



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 03 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

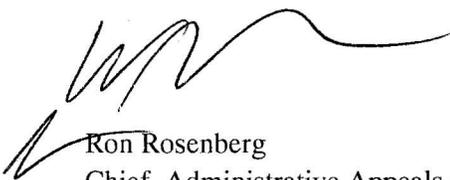
ON BEHALF OF PETITIONER:

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 (hereinafter "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 petition will be denied.

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner describes itself as an "Agribusiness, including cattle breeding, feed yards, ranching, animal nutrition" and states that it was established in [REDACTED]. In order to employ the beneficiary in what it designates as a "Cattle Feedlot Specialist" position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition, finding that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

As will be discussed below, we have determined that the director did not err in her decision to deny the petition on the specialty occupation issue. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

We base our decision upon our review of the entire record of proceeding, which includes: (1) the petitioner's Form I-129 and the supporting documentation filed with it; (2) the service center's request for additional evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B and counsel's submissions on appeal.

II. THE LAW

The issue before us is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. 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), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens

who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. The specific duties of the proffered position, combined with the nature of the petitioning entity's business operations, are factors to be considered. USCIS must examine the ultimate employment of the alien, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. The critical element is not the title of the position nor an employer's self-imposed standards, but whether the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation, as required by the Act.

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a Cattle Feedlot Specialist position, and that it corresponds to Standard Occupational Classification (SOC) code and title 45-2099, Agricultural Workers, All Other, from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level II position.

The visa petition gives the petitioner's address in [REDACTED], Idaho, but states that the beneficiary would perform his duties at [REDACTED], Idaho. With the visa petition, counsel submitted evidence that the beneficiary received a Veterinary Physician and Zoological Technician degree from the [REDACTED] in Mexico. An evaluation in the record states that the beneficiary's degree is equivalent to a doctor of veterinary medicine degree from a U.S. institution.

Counsel also submitted (1) a letter, dated May 15, 2012, from [REDACTED], a doctor of veterinary medicine, on the letterhead of [REDACTED] and (2) a letter, dated March 20, 2013, from the petitioner's Chief Financial Officer (CFO).

In his May 15, 2012 letter, [REDACTED] states that he is the veterinarian of record for [REDACTED] a wholly-owned subsidiary of the petitioner, but that in practice he makes only seven visits per year to the [REDACTED] Idaho feed yards. He stated:

The agricultural professionals that assist my group at the employer's feed yard require specialized education, training and/or experience in the area of animal science, with a special focus on the medical care of large farm animals.

Dr. [REDACTED] further stated that the beneficiary's duties include, but are not limited to:

1. Closely scrutinize a high volume of cattle in the pens on a daily basis to look for animals that need medical attention. Cattle are often afflicted with various diseases that must be quickly identified by an agricultural professional before spreading to the general population.
2. Operate proprietary computer programs to record and prepare reports regarding the data required to track individual cattle illness and related treatments.
3. The position is charged with the responsibility to necropsy cattle that die and must be able to recognize lesions that correlate with a correct diagnosis.
4. From an operational standpoint, [the beneficiary] must identify cattle that are ready for delivery to market.
5. Assist with the coordination and management of the intake and processing of the cattle, which requires frequent pregnancy checks when the cattle first arrive to the employer's feed yard to ensure that pregnant heifers do not enter the pen population, animal tagging and tracking and preliminary vaccinations.
6. Administer vaccines and other medical treatments at the employer's on-site hospital that are unique to the feed yard production setting.
7. Monitor drug inventories and compare theoretical usage from a computer program to actual inventory usage on a daily basis.

Dr. [REDACTED] stated that the proffered position requires knowledge of cattle anatomy, significant posture and behavior, and feedlot operational practices. He stated that caring for large beef cattle requires advanced education and unique skill sets that exceed average requirements for caring for companion animals, and that only a small percentage of agricultural professionals possess the appropriate education and experience to work in a high volume commercial cattle setting. He further stated:

In short, an educational background in veterinary science and/or animal science provides the proper education for the successful execution of my group's medical protocols at [REDACTED] feed yard.

