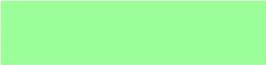


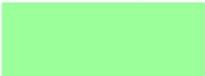


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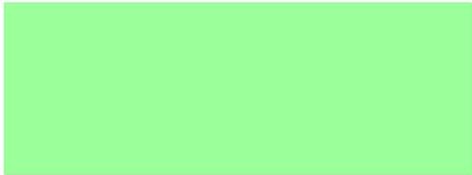


DATE: **JUL 30 2014** OFFICE: VERMONT SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the Vermont Service Center on April 12, 2012. On the Form I-129 petition, the petitioner describes itself as a fashion, apparel and accessories wholesale company with two employees. In order to employ the beneficiary in a position to which it assigned the job title of "Junior Financial 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).

The director denied the petition on May 1, 2013, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

The record of proceeding before us contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (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 (Notice of Appeal) and supporting documentation. We reviewed the record in its entirety before issuing our decision.

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

I. THE LAW

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. 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.

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), 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.

II. FACTUAL AND PROCEDURAL HISTORY

In this matter, the petitioner stated on the Form I-129 petition that it is a fashion, apparel, and accessories wholesaler, and that it seeks the beneficiary's services in a position that it designates as a "Junior Financial Analyst" to work on a full-time basis. The petitioner was established in 2011 and has 2 employees and a gross annual income of \$1.5 million.

The petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational classification of "Financial Analysts" - SOC (ONET/OES) Code 13-2051, and indicates that the rate of pay for the proffered position will be \$45,000.¹

In a letter dated April 8, 2012, the petitioner explained that it is a fashion apparel and accessories wholesaler. It claimed to have two partners and indicated that it expected to hire five employees "in the next few months." The petitioner provided the following list of duties associated with the proffered position:

- 1) Identify profitable transaction deals by using linear regression models and time series models[;]

¹ In Section G of the LCA, we note that the petitioner did not select a wage level in the "Prevailing Wage Information" section and instead checked the "N/A" box. We will address this issue later in the decision.

- 2) Forecast each transaction's required capital to ensure management's desired cash flow level;
- 3) Translate financial and accounting documents from Chinese into English and English into Chinese. Provide and explain financial and accounting data between our clients and our management;
- 4) Manage financial and accounting functions, especially supervise accounts payable, and work on inventory management, depreciation, prepaid expenses and insurances;
- 5) Compile budget data and documents based on estimated revenues and expenses, and previous budgets;
- 6) Help auditors to implement financial and accounting control and to review budgets;
- 7) Analyze financial information and deal with journal entries, bank reconciliation and reconciliation of various general ledger and balance sheet accounts;
- 8) Compile and analyze financial information detailing assets, liabilities and equity, and prepare financial reports such as balance sheet, profit and loss statement, etc. to summarize current and projected financial position;
- 9) Perform analysis of the company's financial status by analyzing its financial statements;
- 10) Analyze domestic and international fashion apparel and accessories wholesale markets' trends by performing advanced analysis of statistical data.

The petitioner further stated that the proffered position required an individual "with advanced education in the field," as well as proficiency in Chinese and familiarity with international financial analyses.

In further support of eligibility, the petitioner submitted (1) copies of the beneficiary's diplomas and transcripts and (2) excerpts from its website.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on July 18, 2012. In the RFE, the director asked the petitioner to provide additional evidence to establish that the proffered position qualifies as a specialty occupation. The notice included a request to provide a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the specific job duties, the percentage of time to be spent on each duty, the level of responsibility, hours per week of work, etc. The director outlined the evidence to be submitted.

In response, the petitioner submitted a letter and additional evidence. That response letter, dated September 28, 2012, included the same statement of duties as initially submitted, but included a breakdown of the percentage of time the beneficiary would devote to each stated duty. Specifically, the petitioner indicated as follows:

- Identify profitable transaction deals by using linear regression models and time series models; (5%)

- Forecast each transaction's required capital to ensure management's desired cash flow level; (10%)
- Translate financial and accounting documents from Chinese into English and English into Chinese. Provide and explain financial and accounting data between our clients and our management; (5%)
- Perform analysis of the company's financial status by analyzing its financial statements; (15%)
- Manage financial and accounting functions, especially supervise accounts payable, and work on inventory management, depreciation, prepaid expenses and insurances; (10%)
- Compile budget data and documents based on estimated revenues and expenses, and previous budgets; (10%)
- Help auditors to implement financial and accounting control and to review budgets; (10%)
- Analyze financial information and deal with journal entries, bank reconciliation and reconciliation of various general ledger and balance sheet accounts; (10%)
- Compile and analyze financial information detailing assets, liabilities and equity, and prepare financial reports such as balance sheet, profit and loss statement, etc. to summarize current and projected financial position; (15%)
- Analyze domestic and international fashion apparel and accessories wholesale markets' trends by performing advanced analysis of statistical data. (10%)

The petitioner also provided (1) a copy of its business plan; (2) a Professional Position Evaluation Report by Dr. [REDACTED] and (3) copies of job postings for positions it claimed are parallel to the proffered position within similar organizations.

