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



U.S. Citizenship  
and Immigration  
Services

DATE: **JUN 12 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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. INTRODUCTION

On the Form I-129 visa petition, the petitioner describes itself as a "Real Estate/Investments" company, established in 1999.<sup>1</sup> Specifically, the petitioner provides businesses and private investors with real estate asset investment analyses and advice on subject properties, enabling investors to make investment decisions. In order to employ the beneficiary in what it designates as an investment analyst position at a salary of \$60,000 per year,<sup>2</sup> 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 found the initial evidence insufficient to establish eligibility for the benefit sought, and issued a Request for Evidence (RFE) on August 12, 2013. Within the RFE, the director outlined the specialty occupation regulatory criteria and requested specific documentation to establish that the proffered position qualifies for classification as a specialty occupation. In response, counsel submitted evidence and a written response.<sup>3</sup>

The director denied the petition on October 2, 2013, finding that the record of proceeding did not sufficiently describe the petitioner's enterprise as one in which an investment analyst would be required, and noting that USCIS was unable to discern the duties the beneficiary would actually perform. On appeal, counsel asserted that the director's basis for denial was erroneous, that USCIS mischaracterized the nature of the petitioner's business, and contended that the petitioner satisfied three of the four evidentiary requirements articulated in 8 C.F.R. § 214.2(h)(4)(iii)(A).

As will be discussed below, the AAO has determined that the director did not err in her decision to deny the petition. Accordingly, the director's decision will not be disturbed. The appeal will be dismissed, and the petition will be denied.

The AAO bases its decision upon its 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

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<sup>1</sup> The petitioner provided a North American Industry Classification System (NAICS) Code of 525990, "Other Financial Vehicles." U.S. Dep't of Commerce, U.S. Census Bureau, North American Industry Classification System, 2012 NAICS Definition, "525990 Other Financial Vehicles," <https://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited June 11, 2014).

<sup>2</sup> The Labor Condition Application (LCA) submitted by the petitioner in support of the petition was certified for use with a job prospect within the "Financial Analysts" occupational classification, SOC (O\*NET/OES) Code 13-2051, and a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels.

<sup>3</sup> On appeal, the petitioner is represented by new counsel. We will refer to the petitioner's prior counsel and current counsel collectively as "counsel."

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. STANDARD OF REVIEW

In the exercise of its administrative review in this matter, as in all matters that come within its purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the law specifically provides that a different standard applies. In pertinent part, that decision states the following:

Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought.

\* \* \*

The "preponderance of the evidence" of "truth" is made based on the factual circumstances of each individual case.

\* \* \*

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director 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 is probably true.

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Foncesca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

*Id.* at 375-76.

We conduct our review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's

determination that the evidence of record does not establish that the proffered position is a specialty occupation was correct. Upon review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, we find that the evidence of record does not establish that the claim of a proffer of a specialty occupation position is "more likely than not" or "probably" true. In other words, as the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads us to believe that the petitioner's claim that the proffered position qualifies as a specialty occupation is "more likely than not" or "probably" true.

### III. 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.

#### IV. ANALYSIS

Based upon a complete review of the record of proceeding, we find that the evidence fails to establish that the position as described constitutes a specialty occupation.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in international business with a minor in economics from the [REDACTED] located in [REDACTED] Florida.

In the November 1, 2013 appeal brief, counsel stated that the duties of the proffered position would include the following tasks:

- ***Perform in-depth financial modeling, valuation, and analysis of our investment strategies: (30%)***
  - *This duty requires the collection and review of monthly financial statements for analysis of raw data for evaluating financing opportunities, including discounted cash flow (DCF) analysis, return on investment (ROI) analysis, internal rate of return (IRR) analysis, and comparable companies analysis.*
  - *The Investment Analyst will be required to report on the financial and business results to track achievement toward key performance indicators.*
  - *Monitor and evaluate the existing portfolios by analyzing current exposures and the potential impact of market dynamics and macroeconomic developments on the portfolios.*
  - *Analyze historical and competitive information and then apply industry metrics to forecasts.*
  - *Analyze and underwrite investment decisions for leasing, financing, buy/sell scenarios including preparation of cash flow models, sensitivity tables, property valuations, and joint venture structuring.*
  - *Create cash flow models, sensitive tables, rent roll analyses, joint venture waterfall models, and other financial analyses required to evaluate and pursue real estate acquisition opportunities for our investors.*
  - *Formulate, model, and apply mathematical equations using Porter Fives Forces Analysis to apply to our [clients'] circumstances and needs to form an analysis*
  - *Applicable college courses: International Finance, International Management[.]*

