

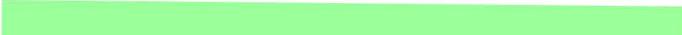


U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **FEB 26 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:

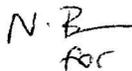


INSTRUCTIONS:

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 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.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 1, 2013. On the Form I-129 petition, the petitioner describes itself as a tour operator and resort support services business established in 2004, with five employees. In order to employ the beneficiary in a position to which it assigned the job title of "budget analyst," the petitioner seeks to classify the beneficiary 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).

Upon reviewing the Form I-129 and the documentation submitted as support, the director issued a request for additional evidence (RFE). After reviewing the petitioner's response to the RFE, the director denied the petition, finding that the petitioner failed to demonstrate that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. The petitioner, through counsel, submitted a timely appeal of the decision. On appeal, counsel for the petitioner contends that the director's basis for denial of the petition was erroneous. In support of this contention, counsel for the petitioner submits a brief and additional evidence.

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's RFE; (3) the petitioner's response to the RFE; (4) the director's notice denying the petition; and (5) the petitioner's Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

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

The issue before the AAO is whether the petitioner's 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 applicable statutory and regulatory requirements.

## I. PROCEDURAL AND FACTUAL HISTORY

The petitioner indicated on the Form I-129 that it intends to employ the beneficiary in a position that it designates as a budget analyst, on a full-time basis, at a salary of \$26.10 per hour (\$54,288 per year). In support of the instant petition, the petitioner submitted a Labor Condition Application (LCA) that was certified for use with a job prospect within the occupational classification of "Budget Analysts," SOC (ONET/OES) code 13-2031 at a Level I (entry level) wage.

In a support letter dated March 27, 2013, the petitioner stated that the proposed duties of the proffered position are the following:

1. Collect and analyze company's budgets, accounting and sales reports, inventory reports, administrative and sales expenses and cash budgets to maintain expenditure control of the company and currently managed resorts in [REDACTED]. Collect and analyze proposed operational and financial budgets to include new resorts in the South Pacific region.
2. Examine the proposed budget estimates for completeness, accuracy and compliance with the company's procedures and objectives. Use cost-benefit analysis to review proposed changes in sales of vacation packages and plans of improvements, remodeling and infrastructure development of the managed resort properties as well as including new resort properties in the company's portfolio.
3. Evaluate proposed budgets and provide to the company's senior management detailed reports on objective measures of the company's past operations, sales, financial effectiveness and sustainability of operations of the resort properties including operating and administrative expenses using past budgets and research data of South Pacific regional economic and financial developments.
4. Perform the analysis of budgets and financial statements. Horizontal, vertical and ratio analyses will be performed in order to make industry comparison and trend analysis. After the analysis is completed the Analyst should consult with management to discuss their plans and prospects, identifying problem areas and offering possible solutions and alternatives.
5. Provide advice and technical assistance with cost analysis of vacation packages and company's fiscal allocation and operational budget preparation.
6. Prepare consolidated and detailed budget reports and statements that provide subjective estimates and sales forecast, determine expected sales volume, estimate operating expenses, determine cash flow and formulate projected financial statements that take into consideration economic forecast maintaining a twelve-month projection. The budget should reflect operational budget including sales budget, operations budget, labor budget, administrative expense budget, cash budget, planned income statement and financial budget (cash budget and projected balance sheet). The budget will be continuously monitored through the review of financial reports and accounting records to determine if allocated funds have been spent as specified. It also will be revised by removing the data for the period just ended and adding estimated budget for the same period next year. The company is interested in detailed quarterly budgets to reflect seasonal trends in vacation packages sales and the resorts occupancy; the budgeted income statement should present an overview of various component projections of revenue and expenses for the budgeting period and budgeted balance sheet that can disclose some unfavorable financial conditions that management might want to avoid.

The petitioner also stated the following:

[The beneficiary] is expected to spend 40% of his time on [sic] working on the budget analysis, 40% of his time on economic forecast based on the analysis, and 20% of his time on financial analysis of the company's financial situation.