The director denied the petition on May 1, 2013, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, newly-retained counsel for the petitioner asserts that the director's denial is erroneous, and submits a brief and additional evidence.² In its brief, the petitioner contends that the director's inference that the proffered position is not a specialty occupation based on the nature of the industry in which it is engaged is misplaced, and further asserts that the job postings submitted establish a hiring standard for degreed individuals within the petitioner's industry. In addition to the appeal brief, counsel submits (1) an excerpt from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* pertaining to the occupation of financial analyst; (2) an excerpt from the O*NET Online pertaining to the occupation of financial analyst; (3) another copy of the job vacancy announcement previously submitted in response to the RFE; and (4) excerpts from [REDACTED] website describing their Mathematics in Science degree program.

² The brief submitted on appeal is signed by the petitioner's president. Other than the Form G-28, Notice of Entry of Appearance as Attorney or Representative, and a cover letter listing the exhibits accompanying the appeal, there is no further submissions by counsel in support of the appeal.

III. ANALYSIS

To make our determination whether the proffered position qualifies as a specialty occupation, we turn to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As a preliminary matter, we here state our finding that the evidence of record does not present the proffered position and its constituent duties in sufficient detail to establish either the substantive nature of the work that the beneficiary would perform in the proffered position or any particular educational or education-equivalent level of any body of highly specialized knowledge in any specific specialty that the beneficiary would have to apply to perform the position.

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position proffered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, 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."

We recognize the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

In pertinent part, the *Handbook* states the following with regard to the general duties of positions within the Financial Analysts occupational group:

Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments.

Duties

Financial analysts typically do the following:

- Recommend individual investments and collections of investments, which are known as portfolios

³ The *Handbook*, which is available in printed form, may also be accessed on the Internet at <http://www.bls.gov/ooh/>. Our references to the *Handbook* are to the 2014-2015 edition available online.

- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements to determine its value
- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy-side analysts and sell-side analysts.

- Buy-side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.
- Sell-side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and belong to neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is become more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

Portfolio managers supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio, but also are expected to explain investment decisions and strategies in meetings with investors.

Fund managers work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

Ratings analysts evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

Risk analysts evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last visited July 29, 2014).

The O*NET Summary Report for the Financial Analysts occupational category also clearly indicates that positions within the Financial Analysts occupational group are not inwardly focused upon the employer's financial status but rather, focus outwardly upon other business entities for possible investment by the financial analyst's employer. That Summary Report identifies the following tasks or duties for Financial Analysts positions:

- Conduct quantitative analyses of information affecting investment programs of public or private institutions.

* * *

- Draw charts and graphs, using computer spreadsheets, to illustrate technical reports.
- Inform investment decisions by analyzing financial information to forecast business, industry, or economic conditions.
- Monitor developments in the fields of industrial technology, business, finance, and economic theory.
- Interpret data on price, yield, stability, future investment-risk trends, economic influences, and other factors affecting investment programs.

- Monitor fundamental economic, industrial, and corporate developments by analyzing information from financial publications and services, investment banking firms, government agencies, trade publications, company sources, or personal interviews.
- Recommend investments and investment timing to companies, investment firm staff, or the public.
- Determine the prices at which securities should be syndicated and offered to the public.
- Prepare plans of action for investment, using financial analyses.
- Evaluate and compare the relative quality of various securities in a given industry.
- Present oral or written reports on general economic trends, individual corporations, and entire industries.

See National Center for O*NET Development. 13-2051.00. *O*NET OnLine*. Retrieved July 29, 2014, from <http://www.onetonline.org/link/summary/13-2051.00>.

Read in the total context of all of the information in the *Handbook* and in the O*NET about the Financial Analysts occupational group, it is clear that the associated research, monitoring, analysis and other functions with regard to a business entity or entities does not refer to activities directed to the employer that is engaging the services of a financial analyst, as the petitioner intends in this case, but rather business entities that the employer firm is evaluating for potential investment. We find, therefore, that the duties of the proffered position as described by the petitioner do not appear to fall within the scope of the Financial Analysts occupational category as addressed in either the *Handbook* or the O*NET.