The Beneficiary must evaluate the raw data to provide analysis on Return on Investment (ROI), Information Quality, Customized Advice, Resale Analysis, Rental Analysis, Sensitivity Analysis (Loan to value ratio and mortgage amortization),

Discounted Cash Flow Analysis (DCF), Internal Return Analysis [(IRR)] in each market region. The specific course of studies required to perform these duties are as follows:

- Economics in Historical Perspective
- Principles in Micro & Macro Economics
- Principles in Financial/Managerial Accounting
- Statistics for Economics
- International Business Operations
- Alternative Economic Perspective
  
- **Analyze industry data and reports and communicate with company representatives and investors to identify and provide general information to use in investment process: (30%)**
  - *The [b]eneficiary will be required to apply general risk concepts, investment trends using strategic methodologies to analyze industry trends and opportunities. These methodologies include: SWOT, Porter's 5-Forces, and BCG Analysis.*
  - *He/she must have the ability to analyze macroeconomic conditions, including monitoring of government legislative and regulatory acts affecting the industry.*
  - Communicate with investment and money managers and custodians to gather and/or clarify client-specific data for reporting.
  - Initiate investment book content, including descriptions, condensed financial and market information using desktop publishing skills.
  - Prepare quarterly summaries of overall performance of and pertinent issues related to the private markets asset classes.
  - Support communication with clients and expression of investment views, providing support to the President for all market[-]related presentations and client meetings.
  - Support onsite management team to prepare operating budgets, develop pricing and marketing strategies and review monthly property financial statements.
  - Conduct independent market research and utilize various multi-family data resources to support business decisions, including supply and demand analysis, rent comp analysis and market write-ups.
  - Be knowledgeable of all commercial/personal property types including office, retail, industrial, multi-family, hotel, and mobile home communities to assess its market values.
  - Analyze economic and demographic data, become knowledgeable of relevant valuations, and insights using Argus and Excel.

- *Applicable college courses: International Business Environments, Global Business Management, Micro/Macro Economics, Statistics for Economics [.]*

The Beneficiary must use methodologies in Strengths, Weaknesses, Opportunities, and Threats (SWOT), Porter's 5 Forces ((1) Threat of new entrants; (2) Threat of substitute products or services; (3) Bargaining power of customers (buyers); (4) Bargaining power of suppliers; and (5) Intensity of competitive rivalry), and [redacted] Analysis: Provide corporations to analyze their business units [product lines] to help allocate resources and [use] as an analytical tool in brand marketing, product management, strategic management, and portfolio analysis. The specific course of studies required to perform these duties are as follows:

- Economics in Historical [Perspective]
- Principles in Micro & Macro Economics
- Principles in Financial/Managerial Accounting
- Statistics for Economics
- International Business Operations
- Alternative Economic Perspective
- Intro to Comparative Politics
- Global Business Strategy
- Learning Strategies
- Quantitative Reasoning
- Problems in Political Thought
- Intro to American Politics
  
- ***Write investment [memoranda] and presentations summarizing the investment rationale and valuations of potential investment candidates: (20%)***
  - *The Investment Analyst is responsible for managing relationships with international clients, including Indian Clients. This requires to work closely with internal and external stakeholders; leasing/sales brokers, property managers, portfolio analysts, joint venture partners, property appraisals, and operations/accounting teams to support the asset management operation. Because of the nature of international business environments, a well-educated finance professional is required to provide a positive impression of our business to its sophisticated clientele.*
  - *Prepare written investment recommendations for the President to evaluate and present to the clients.*
  - *Prepare investment summaries and presentations for existing and pipeline deals and supportive analysis for investors.*
  - *Keep abreast of investment products and economic indicators to assure a continued state-of-the-art investment solution lineup for our clients.*

- *Keep [up-to-date] with market developments, new investment products and all relevant countries.*
- *Participate in investment appraisals and negotiation processes and review quarterly appraisals for accuracy.*
- *Benchmark execution, relationship management, and business development.*
- *Applicable college courses: International Management, International Marketing[.]*