In a March 20, 2013 letter, the petitioner's CFO provided a similar, but more detailed, description of duties. The CFO stated that the proffered position requires the following duties:

- Examine and investigate feedlot cattle and animal specimens to determine the presence of diseases, injury or other health concerns. This duty requires a determination of whether the animal needs transfer to the on-site hospital for treatment.
- Analyze and reevaluate animal diagnoses and health records to determine if sick cattle require continued pharmaceutical treatments.
- Review and comprehend treatment protocols via computer systems.
- Updates animal health records and/or ear tags as needed.

- Manage our Walco animal health tracking system and monitor medicine usage on a daily basis to ensure animals receive correct dosages. This duty also requires the professional to compare theoretical medicine usage from a computer program to actual inventory usage on a daily basis.
- Conduct animal surgery, such as necropsies, to determine causes of cattle death. This duty includes preparation of necropsy reports or dead records.
- Oversee/monitor hospital herd, recovery of animals, and their reentry into the feedlot pens.
- Identify cattle that are ready for market.
- Record and research data pertaining to animal care and prepare data summaries and reports to document the findings and results.
- When disease strikes a large population of cattle, the position must obtain samples of cattle specimen for analysis and laboratory testing.
- Coordinate intake and processing of newly arrived cattle to detect pregnancy in heifers, tag animals, administer injections and coordinate other processing procedures.
- Supervise and coordinate feedlot activities outside contractor companies who provide commercial feed yard services.
- Advise/monitor/ensure compliance with company written protocols and ISO quality standards, which govern humane treatment of [the petitioner's] Beef cattle.
- Administer subcutaneous and intramuscular injections, vaccinations, parasiticides and growth implants according to quality assurance and animal handling procedures.

The petitioner's CFO further stated:

The medical care required for beef cattle and the related management expertise required to provide such care in a commercial setting is more complex and specialized [than caring for small animals like dogs and cats.]

As to the requisite educational qualification for the proffered position, the petitioner's CFO stated:

Based on the complexity of beef cow disease and related healthcare, and the knowledge required to manage production issues at a commercial feedlot, a qualified candidate must possess a Bachelor's degree in Veterinary Science, Animal Science or an appropriate agricultural field of science.

On May 6, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The service center provided a non-exhaustive list of items that might be used to satisfy the specialty occupation requirements. In that RFE, the director referred to the proffered position as a veterinary assistant position.

In response, counsel submitted: (1) an evaluation, dated May 13, 2013, of the proffered position; (2) evidence pertinent to three other employees of the petitioner; (3) evidence pertinent to an employee of another company; (4) five vacancy announcements; and (5) counsel's own letter, dated July 23, 2013. The vacancy announcements will be addressed in the "Analysis" section below.

The May 13, 2013 evaluation of the proffered position was prepared by Professor [REDACTED] MS, DVM, an associate professor of large animal sciences at [REDACTED]. In it, Professor [REDACTED] provided a duty description that is substantially similar to that contained in the petitioner's CFO's March 20, 2013 letter. As to the educational requirements of such a position, Professor [REDACTED] stated:

Companies seeking to employ a Cattle Feedlot Specialist require prospective candidates to have a strong foundation in the field of Animal Sciences, Veterinary Science, or a closely related field, which can only be obtained through a Bachelor's degree or progressively responsible experience in the field of Animal Sciences, Veterinary Science, or a closely related field[.]

Professor [REDACTED] also stated the following:

The primary difference between an Associate's degree in Animal Sciences or Veterinary Sciences and a Bachelor's degree in these fields is that the Bachelor's allows a student to gain more in depth knowledge on a few particular areas in the field of choices, such as: Soil Science, Comparative Animal Anatomy, Domestic Animal Behavior, or Applied Veterinary Epidemiology. An individual with a Bachelor's degree in the field of Animal Sciences, Veterinary Sciences, or closely related fields, will have the flexibility to perform many different functions, not specific to the above mentioned duties, due to the knowledge he/she possesses.