In the support letter, the petitioner stated the following regarding the minimum requirements of the proffered position:

The responsibilities described above are specialized and requires [sic] complex budget and financial analysis. These tasks require the incumbent to have, at minimum, a Bachelor's Degree in Economics or related field and proven work experience. These minimum prerequisites for the offered position clearly mark it as a specialty occupation, one requiring a person of distinguished merit and ability.

The petitioner also submitted a credential evaluation, dated February 1, 2013, by the Foundation for International Services, Inc., stating that the beneficiary has the U.S. equivalency of a bachelor's degree in economics and a master's degree in economics.

On April 25, 2013, the director issued an RFE requesting that the petitioner provide evidence to establish that the proffered position qualifies as a specialty occupation.

In response to the RFE, counsel for the petitioner submitted a brief and the petitioner submitted a response letter and additional evidence. In the response letter dated June 19, 2013, the petitioner included the following breakdown of the duties of the proffered position, along with the percentage of time devoted to each duty per week:

Specific Job Duties	Percentage of Time	Level of Responsibility
Collect the company's budgets, accounting and sales reports, inventory reports, administrative and sales expenses and cash budgets to maintain expenditure control of the company and currently managed resorts in [redacted] and developing resort in [redacted]. Collect and analyze proposed operational and financial budgets to include new resorts in the South Pacific region.	10%	Medium
Examine the proposed budget estimates for completeness, accuracy and compliance with the company's procedures and objectives. Use cost-benefit analysis to review proposed changes in sales of vacation packages and plans of improvements, remodeling and infrastructure development of the managed resort properties as well as including new resort properties in the company's portfolio.	20%	High
Evaluate proposed budgets and provide to the company's senior management detailed reports on objective measures of	10%	High

the company's past operations, sales, financial effectiveness and sustainability of operations of the resort properties including operating and administrative expenses using past budgets and research data of South Pacific regional economic and financial developments.		
Perform the analysis of budgets and financial statements. Horizontal, vertical and ratio analyses will be performed in order to make industry comparison and trend analysis. After the analysis is completed the Analyst should consult with management to discuss their plans and prospects, identifying problem areas and offering possible solutions and alternatives[.]	15%	High
Provide advice and technical assistance with cost analysis of vacation packages and company's fiscal allocation and operational budget preparation[.]	5%	High
Prepare consolidated and detailed budget reports and statements that provide subjective estimates and sales forecast, determine expected sales volume, estimate operating expenses, determine cash flow and formulate projected financial statements that take into consideration economic forecast maintaining a twelve-month projection.	10%	High
Prepare sales budget, operations budget, labor budget, administrative expense budget, cash budget, planned income statement and financial budget (cash budget and projected balance sheet).	10%	High
Continuous monitoring through the review of financial reports to determine if allocated funds have been spent as specified[.]	5%	Medium
Prepare detailed quarterly budgets to reflect seasonal trends in vacation packages sales and the resorts' occupancy.	5%	High
Prepare the budgeted income statement should [sic] present an overview of various component projections of revenue and expenses for the budgeting period and budgeted balance sheet that can disclose some unfavorable financial conditions that management might want to avoid.	10%	High

In response to the RFE, the petitioner also submitted additional evidence, including the following:

- Copy of a document entitled "Resort Master Management Agreement[.]" by and between [REDACTED] and [the petitioner], [REDACTED]. The agreement is dated May 4, 2010.
- Copy of a document entitled "[REDACTED]" [REDACTED]. The agreement is dated January 30, 2013 and states that it is by and between [REDACTED] and [the petitioner].

- A printout of the O\*NET Online Summary Report for: 13-2031.00 – Budget Analysts.
- Copies of several job postings for budget analyst positions.
- A letter dated May 25, 2013 from [REDACTED]
- Promotional materials from the [REDACTED]

After reviewing the RFE response, the director found that the record failed to establish how the beneficiary's immediate duties would necessitate services at a level requiring the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty. The director denied the petition on July 10, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

## II. THE LAW

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

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

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

*Specialty occupation* means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may

show that its particular position is so complex or unique that it can be performed only by an individual with a degree;

- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), 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 issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation.