The Beneficiary must use methodologies in Strengths, Weaknesses, Opportunities, and Threats (SWOT), Porter's 5 Forces ((1) Threat of new entrants; (2) Threat of substitute products or services; (3) Bargaining power of customers (buyers); (4) Bargaining power of suppliers; and (5) Intensity of competitive rivalry), and [redacted] Analysis: Provide corporations [sic] to analyze their business units [product lines] to help allocate resources and [use] as an analytical tool in brand marketing, product management, strategic management, and portfolio analysis. The specific course of studies required to perform these duties are as follows:

- Economics in Historical [Perspective]
  - Principles in Micro & Macro Economics
  - Principles in Financial/Managerial Accounting
  - Statistics for Economics
  - International Business Operations
  - Alternative Economic Perspective
  - Intro to Comparative Politics
  - Global Business Strategy
  - International Economics
  - Intercultural Communication
  - Global Entertainment Business
  - International Marketing
  - International Management
  - International Financial Management
- ***[Coordinate] and manage the completion of due diligence activities within promised time frames and approved schedule: (20%)***
- *This duty requires the inspection of all company investments through the process in addition to participation in the property budget and strategic plans process.*
  - *Assist in closing refinance transactions including the review and approval of property condition reports, and environmental site assessments together with all other due diligence items necessary for clients to get loans from a financial institute.*

- *Support the transaction due diligence and closing process. Collect due diligence materials, utilize information to adjust underwriting and coordinate with team members to facilitate the closing transaction.*
- *Oversee legal contracts for existing and pending investments for each individual [investor].*
- *Conducting due diligence on real estate properties, companies, and industries by researching, reading financial statements and market data.*
- *Applicable college courses: International Finance, Global Business [Management][.]*<sup>4</sup>

The specific course of studies required to perform these duties are as follows:

- [Economics] in Historical [Perspective]
- Principles in Micro & Macro Economics
- Principles in Financial/Managerial Accounting
- Statistics for Economics
- Alternative Economic Perspective
- Intro to Comparative Politics

The petitioner asserts that the incumbent must possess a minimum of a bachelor's degree in International Business, Finance, or a related field.<sup>5</sup> Further, the petitioner states that the nature of the duties, in light of the petitioner's business, necessitates the educational threshold and field, in order to assist the petitioner's clientele when making well-informed decisions. Additionally, the petitioner claims an urgent need for an individual with formal training in business, economics, or accounting due to its intended investment expansion efforts abroad, combined with its goal to broaden its product base to larger multi-family and investment properties.

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 make its determination whether the proffered position qualifies as a specialty occupation position, the AAO turns 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

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<sup>4</sup> The AAO notes that the petitioner presented the same duties that appear in bold in the initial filing, and expanded upon each duty in more detail in its September 18, 2013 response to the RFE. On appeal, counsel builds upon the same duties as presented initially and in response to the RFE in his appeal brief dated November 1, 2013.

<sup>5</sup> In its RFE response, the petitioner claimed an urgent need for an individual with formal training in business, economics, or accounting due to its intended investment expansion efforts abroad, combined with its goal to broaden its product base to larger multi-family and investment properties. While not outcome determinative, we note that this is not the precise representation of the requisite educational fields made initially or on appeal. The petitioner did not provide an explanation for the variance from the petitioner's prior statements regarding the academic requirement for the proffered position.

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 considered by the AAO when determining these criteria include: whether the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*, on which the AAO routinely relies 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)).

The AAO 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. The AAO recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.<sup>6</sup> On the LCA, the petitioner selected the SOC code and title 13-2051, Financial Analysts from O\*NET OnLine. The *Handbook* describes the occupation of "Financial Analysts"<sup>7</sup> as follows:

### **What Financial Analysts Do**

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
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements to determine its value

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<sup>6</sup> 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.

<sup>7</sup> We observe that counsel asserts that the proffered position is also akin to a position that would fit within the occupational classification for Personal Financial Advisors listed in the *Handbook*. However, the duties the petitioner's owner attributed to the proffered position are more consistent with the duties of financial analysts as described in the *Handbook*.

- 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 becoming 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. 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-2> (last visited June 11, 2014).

The duties the petitioner's owner attributed to the proffered position are consistent with the duties of financial analysts as described in the *Handbook*. Overall, the AAO finds that the proffered position is a financial analyst position as described in the *Handbook*.

The *Handbook* states the following about the educational requirements of financial analyst positions:

### **How to Become a Financial Analyst**

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.

