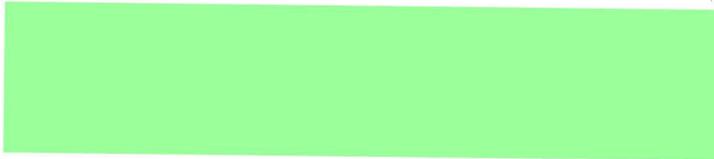


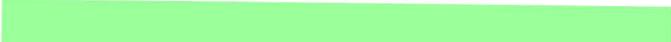
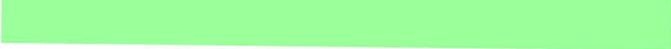


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAR 27 2014** OFFICE: CALIFORNIA 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 (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.

The petitioner describes itself as an educational and research institution on the Form I-129 visa petition, and the evidence of record indicates it is a institution of higher education. In order to employ the beneficiary in what it designates as an associate admissions officer position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

Beyond the decision of the director, the AAO finds an additional aspect which, although not addressed in the director's decision, nevertheless also precludes approval of the petition. Specifically, the AAO finds that the Labor Condition Application (LCA) filed by the petitioner in support of this petition does not correspond to it, that is, the petitioner's claims in the record of proceeding with regard to the levels of independence, judgment, and responsibility to be exercised by the beneficiary do not comport with the LCA submitted by the petitioner, which had been certified for a job prospect at the lowest level (Level I) wage-rate. The AAO conducts review of service center decisions on a *de novo* basis (*See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)), and it was in the course of this review that the AAO identified this additional ground for denial.

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 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.

I. Standard of Review

In the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows 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.

Again, the AAO conducts its review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, the AAO finds 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*, the AAO finds that the director's determination that the evidence of record does not establish that the proffered position is a specialty occupation was correct. Upon its 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, the AAO finds 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 the AAO to believe that the petitioner's claim that the proffered position qualifies as a specialty occupation is "more likely than not" or "probably" true.

In similar fashion, as indicated by the AAO's supplemental finding made on appeal regarding the LCA and the evidentiary deficiencies present in the materials submitted with regard to the

qualifications of the beneficiary, the evidence of record also does not lead the AAO to believe the petitioner's implicit claim that the LCA submitted by the petitioner corresponds to the petition is "more likely than not" or "probably" true.

II. The LCA Submitted by the Petitioner in Support of the Petition

Before addressing the director's determination that the proffered position is not a specialty occupation, the AAO will first address the supplemental finding it has made on appeal, which independently precludes approval of this petition, namely, our finding that the LCA submitted by the petitioner in support of this petition does not correspond to the petition.

The LCA submitted by the petitioner in support of the instant position was certified for use with a job prospect within the "Education Administrators, Postsecondary" occupational classification, SOC (O*NET/OES) Code 11-9033, and at a Level I (entry-level) prevailing wage rate, the lowest of the four assignable wage-levels. Wage levels should be determined only after selecting the most relevant O*NET code classification. A prevailing wage determination is then made by selecting one of four wage levels for an occupation based upon a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.¹

Prevailing wage determinations start at Level I (entry) and progress to a wage that is commensurate with that of Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties.² The U.S. Department of Labor (DOL) emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received as indicated by the job description.

¹ For additional information on wage levels, 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 (last visited Mar. 14, 2014).

² A point system is used to assess the complexity of the job and assign the wage level. Step 1 requires a "1" to represent the job's requirements. Step 2 addresses experience and must contain a "0" (for at or below the level of experience and SVP range), a "1" (low end of experience and SVP), a "2" (high end), or "3" (greater than range). Step 3 considers education required to perform the job duties, a "1" (more than the usual education by one category) or "2" (more than the usual education by more than one category). Step 4 accounts for Special Skills requirements that indicate a higher level of complexity or decision-making with a "1" or a "2" entered as appropriate. Finally, Step 5 addresses Supervisory Duties, with a "1" entered unless supervision is generally required by the occupation.

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

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

The petitioner has classified the proffered position at a Level I wage, which is only appropriate for a position requiring only "a basic understanding of the occupation" expected of a "worker in training" or an individual performing an "internship." That wage-level designation indicates further that the beneficiary will only be expected to "perform routine tasks that require limited, if any, exercise of judgment." However, the AAO finds that many of the duties described by counsel and the petitioner exceed this threshold.

For example, as will be discussed in further detail below, the petitioner claims that the beneficiary will perform such tasks as formulating strategic plans to improve and further develop the petitioner's recruitment and admissions process; planning, administering, and controlling budgets; representing the petitioner's school of management in the initiation, development, and maintenance of institutional partnerships with domestic and foreign institutions of higher education; assessing, planning, monitoring, and strengthening the petitioner's recruitment and admissions process of overseas partner school students; assessing, planning, monitoring, and strengthening the petitioner's recruitment and admissions process of language school students and transfer students; creating, reviewing, and strengthening the petitioner's virtual fair recruitment process; creating, reviewing, and strengthening the petitioner's process of acquiring required credential evaluation reports for potential students; reviewing and strengthening the petitioner's admissions process and policy; and allocating estimated expenses under various recruitment and admissions activities. Moreover, in her April 19, 2012 letter counsel claimed that the duties of the proffered position "include additional complicated, technical, analytical, and strategic decision-making tasks."

These stated duties indicate that the beneficiary will be required to exercise extensive independent judgment in the proffered position, which conflicts with the Level I wage-rate designation.

