. The letters are not probative in establishing an industry standard for the proffered position.

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

The petitioner also failed to satisfy the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The petitioner in this matter provided only an overview of the duties of the proffered position. Thus, it is not possible to ascertain what the beneficiary will actually do on a routine basis. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Upon

review, the petitioner fails to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. The petitioner fails to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position.

We note 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*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

Additionally, given the *Handbook's* indication that typical, financial analyst, personal financial advisor, and financial services sales agent positions do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry into those occupations, 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.⁶

⁶ 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. As noted above, the petitioner has offered the beneficiary an annual wage of \$34,632, which satisfied the Level I prevailing wage for a personal financial advisor SOC (ONET/OES) Code 13-2052 in the [REDACTED] metropolitan area at the time the LCA was certified. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Personal Financial Advisor," <http://flcdatacenter.com/OesQuickResults.aspx?code=13-2052&area=41140&year=13&source=1> (last visited Feb. 12, 2014). However, in order to offer employment to the beneficiary at a Level II (qualified) wage-level, which would involve only "moderately complex tasks that require limited judgment," the petitioner would have been required to raise his salary to at least \$72,904 annually. The Level III (experienced) prevailing wage was \$111,155 annually, and the Level IV (fully competent) prevailing wage was \$149,427 annually. *Id.*

The prevailing wage for a Level I (entry-level) financial analyst in the [REDACTED] metropolitan area at the time the LCA was certified was \$45,614 annually. The Level II (qualified) prevailing wage was \$59,821 annually; the Level III (experienced) prevailing wage was \$74,006 annually; and the Level IV (fully competent) prevailing wage was \$88,213 annually. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Financial Analysts," <http://www.flcdatacenter.com/OesQuickResults.aspx?area=41884&code=13-2051&year=12&source=1> (last visited Feb. 12, 2014).

The prevailing wage for Level I (entry-level) financial services sales agents in the [REDACTED]

Therefore, the evidence of record does not establish that this position is significantly different from other financial representative positions such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for these positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than 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 positions that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Turning to the third criterion, the AAO notes that the petitioner has not indicated that it previously employed anyone to perform the duties of the proffered position. Accordingly, the petitioner's recruiting and hiring history cannot be examined. We also observe that while a petitioner may believe or otherwise assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent. Again, relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than positions within the same occupational category that are not usually associated with at least a bachelor's degree in a specific specialty or

Missouri metropolitan area at the time the LCA was certified was \$33,197 annually. The Level II (qualified) prevailing wage was \$47,549 annually; the Level III (experienced) prevailing wage was \$61,922 annually; and the Level IV (fully competent) prevailing wage was \$76,274 annually. U.S. Dept of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Securities, Commodities, and Financial Services Sales Agents," <http://www.flcdatacenter.com/OesQuickResults.aspx?area=41884&code=41-3031&year=12&source=1> (last visited Feb. 12, 2014).

its equivalent.

In addition to the lack of sufficient specificity to distinguish the proffered position from other positions for which a bachelor's or higher degree in a specific specialty, or its equivalent, is not required to perform their duties, the petitioner has designated the proffered position as a Level I position on the submitted LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation.⁷ Therefore, it is not credible that the position is one with specialized and complex duties, as such a higher-level position would be classified as a Level IV position, requiring a significantly higher prevailing wage. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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

The AAO will also address an additional, independent ground for denial of the petition, not identified by the director's decision, that the AAO finds also precludes approval of this petition. Specifically, as noted above, the petitioner identified the proffered position as a "Financial Representative" on the Form I-129, and attested on the required (LCA) that the position is for a "Finance Analyst" and that the occupational classification for the position is "Financial Analysts," SOC (ONET/OES) Code 13-2051, at a Level I (entry-level) wage.⁸ The LCA was certified on March 25, 2013, for a validity period from September 18, 2013 to September 17, 2016. Also on the LCA, the petitioner indicated the prevailing annual wage for this occupational classification at a Level I wage in the [REDACTED] metropolitan area as \$34,632 at the time the LCA was certified. However, a review of the FLC DataCenter Online Wage Library website identifies the prevailing Level I wage for "Financial Analysts," SOC (ONET/OES) Code 13-2051 as \$45,614.⁹ Accordingly, the LCA does not accurately reflect the correct prevailing wage for the occupational classification certified.¹⁰ Furthermore, as noted

⁷ 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.

⁸ 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.

⁹ U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Financial Analysts," <http://flcdatacenter.com/OesQuickResults.aspx?code=13-2051&area=41140&year=13&source=1> (last visited Feb. 12, 2014).

¹⁰ We observe that the prevailing wage for a "Personal Financial Advisor," SOC (ONET/OES) Code 13-2052 in the [REDACTED] metropolitan area for a Level I wage was \$34,632 at the

above, counsel for the petitioner asserted that the proffered position is closely related to personal financial advisors for which the SOC (ONET/OES) Code is 13-2052 and securities, commodities, or financial services agents for which the SOC (ONET/OES) Code is 41-3031. This assertion is contradicted by the occupational classification selected by the petitioner for the LCA.

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a certified LCA that corresponds to the claimed duties of the proffered position. Beyond the decision of the director, the petition may not be approved for this additional reason.

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

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

time the LCA was certified. U.S. Dep't of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Personal Financial Advisor," <http://flcdatacenter.com/OesQuickResults.aspx?code=13-2052&area=41140&year=13&source=1> (last visited Feb. 12, 2014).