Professor [REDACTED] concluded that the proffered position "is clearly a specialty position, and requires the services of someone with advanced training through a Bachelor's program in Animal Sciences, Veterinary Science, or a closely related field."

The other employees of the petitioner for whom evidence was submitted are [REDACTED]

The evidence submitted indicates that [REDACTED] received the title of Agricultural Engineer specializing in Zootechnics from the Autonomous [REDACTED] Mexico and that an H-1B visa petition the instant petitioner submitted to employ him was approved. A Form W-2, Wage and Tax Statement, shows that the petitioner employed him in some capacity during at least part of 2008, paying him \$5,018.44 for his work during that year.

The evidence pertinent to [REDACTED] shows that he received the title of *Medico Veterinario y Zootechnista* from the [REDACTED] Mexico, which was evaluated as equivalent to a bachelor's degree in veterinary medicine awarded in the United States. The evidence also indicates that an H-1B visa petition the instant petitioner submitted to employ Mr. [REDACTED] was approved. A pay stub provided shows that the petitioner employed Mr. [REDACTED] in some capacity for at least part of 2012.

Evidence pertinent to [REDACTED] indicates that he received a license in veterinary medicine from the [REDACTED] Mexico which was evaluated as equivalent to a bachelor's degree in veterinary medicine awarded in the United States. Further, the record shows that the petitioner filed an H-1B visa petition to employ Mr. [REDACTED] whose visa petition was approved. A pay stub provided shows that the petitioner employed Mr. [REDACTED] in some capacity during at least part of 2012.

Other evidence shows that [REDACTED] which counsel implied on appeal is owned by the petitioner, filed an H-1B visa petition for [REDACTED] to work as an Agricultural Technician. A letter from the general manager of [REDACTED] indicates that Mr. [REDACTED] has a title of Agricultural Engineer Zootechnician from the Autonomous [REDACTED] Mexico. Evidence also shows that Mr. [REDACTED] was previously approved for a TN visa with another company.

In his July 23, 2013 letter, counsel stated that he believes that the evidence previously submitted demonstrates that the proffered position requires a minimum of a bachelor's degree in animal or veterinary science or a related agricultural field. Counsel objected to the characterization of the proffered position as a veterinary assistant position, stating that veterinary assistants typically provide care in an office setting, whereas the proffered position requires work in a rural, commercial feedlot setting and the care of beef cattle is much more complex than the care required for dogs and cats. Counsel also cited two unpublished AAO decisions for the proposition that the instant visa petition is approvable.

The director denied the petition on August 7, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position

as an Agricultural Worker position as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel submitted, *inter alia*, (1) two Forms 9089, Applications for Permanent Employment Certification, that the petitioner filed on July 26, 2009 and July 28, 2009 in other cases; (2) a letter, dated June 29, 2009, from the petitioner's operations manager; (3) a letter, dated July 25, 2012, from [REDACTED] the petitioner's benefits manager; (4) a second letter, dated July 27, 2012, from [REDACTED] (5) a letter, dated September 7, 2013, from counsel; (6) two additional vacancy announcements; and (7) a brief. The vacancy announcements will be discussed in the "Analysis" section below.

In both of the Applications for Permanent Employment Certification, the petitioner provided the following description of the duties to be performed:

Provide medical care to feedlot cattle in accordance with protocol and safety standards established by veterinarians, ISO registration, and internal procedures; examine cattle to detect and identify disease/pregnancy; measure the consumption of feed by ration reports for purposes of managing the appropriate amount of animal feed; administer vaccinations, injections and implants according to quality assurance and animal handling procedures; perform surgeries, such as necropsies, and maintain computerized records of sick cattle and their country of origin; manage "Walco[]" animal health system, check medicines in and out and monitor medicine usage on a daily basis to ensure animals receive correct dosages.

We observe that those duty descriptions are largely identical to the descriptions of the duties of the proffered position, and that the position those employment certifications pertain to are Veterinary Assistant/Technician positions. This is striking because counsel objected to the classification of the proffered position, with a very similar duty description, as a veterinary assistant position.