As a preliminary matter, the AAO finds that, as reflected in the description of the duties of the proffered position as quoted above, the proffered position has been described in terms of generalized and generic functions that fail to sufficiently convey the substantive nature of either the specific matters upon which the beneficiary would focus or the practical and theoretical level of knowledge that the beneficiary would have to apply to those matters.

For instance, while the petitioner claims in its letter in response to the RFE that the majority (20%) of the beneficiary's time will be devoted to "[e]xamin[ing] the proposed budget estimates for completeness, accuracy and compliance with the company's procedures and objectives [and] [using] cost-benefit analysis to review proposed changes in sales of vacation packages and plans of improvements, remodeling and infrastructure development of the managed resort properties as well as including new resort properties in the company's portfolio," the petitioner provides neither substantive information about, nor documentary evidence illustrating, the nature of the "budget estimates" that the beneficiary would be "examining for accuracy and compliance," the nature and level of the analysis that the beneficiary would have to apply, or particular knowledge that the beneficiary would employ. Likewise, the evidence of record sheds no light on the substantive nature of the "cost-benefit analysis" that the petitioner says that the beneficiary would perform, or on the nature of the beneficiary's influence over the proposed changes to "sales of vacation packages or plans of improvement."

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

Upon review of the record of proceeding, the petitioner has failed to provide sufficient details regarding the nature and scope of the beneficiary's employment or any substantive evidence regarding the actual work that the beneficiary would perform. Without a meaningful job

description, the record lacks evidence sufficiently concrete and informative to demonstrate that the proffered position requires a specialty occupation's level of knowledge in a specific specialty. The tasks as described fail to communicate (1) the actual work that the beneficiary would perform, (2) the complexity, uniqueness and/or specialization of the tasks, and/or (3) the correlation between that work and a need for a particular level education of highly specialized knowledge in a specific specialty. The petitioner's assertions with regard to the position's educational requirement are conclusory and unpersuasive, as they are not supported by the job description or substantive evidence.

The petitioner should note that because they bear upon the AAO's analyses of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) that follow below, the above findings and comments with regard to the evidentiary deficiencies in this record of proceeding should be deemed incorporated into this decision's treatment of each of those criteria.

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

As noted above, the petitioner stated that the beneficiary would be employed in a budget analyst position. However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered 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.

The AAO recognizes the U.S. Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>1</sup> As previously discussed, the petitioner asserts in the LCA that the proffered position falls within the occupational category "Budget Analysts."

The AAO reviewed the information in the *Handbook* regarding the occupational category "Budget Analysts," including the sections regarding the typical duties and requirements for this occupational category.<sup>2</sup> However, the *Handbook* does not support the conclusion that this

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<sup>1</sup> The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. The AAO's references to the *Handbook* are to the 2014-2015 edition available online.

<sup>2</sup> For additional information regarding the occupational category "Budget Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 Edition, Budget Analysts,

occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation.

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

A bachelor's degree is typically required to become a budget analyst, although some employers prefer candidates with a master's degree.

### **Education**

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. For the federal government, a bachelor's degree in any field is enough for an entry-level budget analyst position. State and local governments have varying requirements but usually require a bachelor's degree in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

### **Licenses, Certifications, and Registrations**

Government budget analysts may earn the Certified Government Financial Manager credential from the Association of Government Accountants. To earn this certification, candidates must have a minimum of a bachelor's degree, 24 credit hours of study in financial management, 2 years of professional-level experience in governmental financial management, and they must pass a series of exams. To keep the certification, budget analysts must take 80 hours of continuing education every 2 years.

### **Advancement**

Entry-level budget analysts begin with limited responsibilities, but advancement is common. As analysts gain experience, they have the opportunity to advance to intermediate and senior budget analyst positions.