The AAO, therefore, questions the level of complexity, independent judgment and understanding actually required for the proffered position, as the LCA was certified for a Level I entry-level position. This characterization of the position and the claimed duties and responsibilities as described by the petitioner conflict with the wage-rate element of the LCA submitted by the

petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation. In accordance with the relevant DOL explanatory information on wage levels, the selected wage rate indicates that the beneficiary is only required to have a basic understanding of the occupation; that she will be expected to perform routine tasks that require limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results. Thus, the petitioner's characterizations of the proffered position and the claimed duties and responsibilities conflict with the wage-rate element of the LCA selected by the petitioner, which, as reflected in the discussion above, is indicative of a comparatively low, entry-level position relative to others within the occupation.

Under the H-1B program, a petitioner must offer a beneficiary wages that are at least the actual wage level paid by the petitioner to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available as of the time of filing the application. See section 212(n)(1)(A) of the Act, 8 U.S.C. § 1182(n)(1)(A); *Patel v. Boghra*, 369 Fed.Appx. 722, 723 (7th Cir. 2010). The LCA serves as the critical mechanism for enforcing section 212(n)(1) of the Act, 8 U.S.C. § 1182(n)(1). See 65 Fed. Reg. 80110, 80110-80111 (indicating that the wage protections in the Act seek "to protect U.S. workers' wages and eliminate any economic incentive or advantage in hiring temporary foreign workers" and that this "process of protecting U.S. workers begins with [the filing of an LCA] with [DOL]").

It is noted that the petitioner would have been required to offer a significantly higher wage to the beneficiary in order to employ her at a Level II (qualified), a Level III (experienced), or a Level IV (fully competent) level. The petitioner has offered the beneficiary a wage of \$27.30 per hour, which satisfied the Level I (entry level) prevailing wage for a postsecondary education administrator in the San Diego-Carlsbad-San Marcos, California Metropolitan Statistical Area at the time the LCA was certified.³ However, in order to offer employment to the beneficiary at a Level II (qualified) wage-level, which would involve only "moderately complex tasks that require limited judgment," the petitioner would have been required to raise her salary to at least \$36.91 per hour. The Level III (experienced) prevailing wage was \$46.53 per hour, and the Level IV (fully competent) prevailing wage was \$56.14 per hour.⁴

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. Therefore, the petitioner

³ U.S. Dept of Labor, Foreign Labor Certification Data Center, Online Wage Library, FLC Quick Search, "Education Administrators, Postsecondary," <http://www.flcdatacenter.com/OesQuickResults.aspx?code=11-9033&area=41740&year=13&source=1> (last visited Mar. 14, 2014).

⁴ *Id.*

has failed to establish that it would pay an adequate salary for the beneficiary's work as characterized by the petitioner on the Form I-129 and allied submissions and as required under the Act, if the petition were granted for a higher-level and more complex position than addressed in the LCA as claimed elsewhere in the petition.

Additionally, this aspect of the LCA undermines the credibility of the petition, and, in particular, the credibility of the petitioner's assertions regarding the demands, level of responsibilities and requirements of the proffered position. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

DOL and USCIS regulations reveal several features of the LCA-certification process that have material implications in USCIS review of a H-1B specialty occupation petitions, including the one before us now.

DOL has stated clearly that its LCA certification process is cursory, that it does not involve substantive review, and that it makes the petitioner responsible for the accuracy of the information entered in the LCA. With regard to LCA certification, the regulation at 20 C.F.R. § 655.715 states the following:

Certification means the determination by a certifying officer that a labor condition application is not incomplete and does not contain obvious inaccuracies.

Likewise, the regulation at 20 C.F.R. § 655.735(b) states, in pertinent part, that "[i]t is the employer's responsibility to ensure that ETA [(the DOL's Employment and Training Administration)] receives a complete and accurate LCA."

That the LCA-certification process does not involve a substantive review, but instead relies upon the petitioner to provide complete and accurate information, is highlighted by the following italicized-for-emphasis statement that appears at Part M, the certification section, of the standard LCA (ETA Form 9035/9035E):

The Department of Labor is not the guarantor of the accuracy, truthfulness, or adequacy of a certified LCA.

By the signature at part K (Declaration of Employer) of the ETA Form 9035/9035E, the petitioner attested, in part, "that the information and labor condition statements provided [in the LCA] are true and accurate."

As the signature at Part 7 of the Form I-129 certifies under penalty of perjury that the "this petition and the evidence submitted with it are true and correct" to the best of the petitioner's knowledge,

that signature also certified that the content of the LCA filed with it and identified by the LCA or ETA case number at item 2 of Part 5 (Basic Information about the Proposed Employment and Employer) truly and correctly matched the related aspects of the petition. However, as just discussed above, this appears to not be the case.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(2) specifies that certification of an LCA does not constitute a determination that an occupation is a specialty occupation:

Certification by the Department of Labor [DOL] of a labor condition application in an occupational classification does not constitute a determination by that agency that the occupation in question is a specialty occupation. The director shall determine if the application involves a specialty occupation as defined in section 214(i)(1) of the Act. The director shall also determine whether the particular alien for whom H-1B classification is sought qualifies to perform services in the specialty occupation as prescribed in section 214(i)(2) of the Act.⁵

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

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

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, provided the proffered position was in fact found to be a higher-level and more complex position as claimed elsewhere in the petition, the petitioner would have failed to submit a valid LCA that corresponds to the claimed duties and requirements of the proffered position. That is, specifically, the LCA submitted in support of this petition would then fail to correspond to the level of work, responsibilities and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such a level of work, responsibilities and requirements in accordance with section 212(n)(1)(A) of the Act and the pertinent LCA regulations.

The statements regarding the claimed level of complexity, independent judgment and understanding required for the proffered position are materially inconsistent with the certification of the LCA for a Level I, entry-level position. This conflict undermines the overall credibility of the petition. The

⁵ *See also* 56 Fed. Reg. 61111, 61112 (Dec. 2, 1991) ("An approved labor condition application is not a factor in determining whether a position is a specialty occupation").