The petitioner's operations manager's June 29, 2009 letter pertains to a petition filed by the instant petitioner to employ [REDACTED] as a veterinary assistant. The duties described in that letter as the duties of that veterinary assistant position are:

- Continuously monitor cattle corrals to spot and identify sick cattle.
- Record data pertaining to animal care and prepare data summaries and reports to document findings and results.
- Measure the consumption of feed by ration reports for purposes of managing the appropriate amount of animal feed.

- Provide medical care to feedlot cattle in accordance with the protocol and safety standards established by supervising/consulting veterinarians and ISO registration;
- Perform minor surgeries, such as necropsies, and maintain computerized records of sick cattle and their country of origin.
- Examine cattle to detect pregnancy in heifers.
- Responsible for castration of bulls.
- Administer implants to fatten cattle.
- Administer vaccinations and subcutaneous and intramuscular injections according to Beef Quality Assurance and Agri Beef animal handling procedures.
- Manage "Walco" animal health system, check medicines in and out and monitor medicine usage on a daily basis to ensure animals receive correct dosages.

Again, we observe that these duties are very similar, and some are identical, to the duties attributed to the proffered position, and that it is ostensibly a description, by an official of the petitioner, of the duties of a veterinary assistant position. Yet, we again note that counsel has objected to the classification of the proffered position as a veterinary assistant position.

The July 25, 2012 letter from [REDACTED] pertains to a previous TN visa petition the instant petitioner filed for the instant beneficiary. It provides a duty description that is substantially the same as those previously attributed to the proffered position, and states that the position requires, "a Bachelor's degree in Veterinary Science, Animal Science or a related field of agricultural science." The July 27, 2012 letter from [REDACTED] reiterates that duty description and educational requirement.

In his September 7, 2013 letter, counsel asserts that the petitioner has an established history of hiring agricultural professionals at its feedlots. Counsel states: "including the beneficiary, the Petitioner has hired at least eight (8) key professionals who have degrees in animal science, veterinary medicine or agricultural engineering to coordinate feedlot medical care." Counsel again cites unpublished AAO decisions for the proposition that the instant visa petition should be approved.

In the subsequently filed brief, counsel asserts that the proffered position qualifies as a specialty occupation position pursuant to several of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A). He asserts, for instance, that the proffered position is more specialized and complex than a typical veterinary position because it involves care of a high volume of large animals. Counsel further states:

Based on the complexity of beef cow diseases and related healthcare, and the scientific knowledge that must be applied on a daily basis, [the petitioner] requires that a qualified individual possess a Bachelor's of Science degree in veterinary medicine, animal science or a related field of agricultural science.

Counsel also identified four degreed individuals, those mentioned above, whom the petitioner has employed.

IV. ANALYSIS

Initially, we observe that counsel cited unpublished AAO decisions for the proposition that the instant visa petition should be approved. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel is free, of course, to demonstrate that the facts of those cases are similar to the facts of the instant case, to refer to the reasoning of those cases, and to urge that the reasoning be extended to the instant case. However, the cases cited have no probative value as precedent.

We also find that the opinion submitted by Professor [REDACTED] has no probative value. In that regard, we acknowledge Professor [REDACTED] May 13, 2013 evaluation of the proffered position which states that duties substantially similar to those of the proffered position require "a strong foundation in the field of Animal Sciences, Veterinary Science, or a closely related field, which can only be obtained through a Bachelor's degree or progressively responsible experience in the field of Animal Sciences, Veterinary Science, or a closely related field[.]"