### **Important Qualities**

**Analytical skills.** Budget analysts must be able to process a variety of information, evaluate costs and benefits, and solve complex problems.

**Communication skills.** Budget analysts need strong communication skills because they often have to explain and defend their analyses and recommendations in meetings and legislative committee hearings.

**Detail oriented.** Creating an efficient budget requires careful analysis of each budget item.

**Math skills.** Most budget analysts need math skills and should be able to use certain software, including spreadsheets, database functions, and financial analysis programs.

**Writing skills.** Budget analysts must present technical information in writing that is understandable for the intended audience.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Budget Analysts, available on the Internet at <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-4> (last visited Feb. 25, 2014).

The *Handbook* does not report that, as an occupational group, "Budget Analysts" require at least a bachelor's degree in a *specific specialty*. Rather, the *Handbook* states that "[e]mployers generally require budget analysts to have at least a bachelor's degree." The *Handbook* also states that "[f]or the federal government, a bachelor's degree in any field is enough for an entry-level budget analyst position." The AAO notes that while the *Handbook* mentions that "courses in statistics or accounting are helpful," it does *not* state a requirement for a bachelor's degree in a specific specialty. Moreover, "[s]ometimes, budget-related or finance-related work experience can be substituted for formal education." Thus, this is not indicative of an occupation for which there is a normal requirement for at least a baccalaureate or higher degree, in a specific specialty, or its equivalent.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 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 satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner submitted a letter from [REDACTED]

[REDACTED] The letter is dated May 25, 2013. The

<sup>3</sup> The definition of "emeritus" in *Webster's New College Dictionary* 375 (Third Edition, Hough Mifflin Harcourt 2008) is "[r]etired but retaining an honorary title corresponding to that held immediately before retirement."

AAO reviewed the letter in its entirety. However, as discussed below, the letter from [REDACTED] is not persuasive in establishing the proffered position as qualifying as a specialty occupation position.

Based upon a complete review of [REDACTED] letter and curriculum vitae, the AAO notes that, while [REDACTED] may, in fact, be a recognized authority on various topics, he has failed to provide sufficient information regarding the basis of his claimed expertise on the matters upon which he is opining in his letter. Also, [REDACTED] did not provide any further supporting documentation to establish his credentials as a recognized authority on the relevant educational requirements for the proffered position. [REDACTED] curriculum vitae indicates that he has served in various positions at [REDACTED] from 1978 to the present (professor emeritus since 2003; associate dean and director of international programs at the School of Business from 1999 to the present; and professor of business from 1978 to the present). Based upon the information provided, the vast majority of [REDACTED] experience, including his current work, is in the academic setting. According to his curriculum vitae, [REDACTED] most recent "publication or other creative achievement" was in 1995 when he contributed a chapter to a book regarding academic initiatives. His most recent presentation at a professional conference was in 1993. His most recent honor was in 1997 for teaching.<sup>4</sup>

[REDACTED] claims that he is qualified to comment on the position of budget analyst because he has "over 35 years of experience as an Accountant, including [a] CPA certificate in 1976." In the letter, [REDACTED] states that "the need for a university-trained budget analyst is especially acute in a very small business (5 or fewer employees), which would certainly not likely have more than one person performing the financial/economic duties described." He also writes that "[c]ompanies in the travel industry, similar in nature to [the petitioner] routinely hire and employ professionals to perform identical tasks to the tasks described. . . . It is widely regarded that the minimum requirements for being employed in a position such as a Budget Analyst would be a Bachelor's degree in Economics, or a closely related field." However, without further clarification, it is unclear how [REDACTED] education, training, skills and/or experience would translate to expertise or specialized knowledge regarding the *current recruiting and hiring practices* among tour operator and resort support services business (as designated by the petitioner in the Form I-129) similar to the petitioner for budget analyst positions (or parallel positions).

[REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement. Likewise, he does not provide a substantive, analytical basis for his opinion and ultimate conclusions. His opinion does not relate his conclusions 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.