Additionally, the petitioner provides minimal documentation related to its financial operations or organization that would shed light on the substantive nature or complexity of the work to be performed by the beneficiary. Other than its statements on the Form I-129 petition, in which the petitioner states that it is a fashion apparel and accessories wholesaler established in 2011, with 2 employees, and with a gross annual income of \$1.5 million, the petitioner provided no information at all regarding the current financial profile of its operations. Rather, we find that the petitioner describes the proffered position and its duties in relatively abstract terms of generalized functions (such as, for instance, "manage financial and accounting functions" and "analyze financial information.").

Although the petitioner submitted a copy of its business plan, this document did not provide any substantive information regarding the nature of the petitioner's financial operations. It merely claims that the petitioner is seeking to expand its apparel and jewelry markets by obtaining exclusive distribution rights in China. While it provides a short list of its recurring costs and its current and projected sales, there is no evidence in the record to support these claims. 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)).

The petitioner provides insufficient evidence that would indicate that it has taken any substantive steps towards any expansion or investment activities.

We further find that neither the descriptions of the proposed duties nor the discussions of the proffered position in this record of proceeding provide substantial details sufficient to convey either the substantive nature of the matters upon which the beneficiary would work or any particular applications of a body of highly specialized knowledge that the beneficiary would have to apply to perform such work.

Such relatively vague and abstract information is not indicative of a need for at least a bachelor's degree level of knowledge in any specific specialty. Likewise, we find, the evidence of record fails to provide information sufficient to establish relative complexity, specialization, and/or uniqueness as distinguishing attributes of the proffered position or its constituent duties.

For adjudicative efficiency and economy, we hereby incorporate these comments and findings into the analysis of each of the criteria of 8 C.F.R. § 214.2(h)(4)(iii)(A), which will follow later in this decision.

Even if the petitioner had established that the proffered position falls into the financial analyst category, the evidence of record is insufficient to establish that such a position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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

The petitioner stated that the beneficiary would be employed in a position to which it assigned the job title of "Junior Financial Analyst." 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.

As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Financial Analysts." Although we find that the evidence of record does not establish the proffered position as belonging within this occupational group, we shall address why the evidence of record would not satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) even if the proffered is analyzed as a position within the Financial Analysts occupational group.

We reviewed the information in the *Handbook* regarding the occupational category "Financial Analysts," including the sections regarding the typical duties and requirements for this occupational category.⁴ However, the *Handbook* does not support a conclusion that this occupation normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for entry into the occupation.

More specifically, the subchapter of the *Handbook* entitled "How to Become a Financial Analyst" states the following about this occupational category:

Financial analysts typically must have a bachelor's degree, but a master's degree is often required for advanced positions.

Education

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

Licenses, Certifications, and Registrations

The Financial Industry Regulatory Authority (FINRA) is the main licensing organization for the securities industry. It requires licenses for many financial analyst positions. Most of the licenses require sponsorship by an employer, so companies do not expect individuals to have these licenses before starting a job. Certification is often recommended by employers and can improve the chances for advancement. An example is the Chartered Financial Analyst (CFA) certification from the CFA Institute, which financial analysts can get if they have a bachelor's degree, 4 years of experience, and pass three exams. Financial analysts can also become certified in their field of specialty.

⁴ For additional information regarding the occupational category "Financial Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., Financial Analysts, <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last visited July 29, 2014).

Advancement

Financial analysts typically start by specializing in a specific investment field. As they gain experience, they can become portfolio managers, who supervise a team of analysts and select the mix of investments for the company's portfolio. They can also become fund managers, who manage large investment portfolios for individual investors. A master's degree in finance or business administration can improve an analyst's chances of advancing to one of these positions.

Important Qualities

Analytical skills. Financial analysts must process a range of information in finding profitable investments.

Communication skills. Financial analysts must explain their recommendations to clients in clear language that clients can easily understand.

Computer skills. Financial analysts must be adept at using software packages to analyze financial data, see trends, create portfolios, and make forecasts.

Decision making skills. Financial analysts must provide a recommendation to buy, hold, or sell a security. Fund managers must make split-second trading decisions.

Detail oriented. Financial analysts must pay attention to details when reviewing possible investments, as small issues may have large implications for the health of an investment.