First, Professor [REDACTED] does not discuss the number of years of "progressively responsible experience in the field of Animal Sciences, Veterinary Science, or a closely related field" that he deems sufficient to be the equivalent of a Bachelor's degree in any of these fields. As Professor [REDACTED] acknowledges that progressively responsible experience in the field of Animal Sciences, Veterinary Science, or a closely related field, alone, is an alternative to a Bachelor's degree in these fields, we find that his lack of discussion regarding the requisite number of years of such experience makes his opinion deficient on its face, as materially incomplete. Second, Professor [REDACTED] noted the difference between an Associate's degree and Bachelor's degree in Animal Sciences or Veterinary Sciences and found that an individual with a Bachelor's degree "will have the flexibility to perform many different functions, not specific to the above mentioned duties." It appears thus, that Professor [REDACTED] also acknowledges that the proffered position may require only an Associate's degree while speculating that the petitioner may need the flexibility to perform different functions not specific to the mentioned duties. Professor [REDACTED] provides no foundational basis for his speculation. These aspects alone are sufficient reasons for us to accord no probative value to Professor [REDACTED] opinion as it leaves in doubt material parts of the factual foundation upon which Professor [REDACTED] relied as a basis for his opinion.

Moreover, Professor [REDACTED] does not list the specific information he reviewed in order to reach his opinion. His opinion letter provides little substantive analysis as to how he reached his conclusion

that the position proffered here requires a bachelor's degree. Professor [REDACTED] opinion is not accompanied by, and does not expressly indicate whether he visited the petitioner's business premises or communicated with anyone affiliated with the petitioner as to what the performance of the list of duties supplied by the petitioner would actually require. Nor does Professor [REDACTED] letter articulate whatever familiarity he may have obtained regarding the particular content of the work the petitioner would require of the beneficiary. Professor [REDACTED] also fails to reference and discuss any studies, surveys, industry publications, other authoritative publications, or other sources of empirical information which he may have consulted in the course of whatever evaluative process he may have followed. In short, while there is no standard formula or "bright line" rules for producing a persuasive opinion regarding the educational requirements of a particular position, a person purporting to provide an expert evaluation of a particular position should establish greater knowledge of the particular position in question than Professor [REDACTED] has done here.

Further, Professor [REDACTED] stated that he is "qualified to determine whether the position requires the candidate to have specialized knowledge in the position of Cattle Feedlot Specialist because of my previous education, my professional positions in the field, and my publications in the field." Professor [REDACTED] attaches his curriculum vitae including a list of his professional experience, publications and presentations as well as his affiliations and service. However, even considered in the aggregate, the documents submitted by Professor [REDACTED] fail to support his claim of expertise as the documents do not establish that he has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - so structured as to provide him with special knowledge of H-1B specialty occupation requirements or of the minimum educational requirements for Cattle Feedlot Specialists. While Professor [REDACTED] claims he is qualified to make this determination, on the basis of his position and the contents of his curriculum vitae, he does not persuasively articulate - and the documents presented do not show - exactly how his background so recommends his opinion in the area of the minimum educational requirements for particular Cattle Feedlot Specialist positions or in the area of any position's qualification for H-1B specialty occupation recognition in accordance with the governing statutes and USCIS regulations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988). We find that the letter from Professor [REDACTED] does not establish that the proffered position is a specialty occupation under any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) and incorporate this finding in our discussion of each criterion below.

To determine whether the proffered position qualifies as a specialty occupation position, we turn first to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be

performed only by an individual with a degree in a specific specialty. Factors we consider when determining these criteria include: whether the *Handbook*, on which we routinely rely for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty 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)).

We will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹

The proffered position has been described with various job titles. The petitioner stated that it is a cattle feedlot specialist position. In the RFE, the service center appeared to assert that the proffered position is a veterinary assistant position. Although counsel objected to that characterization, duty descriptions the petitioner previously provided for veterinary assistant positions correspond very closely to the duty descriptions the petitioner attributes to the proffered position.

However, the petitioner attests on the LCA that the proffered position corresponds to SOC code and title 45-2099, Agricultural Workers, All Other from O*NET. The *Handbook* describes the occupation of "Agricultural Workers" as follows:

What Agricultural Workers Do

Agricultural workers maintain the quality of farms, crops, and livestock by operating machinery and doing physical labor under the supervision of farmers, ranchers, and other agricultural managers.