### **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.*

The *Handbook* states that "A number of fields of study provide appropriate preparation, including accounting, economics, finance, statistics, mathematics, and engineering." Therefore, the *Handbook* does not support this particular position as normally requiring a specialty occupation level of education, that is, at least a U.S. bachelor's degree *in a specific specialty*, or its equivalent. Further, although the *Handbook* indicates that a bachelor's degree is typically required, it also states that degrees in disparate fields such as accounting or engineering would provide appropriate preparation into this occupation. In addition to recognizing degrees in disparate fields, the *Handbook* also states that a master's in business administration be appropriate for an advanced positions. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007).<sup>8</sup> As the *Handbook* indicates that working as a financial analyst does not normally require at least a bachelor's degree in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

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 investment analysis and strategy, 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.

In addition, we note that the Occupational Information Network (O\*NET OnLine) Summary Reports, referenced by counsel, are insufficient to establish that the proffered position qualifies as a specialty occupation normally requiring at least a bachelor's degree or its equivalent in a specific specialty. On May 19, 2014, the AAO accessed the pertinent section of the O\*NET OnLine Internet site relevant to 13-2051.00 – Financial Analysts. Contrary to the assertions of counsel, O\*NET OnLine does not state a requirement for a bachelor's degree. Rather, it assigns this occupation a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-

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<sup>8</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

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

year bachelor's degree." Further, O\*NET OnLine does not indicate that four-year bachelor's degrees required by Job Zone Four occupations must be in a specific specialty directly related to the occupation. Therefore, O\*NET OnLine information is not probative of the proffered position being a specialty occupation.

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 in a specific specialty, or the equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

As stated earlier, 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, individuals, or similar firms in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

The petitioner did submit vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Investment Analyst for Mountain Real Estate Capital, an organization focused on providing equity capital to home builders and residential land developers. The position requires 2 or more years of finance and/or direct real estate analysis experience and a Bachelor's degree, preferably in finance, economics, business, accounting, or a related field.

2. Investment Analyst for Prudential Mortgage Capital Company, an organization that originates mortgage investments. The position requires a Bachelor's degree, preferably from a top undergraduate business, finance, or related program.
3. Investment Analyst, Commercial Real Estate, for Prudential Real Estate Investors, an organization that manages real estate assets for investors. The position requires a bachelor's degree, with a strong preference for degrees in Finance or Real Estate.
4. Investment Manager Analyst for DeMarche Associates, Inc., a financial research and investment consulting firm. DeMarche Associates, Inc. prefers candidates with a CFA/MBA for the Investment Manager Analyst position.
5. Project Analyst for DeMarche Associates, Inc., a financial research and investment consulting firm. DeMarche Associates, Inc. requires candidates with a BA/BS degree in finance or related field.
6. Analyst for Aon PLC, a provider of risk management, and an insurance and reinsurance brokerage with 65,000 people working in 120 countries. The Analyst position requires one to three years of experience, and a Bachelor['s] or Master['s] degree.
7. [Wealth Management Analyst] for Aon PLC, a provider of risk management, and an insurance and reinsurance brokerage with 65,000 people working in 120 countries. The Analyst-Wealth Management requires a Bachelor['s] degree and up to three years of experience.
8. Investment Analyst for Callan Associates, an employee-owned investment consulting firm with 60 employees. The position requires a Bachelor's degree.
9. Investments Analyst for Mercer, a global consulting firm in talent, health, retirement, and investments. The Investments Analyst position requires a bachelor's degree in finance, economics, mathematics, or other business-related areas.
10. Analyst or Associate for Guggenheim Investments, the investment management division of Guggenheim Partners, LLC, which consists of investment managers with approximately \$150 billion in combined total assets. The open position does not state a minimum degree requirement, but lists one to three years of relevant financial services industry experiences as a qualification.
11. Director, Investment Management (Analysis), a vacancy announcement placed by Access Staffing for an undisclosed employer in the financial services industry. The position requires 10 to 15 years of experience, and a minimum of a bachelor's degree in a related field, or an advanced degree such as an MBA.

First, we find that these job vacancy announcements have no probative value because they do not appear to be organizations sufficiently similar to the petitioner, as would be required if those submissions were to be within this prong's zone of consideration. Again, the language of this prong limits the range of relevant evidence to the petition-pertinent industry's practices (stating "[t]he degree requirement" as one that would be "common to the industry" as well as "in parallel positions among similar organizations.") Second, the petitioner did not submit any evidence regarding how

representative these advertisements are of the industry's usual recruiting and hiring practices with regard to the positions advertised.