Math skills. Financial analysts use mathematical skills when estimating the value of financial securities.

To be successful, financial analysts must be motivated to seek out obscure information that may be important to the investment. Many work independently and must have self-confidence in their judgment.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-4> (last visited July 29, 2014).

The *Handbook* does not indicate that at least a bachelor's degree in a specific specialty or its equivalent is normally the minimum requirement for entry into this occupation. Although the *Handbook* states that most financial analysts typically need a bachelor's degree to enter the occupation, the *Handbook* does not indicate that such a degree must be *in a specific specialty*.⁵

⁵ For instance, the first definition of "most" in *Webster's New College Dictionary* 731 (Third Edition, Hough Mifflin Harcourt 2008) is "[g]reatest in number, quantity, size, or degree." As such, if merely 51% of financial analyst positions require at least a bachelor's degree, it could be said that "most" financial analyst positions require such a degree. It cannot be found, therefore, that a particular degree requirement for "most" positions in a given occupation equates to a normal minimum entry requirement for that

Rather, the narrative of the *Handbook* reports that "[a] number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering."

Thus, for the reasons discussed above, the *Handbook* does not support a claim that "Financial Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

We note the petitioner's submission of an evaluation by Dr. [REDACTED] a consultant for [REDACTED] and a full-time faculty member at [REDACTED], Georgia. Dr. [REDACTED] concludes that the proffered position requires at least a bachelor's degree in finance or a related subject in order to adequately perform the duties of the position.

Dr. [REDACTED] however, appears to base her opinion on the description of the proffered position as provided by the petitioner, and not on any objective evidence. Although Dr. [REDACTED] refers to numerous job vacancy announcements in her evaluation, copies of these documents are not provided, nor does she include any additional details regarding the nature of the advertising companies. Dr. [REDACTED] conclusion that these postings, viewed together with the petitioner's description of the proffered position, establish that a degree in finance is required to perform the duties of the proffered position is not persuasive. 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 Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

occupation, much less for the particular position proffered by the petitioner. Instead, a normal minimum entry requirement is one that denotes a standard entry requirement but recognizes that certain, limited exceptions to that standard may exist. To interpret this provision otherwise would run directly contrary to the plain language of the Act, which requires in part "attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States." Section 214(i)(1) of the Act.

Upon review of the totality of the evidence in the entire record of proceeding, we conclude 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 normally the minimum requirement for entry into the occupation is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner 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)(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 such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (*D. Minn.* 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D. N.Y. 1989).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate by reference the previous discussion on the matter.

The petitioner designated its business operations under the corresponding North American Industry Classification System (NAICS) code 424330 designated for "Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers" on the LCA.⁶

The petitioner must establish that similar organizations in fact routinely require specialty-degreed individuals in parallel positions. For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner.

⁶ According to the U.S. Census Bureau, NAICS is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last visited July 29, 2014).

We will first refer back to Dr. [REDACTED] evaluation, which cites to seven job vacancy announcements for the position of Junior Financial Analyst. As previously noted, Dr. [REDACTED] does not provide copies of these job vacancy announcements, nor does she assert that the postings are for parallel positions within organizations similar to the petitioner (i.e., a fashion apparel and accessory wholesaler). Her conclusion that these seven postings establish a common degree requirement for parallel positions within the petitioner's industry, therefore, is accorded no evidentiary weight.

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 three advertisements in response to the RFE. We find, however, that the petitioner fails 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.

The petitioner submitted job vacancy announcements from [REDACTED] a "glamorous and fun lifestyle brand for women and girls of all ages," [REDACTED], a company that "designs, manufactures and distributes watches," and an undisclosed advertiser described as a "luxury fashion brand." We will address each posing individually below.

The posting by [REDACTED] is for the position of financial analyst. We first note that [REDACTED] is a national brand, and according to the job vacancy announcement, it has more than 120 stores, and also sells its products through select department stores and online through its website. This company, therefore, is not similar in size and scope to the petitioner, an apparel and accessory wholesaler with two employees.

Moreover, the advertised position of financial analyst is distinguished in title from the proffered position of "junior" financial analyst, and indicates that at least two years of experience in finance is required for the position. Moreover, while the posting requires a bachelor's degree, it states that the degree may be in accounting, finance, or business administration. Since there must be a close correlation between the required specialized studies and the position, this posting's requirement of a degree with a generalized title, such as business administration, without further specification, does not support the assertion that a position is a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

The second posting is for a senior financial analyst with [REDACTED] [REDACTED] is a publicly held, worldwide company which, according to its vacancy announcement, employs more than 1,400 people. This entity also is distinguishable from the petitioner's 2-person apparel and accessory wholesale company.