Duties

Agricultural workers typically do the following:

- Harvest and inspect crops by hand
- Irrigate farm soil and maintain ditches or pipes and pumps
- Operate and service farm machinery
- Spray fertilizer or pesticide solutions to control insects, fungi, and weeds
- Move shrubs, plants, and trees with wheelbarrows or tractors

¹ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. Our references to the *Handbook* are to the 2014 – 2015 edition available online.

- Feed livestock and clean and disinfect their pens, cages, yards, and hutches
- Examine animals to detect symptoms of illness or injury
- Use brands, tags, or tattoos to mark livestock to identify ownership and grade
- Herd livestock to pastures for grazing or to scales, trucks, or other enclosures
- Administer vaccines to protect animals from diseases

The following are examples of types of agricultural workers:

Crop, nursery, and greenhouse farmworkers and laborers do numerous tasks related to growing and harvesting grains, fruits, vegetables, nuts, and other crops. They plant and seed, prune, irrigate, harvest, and pack and load crops for shipment.

Farmworkers also apply pesticides, herbicides, and fertilizers to crops. They repair fences and some farm equipment.

Nursery and greenhouse workers prepare land or greenhouse beds for growing horticultural products such as trees, plants, flowers, and sod. They also plant, water, prune, weed, and spray the plants. They may cut, roll, and stack sod; stake trees; tie, wrap, and pack plants to fill orders; and dig up or move field-grown shrubs and trees.

Farm and ranch animal farmworkers care for live animals, including cattle, sheep, pigs, goats, horses, poultry, finfish, or shellfish. These animals are usually raised to supply meat, fur, skins, feathers, eggs, milk, or honey.

These farmworkers may feed, herd, brand, weigh, and load animals. They also keep records on animals; examine animals to detect diseases and injuries; and administer medications, vaccinations, or insecticides.

Many workers clean and maintain animal housing areas every day. On dairy farms, animal farmworkers operate milking machines.

Agricultural equipment operators use a variety of farm equipment to plow and sow seeds, as well as maintain and harvest crops. They may use tractors, fertilizer spreaders, balers, combines, threshers, and trucks. These workers also operate machines such as conveyor belts, loading machines, separators, cleaners, and dryers. Workers may make adjustments and minor repairs to equipment.

Animal breeders use their knowledge of genetics and animal science to select and breed animals that will produce offspring with desired traits and characteristics. For example, they breed chickens that lay more eggs, pigs that produce leaner meat, and

sheep with more desirable wool. Other animal breeders breed and raise cats, dogs, and other household pets.

To know which animals to breed and when to breed them, animal breeders keep detailed records. Breeders note animals' health, size and weight, and the amount and quality of the product they produce. Animal breeders also track the traits of animals' offspring.

Some animal breeders work as consultants for farmers, but others breed and raise their own animals for sale or future breeding. Breeders fix and clean animals' shelters, feed and water animals, and oversee animals' health.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Agricultural Workers," <http://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm#tab-2> (last visited July 2, 2014).

The *Handbook* makes clear that the positions described in the chapter pertinent to Agricultural Workers include workers who care for animals. It states that workers described in that category may feed livestock; examine animals to detect symptoms of illness or injury; use tags to mark livestock; and administer vaccines to protect animals from diseases. The duties attributed to agricultural workers include many of the specific duties attributed to the proffered position. On the balance, the AAO finds that the proffered position corresponds to that of an agricultural worker position as described in the *Handbook*.²

The *Handbook* states the following about the educational requirements of agricultural worker positions.

How to Become an Agricultural Worker

Agricultural workers typically receive on-the-job training. Many do not need a high school diploma before they begin working, but animal breeders typically need a high school diploma and prior work experience.

Education and Training

Most agricultural workers do not need a high school diploma. They usually receive short-term on-the-job training.

² We acknowledge that counsel has argued that the proffered position is another type of position entirely. However, the visa petition is supported by an LCA that is valid for employment in an agricultural worker position, and not in any other type of position. If counsel were to prevail in his assertion that the proffered position is not an agricultural worker position but some other type of position, we would be obliged to deny the visa petition on other grounds, as the visa petition would not, in that event, be supported by a corresponding certified LCA.