The first vacancy announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, it notes a preference in finance, economics, business, accounting, or a related field. We note that a preference for a degree in any one of a variety of subjects does not indicate that it is a minimum requirement. Similarly, the second, third, and fourth announcements state a degree preference, but this does not meet the standard stated in the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The sixth, seventh,<sup>9</sup> and eighth vacancy announcements do not indicate that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, they indicate that the positions they announce require bachelor's degrees, but not that the requisite degrees must be in any specific specialty.

The the ninth vacancy announcement requires a bachelor's degree in finance, economics, mathematics, or other business-related areas. We note that the vacancy announcement indicates that a degree would be acceptable. By making clear that a bachelor's degree in a business-related field would be a sufficient educational qualification for the position, the vacancy announcement makes clear that it does not require a minimum of a bachelor's degree in a specific specialty or its equivalent. Although a general-purpose bachelor's degree, such as a degree in business, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, and that vacancy announcement contains no requirement for such a specialized degree.

The vacancy announcement for Guggenheim Investments makes clear that one to three years of relevant financial services industry experiences is a sufficient qualification for the vacant position, without reference to education. One to three years of experience has not been demonstrated to be equivalent to a bachelor's degree. Even if it were, a requirement that may be satisfied with experience that may be in any vocation from within that wide array would not be a requirement of the equivalent of bachelor's degree *in a specific specialty*.

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<sup>9</sup> We observe that the petitioning entity for the sixth and seventh open positions is comprised of 65,000 employees and is in the insurance and re-insurance industry, and therefore this entity operates on a demonstrably different scale of operations than the petitioner as well as in a different industry. These factors weigh against a finding that the advertising entity is similar to the petitioner.

Finally, the eleventh vacancy announcement does not indicate that the position it announces requires a minimum of a bachelor's degree in a specific specialty or its equivalent. Rather, the announcement indicates that the announced position requires either a bachelor's or MBA. As noted above, a general-purpose degree in business does not equate to a degree in a specific specialty.

Moreover, the proffered position is an entry level position for an employee who has only basic understanding of the occupation, as indicated on the LCA where the petitioner designated the proffered position as a Level I position. See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf). Many of the vacancy announcements are for experienced candidates. Most are clearly not Level I positions, and are not, therefore, "parallel to the proffered position." The educational requirements of those positions are of little relevance, therefore, to the requirements of the proffered position.

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 record of proceeding does not demonstrate what statistically valid inferences, if any, can be drawn from eleven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.<sup>10</sup>

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

The petitioner also has not satisfied 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 record of proceeding does not demonstrate that the duties the beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so

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<sup>10</sup> 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 is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. 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).

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 record of proceeding does not clearly demonstrate how the position described requires 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. We acknowledge that the petitioner, through counsel, provided a very detailed job description and listed relevant courses pertinent to the position and the constituent duties. This fact notwithstanding, we note that listing the courses, without a contextualized explanation as to why the courses are essential to the proffered position, does not meet the regulatory requirement provided in the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the record or proceeding does not demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

Further, as was also noted above, the LCA submitted in support of the visa petition is approved for a Level I financial analyst position, an indication that the proffered position is an entry-level position for an employee who has only a basic understanding of the duties of a financial analyst. This does not support the proposition that the proffered position is so complex or unique that it can only be performed by a person with a specific bachelor's degree, especially as the *Handbook* suggests that some financial analyst positions do not require such a degree.

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 there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the record of proceeding 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).

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

To merit approval of the petition under this criterion, the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position.<sup>11</sup> In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner has provided no evidence pertinent to its hiring practices, and has not demonstrated that it normally requires a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. It has not, therefore, satisfied the criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO 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's duties. In other words, the proposed duties have not been described with sufficient specificity to show that their nature is more specialized and complex than financial analyst positions whose duties are not of a nature so specialized and complex that their performance requires knowledge usually associated with a degree in a specific specialty.

We acknowledge that the petitioner believes its proffered position involves specialized and complex duties. However, upon review of the record, there is insufficient evidence to establish that the duties of the investment analyst position require the theoretical and practical application of at least a bachelor's degree level of a body of highly specialized knowledge in a specific specialty.

Moreover, we incorporate our earlier discussion regarding the wage-level designation on the LCA, which is appropriate for duties whose nature is less complex and specialized than required to satisfy this criterion.