The AAO observes that [REDACTED] states in his letter that "[t]he attorney representing [the petitioner] has provided the documentation, which I used in forming my professional opinion. I am in no

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[REDACTED] submitted an eleven page curriculum vitae. Aside from his employment with [REDACTED] University, there are three entries that are dated within seven years of the advisory opinion, including a semester at sea voyage during the spring of 2006; serving as an adjunct professor in France during the summers until 2007; and serving as a faculty consultant for a foundation until 2007. The vast majority of entries on [REDACTED] curriculum vitae are from the 1980's and early 1990's.

position to authenticate any of these documents. I am forming my professional opinion based on the assumption that the documents are accurate.” Upon review of [REDACTED] opinion letter, there is no indication that he possesses any knowledge of the petitioner's proffered position and its business operations beyond this information. There is no evidence that [REDACTED] 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. [REDACTED] 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 nor provide sufficiently substantive and analytical bases for his opinion. Notably, [REDACTED] restated the duties provided in the petitioner's support letter. As previously discussed, the generalized description provided by the petitioner may be appropriate when defining the range of duties that may be performed within an occupational category, but it fails to adequately convey the substantive work that the beneficiary will perform within the petitioner's business operations and, thus, provides insufficient details to be relied upon to establish the specific beneficiary's role and responsibilities for the duration of the period requested for H-1B employment. Accordingly, the very fact that [REDACTED] attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion.

Further, it must be noted that there is no indication that the petitioner and counsel advised Dr. [REDACTED] that the petitioner characterized the proffered position as a low, entry-level budget analyst position, for a beginning level employee who has only a basic understanding of the occupation (as indicated by the wage-level on the LCA). The wage-rate indicates that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. It appears that [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the job duties and responsibilities.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the advisory opinion rendered by [REDACTED] is not probative evidence to establish that the proffered position qualifies as a specialty occupation. The conclusions reached by [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record.

The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). As a reasonable exercise of its discretion the AAO discounts the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The above findings and comments with regard to the evidentiary deficiencies of [REDACTED] opinion letter shall be deemed incorporated into this decision's analysis of each of the relevant criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally, the AAO notes that on appeal counsel cites 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. . . . 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." 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). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.<sup>5</sup> 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.

Upon review of the totality of the evidence in the entire record of proceeding, the AAO concludes that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that a requirement for at least a bachelor's degree in a specific specialty, or its equivalent, is normally

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<sup>5</sup> 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.

required for entry into the occupation. Furthermore, the duties and requirements of the proffered position, as described in the record of proceeding, do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a *specific specialty*, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I).

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 first alternative prong calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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)).

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

In support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations, the petitioner submitted copies of five advertisements.

In order for the petitioner to establish that another organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Here, the petitioner submits no evidence demonstrating that any of the advertising companies are similar in size and scope to that of the petitioner, a tour operator and resort support services business, with five employees. In the brief in response to the RFE, counsel acknowledges that the "Petitioner has been unable to locate job postings from identically-sized firms whose primary business combines tour operation and resort management. . . ." Thus, the record is devoid of sufficient information regarding the advertising companies to conduct a legitimate comparison of each of these firms to the petitioner. Without such evidence, advertisements submitted by a petitioner are 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 another organization share the same general characteristics, 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) may be considered.

The submitted advertisements establish at best that a bachelor's degree is generally required, but do not establish that the advertising employers require at least a bachelor's degree in a *specific specialty* or its equivalent. In addition, even if all of the job postings indicated that a bachelor's or higher degree in a specific specialty or its equivalent were required, the petitioner fails to establish that the submitted advertisements are relevant in that the posted job announcements are not for parallel positions in similar organizations in the same industry. For instance, the first advertisement was posted by the [REDACTED] and is a recruitment effort to recruit eligible candidates for future job opportunities. Moreover, the [REDACTED] more likely than not employs more than five individuals and is a local government office, and therefore dissimilar from the petitioner. The second submitted advertisement is for a "Senior Analyst, Budget" and not for an entry level budget analyst position as the petitioner's proffered position. Also, the advertising organization is not of the same size and in the same industry as the petitioner. Likewise, the third, fourth and fifth advertisements are for, respectively, a retail business operating 113 stores, a financial services group, and an oil and gas company, and therefore in different industries and dissimilar in size from the petitioner.