Most animal breeders have a high school diploma, and typically have several years of experience in a related occupation.

Most agricultural workers receive some short-term on-the-job training. Employers instruct them on how to use simple farming tools, as well as more complex machinery. More experienced workers are also expected to perform routine maintenance on the tools they use.

Important Qualities

Dexterity. Agricultural workers need excellent hand-eye coordination to harvest crops and operate farm machinery.

Listening skills. Agricultural workers need to work well with others. Because they take instructions from farmers and other agricultural managers, effective listening is critical.

Physical stamina. Agricultural workers need to be able to perform laborious tasks repeatedly.

Physical strength. Agricultural workers must be strong enough to lift heavy objects, including tools and crops.

Mechanical skills. Agricultural workers must be able to operate complex farm machinery. They also occasionally do routine maintenance on the machinery.

Work Experience in a Related Occupation

Animal breeders typically have prior work experience before they begin interacting with livestock. Ranch workers may transition into animal breeding after they become more familiar with animals and learn how to handle them.

Advancement

Agricultural workers may advance to crew leader or other supervisory positions. The ability to speak both English and Spanish is helpful for agricultural supervisors.

Some agricultural workers aspire to become farmers, ranchers, or agricultural managers or to own their own farms and ranches. Knowledge of produce and livestock may provide an excellent background for becoming a purchasing agent or buyer of farm products. Those who earn a college degree in agricultural science could become agricultural or food scientists.

Id. at <http://www.bls.gov/ooh/farming-fishing-and-forestry/agricultural-workers.htm#tab-4> (last visited July 2, 2014).

The *Handbook* makes clear that agricultural worker positions, as a category, do not require a minimum of a bachelor's degree in a specific specialty or its equivalent. To the contrary, many do not even require a high school diploma.

Where, 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 this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such a 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." Again, 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. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."³

Further, we find that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge of providing care for beef cattle, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

Further still, the petitioner has designated the proffered position as a Level II position on the submitted LCA, indicating that it is a position for a worker who performs moderately complex tasks that require limited judgment. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The classification of the proffered position as a Level II position does not support the assertion that a minimum of a bachelor's degree in a specific specialty or its equivalent is normally required for entry into this particular position, especially as the *Handbook* suggests that many agricultural

³ We have discussed in detail the lack of probative value we accord to Professor [REDACTED] opinion regarding the specialty occupation nature of the proffered position at the beginning of our analysis.

worker positions do not require such a specialized degree or equivalent, or even a high school diploma.⁴

As the evidence of record does not establish that the particular position here proffered is one for which the normal minimum entry requirement is a baccalaureate or higher degree, or the equivalent, in a specific specialty, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is 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).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook*, or other reliable and authoritative source, indicates that there is a standard, minimum entry requirement of at least a bachelor's degree in a specific specialty or its equivalent.

Also, there are no submissions from professional associations 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.

In his May 15, 2012 letter [REDACTED] asserted that the proffered position requires knowledge of cattle anatomy, significant posture and behavior, and feedlot operational practices. He stated that the knowledge required for the position exceeds average requirements for caring for companion animals. He also stated that a background in veterinary science or animal science would be a suitable preparation for the proffered position. He did not, however, indicate that the position requires a bachelor's degree in a specific specialty or its equivalent as a minimum for entry. In fact, he indicated that some unspecified amount and type of experience would suffice in place of education.

⁴ If we found that the proffered position is not, in fact, a Level II agricultural worker position, that is, an agricultural worker position characterized by moderately complex tasks that require limited judgment, then, again, we would deny the visa petition as not supported by a corresponding certified LCA.