The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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<sup>11</sup> 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").

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

Counsel refers to four unpublished decisions in which the AAO determined that the positions of financial analyst, investment research associate, assistant investment analyst, and market research analyst proffered in those matters qualified as a specialty occupation. Counsel has furnished insufficient evidence to establish that the facts of the instant petition are analogous to those in the unpublished decisions. 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.

Finally, we note that, on appeal, counsel cites to *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000) when rejecting USCIS's statutory interpretation that the degree must be in a specific academic major. We find counsel's reliance on *Tapis Int'l v. INS* misplaced for the reasons set forth below.

Specifically, we note that in *Tapis Int'l v. INS*, the U.S. district court found that while the former Immigration and Naturalization Service (INS) was reasonable in requiring a bachelor's degree in a specific field, it abused its discretion by ignoring the portion of the regulations that allows for the equivalent of a specialized baccalaureate degree. According to the U.S. district court, INS's interpretation was not reasonable because then H-1B visas would only be available in fields where a specific degree was offered, ignoring the statutory definition allowing for "various combinations of academic and experience based training." *Tapis Int'l v. INS*, 94 F. Supp. 2d at 176. The court elaborated that "[i]n fields where no specifically tailored baccalaureate program exists, the only possible way to achieve something equivalent is by studying a related field (or fields) and then obtaining specialized experience." *Id.* at 177.

We agree with the district court judge in *Tapis Int'l v. INS*, that in satisfying the specialty occupation requirements, both the Act and the regulations require a bachelor's degree in a specific specialty or its equivalent, and that this language indicates that the degree does not have to be a degree in a single specific specialty. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) (emphasis added).

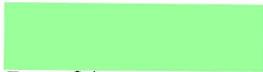
Moreover, we agree that, if the requirements to perform the duties and job responsibilities of a proffered position are a combination of a general bachelor's degree and experience such that the standards at both section 214(i)(1)(A) and (B) of the Act have been satisfied, then the proffered position may qualify as a specialty occupation. We do not find, however, that the U.S. district court is stating that any position can qualify as a specialty occupation based solely on the claimed requirements of a petitioner.

Instead, USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation as required by the Act.

In addition, the district court judge does not state in *Tapis Int'l v. INS* that, simply because there is no specialty degree requirement for entry into a particular position in a given occupational category, USCIS must recognize such a position as a specialty occupation if the beneficiary has the equivalent of a bachelor's degree in that field. In other words, we do not find that *Tapis Int'l v. INS* stands for either (1) that a specialty occupation is determined by the qualifications of the beneficiary being petitioned to perform it; or (2) that a position may qualify as a specialty occupation even when there is no specialty degree requirement, or its equivalent, for entry into a particular position in a given occupational category.

First, USCIS cannot determine if a particular job is a specialty occupation based on the qualifications of the beneficiary. A beneficiary's credentials to perform a particular job are relevant only when the job is first found to qualify as a specialty occupation. USCIS is required instead to follow long-standing legal standards and determine first, whether the proffered position qualifies as a specialty occupation, and second, whether an alien beneficiary was qualified for the position at the time the nonimmigrant visa petition was filed. *Cf. Matter of Michael Hertz Assoc.*, 19 I&N Dec. 558, 560 (Comm'r 1988) ("The facts of a beneficiary's background only come at issue after it is found that the position in which the petitioner intends to employ him falls within [a specialty occupation].").

Second, in promulgating the H-1B regulations, the former INS made clear that the definition of the term "specialty occupation" could not be expanded "to include those occupations which did not require a bachelor's degree in the specific specialty." 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991). More specifically, in responding to comments that "the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations," the former INS stated that "[t]he definition of specialty occupation contained in the statute contains this requirement [for a bachelor's degree in the specific specialty or its equivalent]" and, therefore, "may not be amended in the final rule." *Id.*



In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Tapis Int'l v. INS*. We also note that, in contrast to the broad precedential authority of the case law of a United States circuit court, we are not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

As the evidence of record does not satisfy at least one of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position is a specialty occupation. Accordingly, the appeal will be dismissed and the petition will be denied on this basis.

#### V. CONCLUSION AND ORDER

As set forth above, we find that evidence of record fails to demonstrate that the proffered position qualifies for classification as a specialty occupation. Accordingly, the director's decision will not be disturbed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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