AAO finds that, fully considered in the context of the entire record of proceedings, the petitioner failed to establish the nature of the proffered position and in what capacity the beneficiary will actually be employed.

As such, a review of the LCA submitted by the petitioner indicates that the information provided therein does not correspond to the level of work and requirements that the petitioner ascribed to the proffered position and to the wage-level corresponding to such higher-level work and responsibilities, which if accepted as accurate would result in the beneficiary being offered a salary below that required by law. Thus, even if it were determined that the petitioner had overcome the director's ground for denying this petition (which it has not), the petition could still not be approved.

III. Specialty Occupation

The AAO will now address the director's determination that the proffered position is not a specialty occupation. Based upon a complete review of the record of proceeding, the AAO agrees with the director that the evidence fails to establish that the proffered position constitutes a specialty occupation.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

To determine whether a particular job qualifies as a specialty occupation, USCIS does not rely simply upon a proffered position's title. The specific duties of the 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 beneficiary, and determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d at 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.

With the visa petition, counsel submitted transcripts and diplomas showing that the beneficiary has a bachelor's degree in business administration and a master's degree in business administration with a concentration in finance, both of which she received from the petitioner. Counsel also submitted a letter, dated February 8, 2013, from the petitioner's vice president for administration, who stated the following:

[The petitioner] would like to employ [the beneficiary] as an Associate Admissions Officer with [the petitioner's school of management]. The Associate Admissions Officer will engage in planning and analysis related to the recruitment, selection, and admission of students for the School of Management. In this capacity, s/he will: formulate strategic plans to improve and further develop the recruitment and admissions process; analyze data pertaining to [the petitioner's school of management's] recruitment activities, applicants, and admitted students; plan, administer, and control budgets; maintain financial records and produce financial reports; represent [the petitioner's school of management] in the initiation, development, and maintenance of institutional partnerships with domestic and foreign institutions of higher education; and meet and communicate with prospective students about the curricula and programs in business, management, and leadership offered by [the petitioner's school of management]; and review applications to make admissions recommendations, as necessary. The Associate Admissions Officer will also meet regularly with institutional personnel, participate on committees, and attend meetings, events, and certain institution-wide functions.

As to the educational requirement of the proffered position, the petitioner's vice president for administration stated the following: "[t]he minimum requirement for this position is [a] degree in management, finance, or closely related field from an accredited institution."

On March 4, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted. The RFE specifically requested:

- **Job Description**: Provide a more detailed description of the work to be performed by the beneficiary for the entire requested period of validity. Include specific job duties, the percentage of time to be spent on each job duty, level of responsibility, hours per week of work, and the minimum education, training, and experience necessary to do the job. Also, explain why the work to be performed

requires the services of a person who has a college degree or its equivalent in the occupational field.

In response, counsel submitted, *inter alia*, the following: (1) a March 5, 2013 vacancy announcement placed by the petitioner for an Admissions and Recruitment Coordinator for the petitioner's [REDACTED] (2) 13 vacancy announcements posted by other companies; (3) a letter, dated March 26, 2013, from the Chief Academic Officer of [REDACTED] (4) a letter, dated April 18, 2013, from the petitioner's vice president for administration; (5) the requested more detailed job description; and (6) counsel's own letter, dated April 19, 2012.

The petitioner's March 5, 2013 vacancy announcement states the following pertinent to the duties of the position of Admissions and Recruitment Coordinator at the petitioner's [REDACTED]

Counseling and Recruitment

- Provide counseling and overall customer service to prospective students at all stages in the admissions process via telephone, e-mail and campus visits.
- Maintain ongoing communication with applicants throughout the admissions process, tracking all communications using the CRM tools.
- Coordinate monthly Open Houses with faculty and/or student presenters.
- Attend Grad Fairs, Conventions and Conferences.
- Contact annually Psi Chi Clubs and/or other undergraduate school based organizations to offer presentations.
- Create an annual directory of current student contacts and classes open for visitors, to be shared with prospective students.
- Network w/other recruiters for professional development.

Admissions Process Management

- Receive and process admissions applications from the university's Application Processing Center.
- Coordinate reading and interview processes and schedules with faculty and/or program director's.
- Invite and host admissions finalists for interview.
- Prepare acceptance agreement packets, coordinating with other departments, administrators and faculty.
- Manage and monitor deferred enrollments and wait-listed applicants.

- Distribute admissions statistic reports and lists to faculty and/or program directors.

Other duties as assigned by the Director of Admissions, [REDACTED]

As to the educational requirement of that position, that vacancy announcement states:

Education: BA/BS or equivalent combination of education and relevant experience. MA/MS degree in counseling or higher education preferred.

As to the experience required for that position, that vacancy announcement states:

Experience: Experience in a college/university admissions department and/or two or more years of customer service, sales or marketing experience.

The March 26, 2013 letter from the Chief Academic Officer of [REDACTED] states that it has two admission officers and two student recruiters, and that they require a minimum of a bachelor's degree in business, management, accounting, or a closely-related field for those positions so that they can explain course content, address differences between the curriculum offered by that institution and the curricula offered by other schools, and so that they may evaluate prospective students.

The April 18, 2013 letter from the petitioner's vice president for administration reiterates the assertion that the proffered position requires a bachelor's degree in management, finance, or a related field because the incumbent is responsible for explaining the petitioner's programs to potential students and to representatives of other schools. She further stated that the petitioner's school of management currently employs the beneficiary as an associate admissions officer and employs an admissions officer who is enrolled in an MBA program. She did not identify that admissions officer's current degree. She also stated that the petitioner's psychology and forensic psychology schools employ six admissions officers, all of whom have bachelor's degrees in psychology or in unidentified related fields, and that four have master's degrees. She did not indicate whether those other schools employ associate admissions officers.