Finally, the AAO notes that the record contains a letter from [REDACTED] stating that "[a] Bachelor's degree in Economics, or closely related field[,] is the travel industry standard for the position of Budget Analyst." As previously discussed, [REDACTED] asserts a general industry educational standard for organizations similar to the petitioner without referencing any supporting authority or any empirical basis for the pronouncement. Thus, the AAO incorporates by reference into this decision's analysis of this criterion its previous findings and comments with regard to the evidentiary deficiencies of [REDACTED] opinion letter.

As a result, the petitioner has not established that similar companies in the same industry routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>6</sup> Therefore, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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<sup>6</sup>The petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from just five job postings with regard to the common educational requirements for entry into parallel positions in similar organizations in the insurance agency / brokerage industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the job of budget analyst for a tour operator and resort support services business required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly refute the findings of the *Handbook* published by the Bureau of Labor Statistics that such a position does not require at least a baccalaureate degree in a specific specialty for entry into the occupation in the United States.

The petitioner also failed to satisfy 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 failed to credibly demonstrate exactly what the beneficiary will do on a day-to-day basis such that complexity or uniqueness can even be determined. As noted earlier, the AAO here incorporates, and adopts into the analysis of this prong, its earlier comments and findings with regard to the evidentiary deficiencies of the descriptions of the proposed duties and the position that they are said to comprise. As noted and reflected in those comments and findings, the petitioner has not sufficiently developed relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the budget analyst duties as described in this record of proceeding comprise a position that requires the theoretical and practical application of a body of highly specialized knowledge in a specific specialty that only a person with a bachelor's or higher degree in a specific specialty or its equivalent can perform it.

The AAO also finds that the LCA submitted by the petitioner in support of the instant petition is materially inconsistent with a claim that the petitioner has established the relative complexity or uniqueness required to satisfy this second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO must note that the petitioner designated the proffered position as a Level I (entry level) position on the LCA.<sup>7</sup> This designation is indicative of a comparatively low, entry-level position relative to others within the occupation.<sup>8</sup> That is, in accordance with the relevant DOL

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<sup>7</sup> Wage levels should be determined only after selecting the most relevant Occupational Information Network (O\*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>8</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

**Level I** (entry) wage rates are assigned to job offers for beginning level employees who

explanatory information on wage levels, this Level I wage rate is only appropriate for a position in which the beneficiary is only required to have a basic understanding of the occupation and would be expected to perform routine tasks that require limited, if any, exercise of judgment. This wage rate also indicates that the beneficiary would be closely supervised; that his work would be closely monitored and reviewed for accuracy; and that he would receive specific instructions on required tasks and expected results.

By way of comparison, the AAO notes that a position classified at a Level IV (fully competent) position is designated by the DOL for employees who “use advanced skills and diversified knowledge to solve unusual and complex problems.” Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services of a person with at least a bachelor’s degree in a specific specialty.

While the petitioner asserts that the beneficiary “will have a high level of responsibility and . . . be unsupervised in the performance of his duties,” the wage level designated by the petitioner in the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner’s assertions regarding the demands, level of responsibilities and requirements of the proffered position. 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).

The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique than positions in the pertinent occupation that can be performed by persons without at least a bachelor’s degree in a specific specialty, or its equivalent.

Consequently, as the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other budget analyst positions that can be performed by a person without at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Next, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific

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

*Id.*

specialty, or the equivalent, for the position.