Upon review of the vacancy announcements provided, the vacancy announcements are not all for positions with companies in the petitioner's industry. One advertiser stated that it is a yogurt producer. Another vacancy announcement was placed by an employment service, and states that the client is a nutrition company, but the balance of the vacancy announcement suggests the client manufactures animal feed. Yet another advertiser stated that it is also an animal feed manufacturing company. One vacancy announcement does not identify the employer either by its name or its industry. One vacancy announcement was placed by the [REDACTED] and another was placed by the U.S. Department of Agriculture. Although one vacancy announcement was placed by a feedlot company, the petitioner has not established that the company is similar to the petitioner in any other respect, such as size, level of staffing, or revenue.

Further, the positions announced have not been shown to be for positions parallel to the proffered position. The job titles announced include Dairy Specialist, Animal Welfare Specialist, Animal Husbandry Manager/Herdsperson, Animal Health Technician, Research Specialist, and Veterinary Assistant/Technician, and none of the vacancy announcements contains a duty description sufficiently detailed that it demonstrates that the position announced is parallel to the proffered position.

Further still, not all of the vacancy announcements submitted require a minimum of a bachelor's degree in a specific specialty or its equivalent. One states, "The ideal candidate will have a BS or advanced degree in Animal Science or Nutrition." That the ideal candidate would have such a degree does not denote that it is a minimum requirement. Another vacancy announcement states that an associate's degree and five years' experience would qualify one for the position. We note that an associate's degree and five years of experience is not equivalent to a bachelor's degree pursuant to the salient regulations. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Another vacancy announcement states that it requires a bachelor's degree "in zoology, biology, chemistry, or agricultural subjects." 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" 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 either of two disparate fields, such as chemistry and agriculture, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added).

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from seven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁵

⁵ USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven

Thus, the evidence of record does not 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. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The evidence of record also does not 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." A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties that comprise the proffered position entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties that collectively constitute the proffered position require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that a Level II agricultural worker position likely does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category 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).

is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

We will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁶

Although counsel stated, in his September 7, 2013 letter that the petitioner has hired at least eight degreed professionals to work in the proffered position, the record contains evidence pertinent to only four. The record indicates that the petitioner operates feed lots in several states and has been in business since 1968. The record contains no evidence, nor even an assertion, that the four workers for whom evidence was supplied are all of the people the petitioner has employed in the proffered position, nor even that they constitute a majority of the people the petitioner now employs in the position.

The evidence pertinent to those four people is insufficient to establish that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and insufficient, therefore, to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, we will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties is so specialized and complex that knowledge required to perform them 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. The duties of the proffered position, such as monitoring cattle to identify sick or pregnant animals; monitoring feed consumption and medicine usage; providing care in accordance with protocol and safety standards; administering vaccinations, injections, and implants; performing castrations and necropsies; and maintaining records and producing reports, for instance, do not contain sufficient indication of such specialization and complexity that their performance is usually associated with a minimum of a bachelor's degree in a specific specialty or its equivalent. The proposed duties have not been shown to be more specialized and complex than the duties of agricultural worker positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

In his brief, counsel asserts that the proffered position is specialized and complex because it involves care of a high volume of large animals. However, the record contains insufficient evidence

⁶ While a petitioner may believe or otherwise assert that a proffered position requires a degree, 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 a 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").

to demonstrate that caring for a large volume of cattle is so much more specialized and complex than other agricultural worker positions, or, more to the point, so specialized and complex that it requires a minimum of a bachelor's degree in a specific specialty or its equivalent.⁷

Further, as was noted above, the petitioner filed the instant visa petition for a Level II agricultural worker position, a position requiring performance of moderately complex tasks that require limited judgment. This does not support the proposition that the duties of the position are so specialized and complex that their performance is associated with attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as many agricultural worker positions require no such specialized college degree or equivalent, or even a high school diploma.

For all of the reasons explained above, the evidence of record does not satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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.

V. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁷ Had Professor Peters' evaluation, or any other evidence, or counsel's assertion, established that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, we would have been obliged to revisit the issue of whether the visa petition is supported by a corresponding LCA, that is, whether the proffered position is actually an agricultural worker position characterized by moderately complex tasks requiring limited judgment as the petitioner attested to on the certified LCA.