The detailed description of duties provided greatly expands on the previous description. The original duty description states, *inter alia*, that the beneficiary would: "Formulate strategic plans to improve and further develop the recruitment and admissions process." The expanded description states that the beneficiary would perform that duty during 20% of her work time, and breaks that duty down as follows:

1. Assess, plan, monitor and strengthen the recruitment and admissions process of overseas partner school students.
2. Assess, plan, review and strengthen the recruitment and admissions process of language school students and transfer students, including establishing school-based TOEFL waiver agreements, make routine school visits and contacts.

Develop B2B relationships with partners such as [REDACTED] American Language Institute, [REDACTED] English [REDACTED]

3. Create, review and strengthen the process of virtual fair recruitment, including looking for potential virtual fairs, booth design and revision, developing email templates, setting up email and social media reminders, formulating responses during events, post event follow-up and data consolidation;
4. Create, review and strengthen the process of acquiring required credential evaluation reports for potential students. Develop B2B relationships with individual evaluators such as [REDACTED]
5. Provide strategic insights for developing marketing/recruiting designs and content for international markets, including digital content such as virtual booth. Develop country and school specific recruiting materials ([REDACTED] brochure, [the petitioner's school of management's] Chinese brochure content, [the petitioner's school of management] Presentation in Chinese, email template)
6. Review and strengthen [the petitioner's school of management's] admissions process and policy in general based on program and market changes (recommend DBA admissions requirements)

The original duty description states that the beneficiary would: "Analyze data pertaining to [the petitioner's school of management's] recruitment activities, applicants, and admitted students." The expanded description states that the beneficiary would perform that duty during 10% of her work time, and breaks that duty down as follows:

1. Analyze and consolidate prospective applicants' demographics and response rate data generated from the following channels:
 - 1) [REDACTED] virtual fairs
 - 2) [REDACTED] monthly and international virtual fairs
 - 3) [REDACTED] international virtual fairs
 - 4) Local language school college fairs and grad fairs
 - 5) Overseas recruiting fairs, including partner schools info days and visits
2. Analyze and consolidate prospective student data weekly and monthly

The original duty description states that the beneficiary would: "Plan, administer, and control budgets." The expanded description states that the beneficiary would perform that duty during 5% of her work time, and breaks that duty down as follows:

1. Allocate estimated expenses under various recruitment and admissions activities
2. Retain records of recruiting related expenses, including registration fees, mileage, lounge, travel, etc.
3. Review and evaluate resource allocation and annual budgets.

The original duty description states that the beneficiary would: "Maintain financial records and produce financial reports." The expanded description states that the beneficiary would perform that duty during 10% of her work time, and breaks that duty down as follows:

1. Forecast new students/revenue for upcoming session, semester and academic year
2. Monitor incoming student numbers and make estimate adjustments throughout the academic year
3. Produce and analyze weekly reports of current applicant pipeline
4. Produce and analyze monthly reports of leads pipeline
5. Customize and consolidate year-to-year, semester-to-semester comparison enrollment reports and liaise with [the petitioner's school of management's] Dean to provide updates on new student statistics.
6. Create campaigns and keep track of the return on investment (ROI) for different fairs and events attended

The original duty description states that the beneficiary would: "Represent [the petitioner's school of management] in initiating, developing, and maintaining institutional partnerships with domestic and foreign higher education institutions." The expanded description states that the beneficiary would perform that duty during 20% of her work time, and breaks that duty down as follows:

1. [Liaise] with potential partner schools/ institutions
2. Research and assess potential partner school eligibility, including international recognition, accreditation, matching programs, tuition costs and exchange possibilities
3. Facilitate conferences and calls to continue conversations with potential partner schools
4. Draft and edit partnership agreements and MOUs
5. Correspond with existing partner schools on programs, scholarships, admissions policy changes on a regular basis
6. Review existing agreements for update and accuracy on a routine basis

The original duty description states that the beneficiary would: "Meet and communicate with prospective students about the curricula and programs in business, management, and leadership offered by [the petitioner's school of management] and review applications to make admissions recommendations, as necessary." The expanded description states that the beneficiary would perform that duty during 30% of her work time, and breaks that duty down as follows:

1. Represent [the petitioner's school of management] at college/school fairs, virtual fairs and events and make presentations about [the petitioner's school of management's] programs
2. Provide curriculum and program information to potential applicants by email and phone daily
3. Review and assess potential applicants educational qualifications to make program and concentration recommendations

4. Evaluate previous coursework of potential applicants and prepare preliminary evaluations.
5. Collaborate with faculty and program coordinator to make presentations to prospective applicants and students
6. Review and assess application documents and make interview and/or scholarship recommendations

The original duty description states that the beneficiary would: "Meet regularly with institutional personnel, participate on committees, and attend meetings, events, and certain institution-wide functions." The expanded description states that the beneficiary would perform that duty during 5% of her work time, and breaks that duty down as follows:

1. Contribute to monthly [faculty meetings of the petitioner's school of management] with issues, ideas, and concerns regarding student recruitment
2. Contribute to biweekly Marketing meeting/conference calls. Provide insights on discussions regarding system-wide marketing efforts such as the recruitment strategies of overall international markets, present statistics and experiences on [the petitioner's school of management's] recruitment efforts, including impact of international applicants and veteran applicants.
3. Contribute to biweekly undergraduate program meetings at the university level. Provide feedback regarding curriculum change or advancement, scholarship offerings, financial aid processes and student services process, including course registration, student business services, housing services, etc.
4. Contribute to biweekly undergraduate recruitment meetings. Present best practices on forming strategies to recruit undergraduate students locally (San Diego and Orange County areas), present concerns and issues that arise from outreach activities with higher administration, brainstorm solutions for issues to be brought up in the meetings.
5. Contribute to meetings with university language experts in support of formulating/updating [the petitioner's school of management's] English language requirement policy as well as support to international students. Present research completed for other potential substitutes for TOEFL and IELTS, including International Test of English Proficiency – ITEP (more flexibility), Certificate of Advanced English – CAE (popular in European countries), and Pearson Test of English –PTE. Provide advice on creating Pathway programs for international applicants with lower proficiency in English.
6. Represent new student orientations
7. Represent [the petitioner] at in-staff council meetings and international events such as international education week and United Nations Day.
8. Represent [the petitioner's school of management] at chamber of commerce mixers, receptions etc.

Because counsel's letter dated April 19, 2012 was prepared and submitted in response to the March 4, 2013 RFE, the AAO believes it was misdated. In that letter, counsel cited a U.S. District Court

case from the Southern District of Ohio for the proposition that a position need not require a minimum of a bachelor's degree *in a specific specialty* or its equivalent to qualify as a specialty occupation position. Counsel cited the evidence submitted and DOL's *Occupational Outlook Handbook (Handbook)* for the proposition that the proffered position does, in fact, qualify as a specialty occupation position.

The director denied the petition on May 28, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Despite the fact that section 214(i)(1) of the Act defines the term "specialty occupation" as one requiring the theoretical and practical application of a body of *highly specialized knowledge* and attainment of a bachelor's or higher degree *in the specific specialty*, or the equivalent, as a minimum for entry into the occupation in the United States, and that 8 C.F.R. § 214.2(h)(4)(ii) further defines the term "specialty occupation" as an occupation requiring, in part, 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, counsel argues nonetheless that a bachelor's degree in a specific specialty, or the equivalent, is not required in order to demonstrate that a proffered position qualifies as a specialty occupation. Counsel indicates that so long as a petitioner satisfies one of the four alternative criteria set forth at 8 C.F.R. §§ 214.2(h)(4)(iii)(A)(1)-(4), an H-1B petition should be approved.

As indicated above, this reasoning would result in a position which met one of the conditions under 8 C.F.R. § 214.2(h)(4)(iii)(A), but not satisfying the statutory or regulatory definition of a "specialty occupation" nonetheless qualifying for classification as a specialty occupation. The AAO does not agree with such an outcome; it is simply not logical to classify a position which does not satisfy the statutory or regulatory definition of a "specialty occupation" as a specialty occupation, and we do not find counsel's argument persuasive.⁶

On appeal, counsel asserted that the evidence submitted demonstrates that the proffered position is a specialty occupation position. Counsel stated:

⁶ The AAO notes that in promulgating the current H-1B regulations, the former Immigration and Naturalization Service stated the following:

Thirty-one commenters suggested that the definition of specialty occupation was too severe and would exclude certain occupations from classification as specialty occupations. Most of these commenters suggested that the definition should be expanded to include those occupations which did not require a bachelor's degree in the specific specialty. The definition of specialty occupation contained in the statute contains this requirement. Accordingly, the requirement may not be amended in the final rule.

The sole issue on appeal is the Service's interpretation of the term "specific specialty," which the Service interpreted in such a restrictive manner as to abuse its discretion and constitute *ultra [vires]* law-making. The rationale in the Denial reflects that the Service's position is that the term "specific specialty" indicates there may be only one possible degree which would make an individual eligible for the position offered, and that as a result [the proffered position] is not a specific specialty occupation.

Counsel misstates the director's rationale. In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. See section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Nor is the AAO persuaded by the unpublished AAO decisions counsel cites on appeal. Although counsel cited several unpublished AAO decisions, she did not provide copies of those decisions. When any person makes an application for a "visa or any other document required for entry, or makes an application for admission [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such relief. 8 U.S.C. § 1361; see also *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190 (Reg. Comm'r 1972). Furthermore, any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the director nor the AAO was required to request and/or obtain a copy of the unpublished decisions cited by counsel.

If a petitioner wishes to have unpublished decisions considered by USCIS in its adjudication of a petition, the petitioner is permitted to submit copies of such evidence that it either obtained itself through its own legal research and/or received in response to a Freedom of Information Act request filed in accordance with 6 C.F.R. Part 5. Otherwise, "[t]he non-existence or other unavailability of required evidence creates a presumption of ineligibility." 8 C.F.R. § 103.2(b)(2)(i). In the instant

case, counsel failed to submit a copy of the unpublished decisions. As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding.

Nevertheless, even if this evidence had been submitted and even if it had been determined that the facts in those cases were analogous to those in this proceeding, those decisions are not binding on USCIS. 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. Moreover, if the previous nonimmigrant petitions were approved based on the same unsupported and contradictory assertions that are contained in the current record, the approvals would constitute material and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

The AAO turns next to counsel's citation of *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). In that case, the U.S. district court found that while the former 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.

The AAO agrees 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. Again, 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, the AAO also agrees 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. The AAO does 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, the AAO does 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*. The AAO also notes that, in contrast to the broad

precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Nor is the AAO persuaded by counsel's citation to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." In general, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's or higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty (or its equivalent)" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as philosophy and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required body of highly specialized knowledge is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). As will be discussed below, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties. *See also Health Carousel, LLC v. U.S. Citizenship & Immigration Services*, ___ F. Supp. 2d ___ (S.D. Ohio 2014) (agreeing with AAO's analysis of *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*).