In addition, although this posting also requires a bachelor's degree in accounting or finance, this posting is for a "senior financial analyst" and requires a minimum of five years of experience in a similar position. This posting, therefore, is likewise not persuasive evidence of an industry-wide degree standard since it is a worldwide company and is soliciting a senior financial analyst, unlike the junior, less-experienced position offered to the beneficiary here.

Finally, the record contains an advertisement for a junior financial analyst posted by an undisclosed company. Although the position title is the same as the proffered position, the posting indicates that a degree or 1-2 years of work experience would be sufficient for entry into this position.

The posting also fails to disclose the name of the advertiser, noting only that the company seeking the job prospect is a "luxury fashion / retail" company. The posting contains no information regarding the size and scope of the advertising entity, nor is the nature of its business operations clearly defined. Consequently, since this advertisement indicates that relevant experience can be substituted for a degree, this posting does not establish a common degree requirement among similar positions within the petitioner's industry.

The petitioner failed to supplement the record of proceeding to establish that the advertising organizations are similar to it. That is, the petitioner has not provided any information regarding which aspects or traits (if any) it shares with the advertising organizations. Moreover, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position.

We note that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, we find that they do not establish that a requirement for a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common 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. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

At the outset, we refer the petitioner back to our earlier comments and findings with regard to the record's presentation of the proffered position and its duties in terms of generalized functions that are not described in sufficient detail to establish either whatever substantive work their actual performance would entail or the nature and educational or education-equivalency level of knowledge in any specific specialty that such work would require. As reflected in those discussions, we find that the evidence of record does not establish relative complexity or uniqueness as distinguishing features of the proffered position, let alone as aspects that would

establish the position as requiring the service of a person with at least bachelor's degree, or the equivalent, in a specific specialty.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the proffered position's duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

By virtue of the position's title, it appears that the beneficiary, as a junior financial analyst, is required to have only a basic understanding of the occupation. Based on the title of the petition and the minimal information provided regarding the "financial analysis" the beneficiary will perform, there is no indication 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.

In other words, the record lacks sufficiently detailed information to distinguish the proffered position as so complex or unique that it can only be performed can be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent. Consequently, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

We turn next to 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 specialty, or its equivalent, for the position.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

While a petitioner may believe and assert that a proffered position requires a specific 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 petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree, or its equivalent, to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Moreover, to satisfy this criterion, the record must establish 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 the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation 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 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.

The petitioner states in response to the RFE that it is a new company and has not previously employed a junior financial analyst. Since there is no hiring history for the proffered position, there is likewise no evidence to establish that the petitioner normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Finally we find that the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires the petitioner to establish that the nature of the proffered position's 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 entire record of the proceeding, we find that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations.

We again refer the petitioner to our earlier discussions with regard to the generalized and relatively abstract information provided about the nature of the proposed duties. As there reflected, the evidence of record simply does not provide sufficient details about the nature of the proposed duties to establish the level of specialization and complexity required to satisfy this particular criterion.

By the same token, 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 positions in the Financial Analysts 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.

As the evidence of record has not established that the nature of the duties of the proffered position 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, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

IV. BEYOND THE DIRECTOR'S DECISION

Beyond the decision of the director, we note that the proffered wage of \$45,000 per year for the occupational category "Financial Analysts" - SOC (ONET/OES) Code 13-2051 as claimed on the LCA and in the petitioner's letter of support was lower than the prevailing wage in the area of intended employment at the time the LCA was filed. Specifically, the prevailing wage for "Financial Analysts" at Level I for ██████████ County, New York was \$62,566 per year when the LCA was certified on April 2, 2012. See the All Industries Database for 7/2011 - 6/2012 for Financial Analysts at the Foreign Labor Certification Data Center, <http://www.flcdatacenter.com/OesQuickResults.aspx?code=13-2051&area=35644&year=12&source=1> (last visited July 29, 2014). The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct wage level in order for it to be found to correspond to the petition. To permit otherwise would result in a petitioner paying a wage lower than that required by section 212(n)(1)(A) of the Act, by allowing that petitioner to simply submit an LCA for a different wage level at a lower prevailing wage than the one that it claims it is offering to the beneficiary. As such, the petitioner has failed to establish that it would pay the beneficiary an adequate salary for the work, as required under the Act, if the petition were granted.

V. CONCLUSION

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the service center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

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

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