Here, the petitioner did not submit evidence to satisfy this criterion. Therefore, the petitioner has not established a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or the equivalent.<sup>9</sup>

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the record of the proceeding, the AAO finds that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations. The evidence of record does not convey either the substantive nature or the specialization and complexity of any specific duties that the beneficiary would perform. That is, the proposed duties have not been described with sufficient specificity to establish their nature as more specialized and complex than the nature of the duties of other positions in the pertinent occupational category whose performance does not require the application of knowledge usually associated with attainment of at least a bachelor's degree in a specific specialty, or its equivalent.

In this regard, the AAO here incorporates into this analysis its earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is indicative of a low, entry-level position relative to others within the pertinent occupational category and hence one not likely distinguishable by relatively specialized and complex duties.

As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only 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

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<sup>9</sup> To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally* *Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I wage, the petitioner effectively attests that the proposed duties are of relatively low complexity as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

As earlier noted, the *Prevailing Wage Determination Policy Guidance* issued by DOL states the following with regard to Level I wage rates:

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

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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

The pertinent guidance from DOL, in its *Prevailing Wage Determination Policy Guidance*, describes the next higher wage-level as follows:

**Level II** (qualified) wage rates are assigned to job offers for qualified employees who have attained, either through education or experience, a good understanding of the occupation. They perform moderately complex tasks that require limited judgment. An indicator that the job request warrants a wage determination at Level II would be a requirement for years of education and/or experience that are generally required as described in the O\*NET Job Zones.

*Id.*

The above descriptive summary indicates that even this higher-than-designated wage level is appropriate for only "moderately complex tasks that require limited judgment." The fact that this higher-than-here-assigned, Level II wage-rate itself indicates performance of only "moderately complex tasks that require limited judgment," is very telling with regard to the relatively low level of complexity imputed to the proffered position by virtue of its Level I wage-rate designation.

Further, the AAO notes the relatively low level of complexity that even this Level II wage-level reflects when compared with the two still-higher LCA wage levels, neither of which was designated on the LCA submitted to support this petition.

The aforementioned *Prevailing Wage Determination Policy Guidance* describes the Level III wage designation as follows:

**Level III** (experienced) wage rates are assigned to job offers for experienced employees who have a sound understanding of the occupation and have attained, either through education or experience, special skills or knowledge. They perform tasks that require exercising judgment and may coordinate the activities of other staff. They may have supervisory authority over those staff. A requirement for years of experience or educational degrees that are at the higher ranges indicated in the O\*NET Job Zones would be indicators that a Level III wage should be considered.

Frequently, key words in the job title can be used as indicators that an employer's job offer is for an experienced worker . . . .

*Id.*

The *Prevailing Wage Determination Policy Guidance* describes the Level IV wage designation as follows:

**Level IV** (fully competent) wage rates are assigned to job offers for competent employees who have sufficient experience in the occupation to plan and conduct work requiring judgment and the independent evaluation, selection, modification, and application of standard procedures and techniques. Such employees use advanced skills and diversified knowledge to solve unusual and complex problems. These employees receive only technical guidance and their work is reviewed only for application of sound judgment and effectiveness in meeting the establishment's procedures and expectations. They generally have management and/or supervisory responsibilities.

*Id.*

Here the AAO again incorporates its earlier discussion and analysis regarding the implications of the petitioner's submission of an LCA certified for the lowest assignable wage-level. By virtue of this submission, the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the occupation, and that, by comparison with DOL's instructive comments about the next higher level (Level II), the proffered position did not even involve "moderately complex tasks that require limited judgment" (the level of complexity noted for the next higher wage-level, Level II).

Finally, the AAO again notes that the record contains a letter from [REDACTED] states that "[t]he position of Budget Analyst at [the petitioner] requires sufficiently specialized and complex job skills, which require a minimum of a bachelor's degree in Economics, or closely

related field.” The AAO incorporates by reference into this decision’s analysis of this criterion its previous findings and comments with regard to the evidentiary deficiencies of [REDACTED] opinion letter.

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold 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.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought.<sup>10</sup> 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.

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<sup>10</sup> The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). However, as the appeal is dismissed for the reasons discussed above, the AAO will not further discuss the additional issues and deficiencies that it observes in the record of proceedings.