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.⁷ The AAO also notes that, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising even within the same district. *See Matter of K-S-*, 20 I&N Dec. at 715. Although

⁷ It is noted that the district judge's decision in that case appears to have been based largely on the many factual errors made by the service center in its decision denying the petition. The AAO further notes that the service center director's decision was not appealed to the AAO. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, the AAO may very well have remanded the matter to the service center for a new decision for many of the same reasons articulated by the district court if these errors could not have been remedied by the AAO in its *de novo* review of the matter.

the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

For all of these reasons, the AAO reiterates its earlier statements 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); that this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole; and that, 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, as 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. To avoid this result, 8 C.F.R. § 214.2(h)(4)(iii)(A) must therefore be read as providing supplemental criteria that must be met in accordance with, and not as alternatives to, the statutory and regulatory definitions of specialty occupation. As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), USCIS consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

Having made these initial observations, the AAO will now discuss the application of each supplemental, alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) to the evidence in this record of proceeding. To determine 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 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 DOL'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)(1): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸ The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 11-9033,

⁸ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

Education Administrators, Postsecondary from O*NET. The *Handbook* states the following with regard to the duties of Postsecondary Education Administrators:

What Postsecondary Education Administrators Do

Postsecondary education administrators oversee student services, academics, and faculty research at colleges and universities. Their job duties vary depending on the area of the college they manage, such as admissions, the office of the registrar, or student affairs.

Duties

Postsecondary education administrators who work in *admissions* decide whether potential students should be admitted to the school. They typically do the following:

- Determine how many students to admit to fill the available spaces
- Prepare promotional materials about the school
- Meet with prospective students and encourage them to apply
- Review applications to determine if each potential student should be admitted
- Analyze data about applicants and admitted students

Many admissions counselors are assigned a region of the country and travel to that region to speak to high school counselors and students.

In addition, admissions officers often work with the financial aid department, which helps students determine if they are able to afford tuition and creates packages of federal and institutional financial aid if necessary.

Postsecondary education administrators who work in the *registrar's office* maintain student and course records. They typically do the following:

- Schedule and register students for classes
- Schedule space and times for classes
- Ensure that students meet graduation requirements
- Plan commencement ceremonies
- Prepare transcripts and diplomas for students
- Produce data about students and classes
- Maintain the academic records of the institution

How registrars spend their time varies depending on the time of year. Before students register for classes, registrars must prepare schedules and course offerings. Then during registration and for the first few weeks of the semester, they help students sign up for, drop, and add courses. Toward the end of the semester, they plan graduation

and ensure that students meet the requirements to graduate. Workers in a registrar's office need advanced computer skills to create and maintain databases.

Postsecondary education administrators who work in *student affairs* are responsible for a variety of co-curricular school functions, such as student athletics and activities. They typically do the following:

- Advise students on topics such as housing issues, personal problems, or academics
- Communicate with parents and families
- Create, support, and assess nonacademic programs for students
- Schedule programs and services, such as athletic events or recreational activities

Postsecondary education administrators in student affairs can specialize in student activities, housing and residential life, or multicultural affairs. In student activities, education administrators plan events and advise student clubs and organizations. In housing and residential life, education administrators assign students rooms and roommates, ensure that residential facilities are well maintained, and train student workers, such as residential advisers. Education administrators who specialize in multicultural affairs plan events to celebrate different cultures and diverse backgrounds. Sometimes, they manage multicultural centers on campus.

Other postsecondary education administrators are *provosts* or *academic deans*. Provosts, also sometimes called chief academic officers, help college presidents develop academic policies, participate in making faculty appointments and tenure decisions, and manage budgets. Academic deans direct and coordinate the activities of the individual colleges or schools. For example, in a large university, there may be a dean who oversees the law school.

Education administrators have varying duties depending on the size of their college or university. Small schools often have smaller staffs who take on many different responsibilities, but larger schools may have different offices for each of these functions. For example, at a small college, the Office of Student Life may oversee student athletics and other activities, whereas a large university may have an Athletics Department.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Postsecondary Education Administrators" <http://www.bls.gov/ooh/management/postsecondary-education-administrators.htm#tab-2> (last visited Mar. 14, 2014).

The duties attributed to the proffered position, therefore, are consistent with the duties of postsecondary education administrators as described in the *Handbook* and in O*NET, and the AAO finds that the proffered position is a postsecondary education administrator as described in them.

The *Handbook* states the following with regard to the educational requirements of postsecondary education administrator positions:

How to Become a Postsecondary Education Administrator

Although a bachelor's degree may be acceptable for some entry-level positions, a master's or higher degree is often required. Employers often want candidates who have experience working in the field, particularly for such occupations as registrars and academic deans.

Education

Educational requirements vary for different positions. For entry-level positions, a bachelor's degree may be sufficient. Degrees can be in a variety of disciplines, such as social work, accounting, or marketing.

For higher level positions, a master's degree or Ph.D. is generally required. Provosts and deans often must have a Ph.D. Some provosts and deans begin their career as professors and later move into administration. These administrators have doctorates in the field in which they taught, such as English or chemistry. Other provosts and deans have a Ph.D. in higher education or a related field.

Work Experience in a Related Occupation

Employers often want candidates who have experience working in the field, particularly for such occupations as registrars and academic deans. For example, some postsecondary education administrators work in the registrar's office or as a resident assistant while in college to gain the necessary experience. For other positions, such as those in admissions and student affairs, experience may or may not be necessary depending on the position.

Other Experience

Many postsecondary education administrators, particularly those working in student affairs, were involved in student activities while they were attending college. For example, they may lead student organizations or participate in student government to gain the experience necessary to work in student affairs after graduating.

Important Qualities

Computer skills. Registrars often need to be adept at working with computers so they can create and maintain databases and computer programs to manage student and school records.

Interpersonal skills. Postsecondary education administrators need to build good relationships with colleagues, students, and parents. Those in admissions and student affairs need to be outgoing so they can encourage prospective students to apply to the school and existing students to participate in co-curricular activities.

Organizational skills. Regardless of their field, administrators need to be organized so they can manage records, prioritize tasks, and coordinate the activities of their staff.

Problem-solving skills. Administrators often need to respond to difficult situations, develop creative solutions to problems, and react calmly when problems arise.

Advancement

Education administrators with advanced degrees can be promoted to higher level positions within their department or the college. Some become college presidents, which is discussed in the profile on top executives.

Id. at <http://www.bls.gov/ooh/management/postsecondary-education-administrators.htm#tab-4> (last visited Mar. 14, 2014).

The statements made by DOL in the *Handbook* regarding entrance into this occupational category do not support a finding that a bachelor's degree, or the equivalent, in a specific specialty is normally required. To the contrary, the *Handbook* specifically states that educational requirements vary for different positions, and that for entry-level positions,⁹ a bachelor's degree from a variety of fields, such as social work, accounting, or marketing, would provide sufficient preparation.

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

In other words, while the statutory "the" and the regulatory "a" both denote a singular "specialty," the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as

⁹ As noted above, the petitioner submitted an LCA certified for a Level I (entry-level) prevailing wage-rate.

specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty. *See* section 214(i)(1)(B) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). This also includes even seemingly disparate specialties providing, again, the evidence of record establishes how each acceptable, specific field of study is directly related to the duties and responsibilities of the particular position.

Here, although the *Handbook* indicates that a bachelor's or higher degree is required, it also indicates that baccalaureate degrees in various fields are acceptable for entry into the occupation. It is not readily apparent that the three fields identified by the *Handbook* – social work, accounting, and marketing – are closely related to one another or that each is directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish either (1) that social work, accounting, and marketing¹⁰ are closely related fields or (2) that social work, accounting, and marketing are directly related to the duties and responsibilities of the proffered position. Absent such evidence, it cannot be found that the particular position proffered in this matter has a normal minimum entry requirement of a bachelor's or higher degree in a specific specialty or its equivalent.

Therefore, absent evidence of a direct relationship between bachelor's degrees in social work, accounting, and marketing and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. USCIS has consistently stated that, although a general-purpose bachelor's degree 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).¹¹

¹⁰ It is also not clear that social work, accounting, and marketing are the only fields of study that would provide adequate preparation for the duties of a postsecondary education administrator. The *Handbook's* use of the qualifier "such as" indicates that degrees from additional fields of study could also prepare an individual to perform those duties.

¹¹ 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.

Accordingly, as the *Handbook* indicates that working as a postsecondary education administrator does not normally require at least a bachelor's degree or the equivalent in a specific specialty or its equivalent for entry into the occupation, it does not support the proffered position as being a specialty occupation.

The statement made by counsel in her April 19, 2012 letter, at page 6, that a bachelor's degree in "business" without any further specification, could provide adequate preparation constitutes additional evidence that the proffered position is not a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). Again, to prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. 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.

The AAO will turn next to O*NET, an alternative authoritative source cited by the petitioner. The AAO finds that O*NET does not establish that the proffered position qualifies as a specialty occupation under the first criterion described at 8 C.F.R. § 214.2(h)(4)(iii)(A), either. In general, O*NET is not particularly useful in determining whether a baccalaureate degree in a specific specialty, or its equivalent, is a standard entry requirement for a given position, as O*NET's Job Zone designations make no mention of the specific field of study from which a degree must come. Again, the AAO 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 proposed position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147. Furthermore, the Specialized Vocational Preparation (SVP) ratings, which are cited within O*Net's Job Zone designations, are meant to indicate only the total number of years of vocational preparation required for a particular position. The SVP ratings do not describe how those years are to be divided among training, formal education, and experience and it does not specify the particular type of degree, if any, that a position would require.

Nor do the statistics counsel cites from DOL's Office of Foreign Labor Certification satisfy the first criterion. Counsel claims that this resource indicates that all postsecondary education administrators

possess at least a bachelor's degree. However, counsel does not indicate that those individuals possessed a bachelor's degree *in a specific specialty*, or the equivalent.

Nor does the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

Finally, the AAO notes again that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation. In conclusion, as the evidence in the record of proceeding does not establish that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of this petition, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d at 1165 (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. at 1102).

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

Also, there are no submissions from professional associations in the petitioner's industry attesting that individuals employed in positions parallel to the proffered position are routinely required to have a minimum of a bachelor's degree in a specific specialty or its equivalent for entry into those positions.

As was noted above, the record does contain the March 26, 2013 letter from the Chief Academic Officer of [REDACTED]. That letter asserts that the university's two admissions officers and two student recruiters all have bachelor's degrees in business, management, accounting, or closely-related fields, and that such degrees are necessary for those positions so that the

incumbents can "explain course content, address differences between the curriculum offered by that institution and the curricula offered by other schools, and so that they may evaluate prospective students." The AAO observes that the writer did not identify those employees or their degrees. As such, whether their degrees, which the writer asserted may be "in closely-related fields," are actually in fields so closely-related that they could delineate a single specific specialty is unclear.

Furthermore, the evidence of record does not demonstrate that the positions described in this letter are "parallel" to the one being proffered here. For example, as noted above the petitioner submitted an LCA that was certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation which, as discussed above, signifies that the beneficiary is only expected to possess a basic understanding of the occupation. It is not clear that such is the case with the positions described in this letter.

Further, even if [REDACTED] had demonstrated, rather than asserted, that it always requires a minimum of a bachelor's degree in "business, management, accounting, or closely-related fields" or its equivalent, that assertion would fall short of asserting that the university requires a minimum of a bachelor's degree in a specific specialty. Again, 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).

The petitioner also submitted 13 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. Admissions Coordinator for [REDACTED] requiring admissions experience in a university and an unspecified bachelor's degree, and preferring a master's degree in business administration;
2. Director of Admissions for [REDACTED] requiring a Master's Degree in Marketing, Business, Higher Education Administration or closely related field," and five year's experience "in an admissions or other relevant student service or recruitment area";
3. Associate Director of Admissions and Enrollment at [REDACTED] requiring a master's degree in education, business, marketing and sales, or communications and five years of experience in admissions, enrollment and recruiting in higher education;
4. Director, Admissions/Registrar for [REDACTED] requiring "Bachelor's degree or higher in business, management or counseling plus three years of experience in a community college admissions environment or other student support area or Associate's degree or higher in a related field plus five years in a community college admissions environment or other student support area";

5. Director, Admissions/Recruiting, Graduate Programs for [REDACTED] requiring a "Master's degree in business or management or equivalent combination of education and experience," and "Five to eight years related work experience";
6. Associate Dean for Admissions for [REDACTED] requiring a bachelor's degree and preferring a master's degree in "Business, HR, Higher Education or closely related field";
7. Recruitment Officer of Undergraduate Admission for [REDACTED] stating, "Bachelor's degree required, preferably in public relations, business, communication, education or related area, 2-5 years of professional experience. 10 years work experience may be substituted in lieu of educational qualifications";
8. Admissions Assistant Director for [REDACTED] requiring:

Knowledge equivalent to that which normally would be acquired by completing a four-year college degree program in higher education, international studies, marketing, or a related field, three to five years of related and progressively more responsible or expansive work experience in professional admissions work, including planning and implementing admissions programs, linking institutional knowledge resources to prospecting international students at the graduate and undergraduate level, developing and implementing marketing and recruitment plans and strategies, researching and analyzing admissions data and making formal presentations, or an equivalent combination of education and experience;

9. Associate Director for Admissions & Multicultural Education for [REDACTED] University requiring a "Master's Degree in higher education administration, student personnel/development, cultural studies, counseling, admissions, education or related academic field" and "A minimum 3-5 years relevant experience providing leadership to and working with students in a multicultural environment, preferably in higher education";
10. Director of Admissions for [REDACTED] requiring a bachelor's degree in higher education and preferring a master's degree;
11. Director of Admissions for [REDACTED] requiring a master's degree in education or a related field and four to six years of recent and related experience;
12. Graduate Admissions Specialist for the [REDACTED] County requiring a bachelor's degree, preferably in information systems, information technology, or a related field, and at least one year of experience, preferably in graduate admissions, higher education or a related field;
13. Admissions Counselor for [REDACTED] Professions requiring "BA/BS in relevant field" and "2+ years of sales experience";

However, those vacancy announcements do not support the proposition that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations.

Initially, the AAO observes that, although the vacancy announcements contain position descriptions, none are sufficiently detailed to demonstrate that the positions they announce are so similar to the proffered position that they would require the same educational preparation. The positions announced, therefore, have not been shown to be positions *parallel* to the proffered position. For this reason alone, the vacancy announcements do not show that a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent is common to the petitioner's industry in parallel positions among similar organizations.

Additionally, all but the sixth and tenth vacancy announcements seek experienced candidates, whereas 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. The petitioner has indicated that the proffered position is a Level I position, and most of the vacancy announcements provided are for more advanced positions. As such, for this additional reason, the majority of the vacancy announcements provided do not appear to be for positions parallel to the proffered position.

To address the requirement of the first prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), those vacancy announcements would have to have been placed by organizations that are not only in the petitioner's industry but that are otherwise similar to the petitioner. The AAO observes that some of the organizations that placed those vacancy announcements are large state universities and private colleges and universities, such as [REDACTED]. Although the vacancy announcements provided were placed by higher education organizations, counsel provided no evidence, and did not even assert, that they are otherwise similar to the petitioner.

Further, the first vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. It states that a master's degree in business administration is preferred for the position, but that the minimum requirement is an unspecified bachelor's degree. The sixth vacancy announcement fails to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent for that same reason, as it states that an unspecified bachelor's degree is the minimum educational requirement, and that a master's degree in "Business, HR, Higher Education or closely related field" is preferred.

Further still, even if the first vacancy announcement stated a minimum requirement of a bachelor's or higher degree in business administration, that would not be a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Again, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. 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

administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The first, second, third, fourth, fifth, sixth, and seventh vacancy announcements all indicate that a degree in business administration would be a sufficient educational qualification for the position announced and, for that same reason, also fail to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Yet further, the second vacancy announcement states that a degree in business, marketing, or higher education administration would be a sufficient educational qualification for the proffered position. In general, as was stated above, provided the specialties are closely related, e.g., chemistry and biochemistry, a minimum of a bachelor's of higher degree in more than one specialty is recognized as satisfying the "degree in the specific specialty" requirement of section 214(i)(1)(B) of the Act. In such a case, the required "body of highly specialized knowledge" would essentially be the same. Since there must be a close correlation between the required "body of highly specialized knowledge" and the position, however, a minimum entry requirement of a degree in two disparate fields, such as marketing and higher education administration, would not meet the statutory requirement that the degree be "in *the* specific specialty."¹² Section 214(i)(1)(b) (emphasis added). For this additional reason, that vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the third vacancy announcement states that a degree in business, marketing and sales, or communications would be a sufficient educational qualification for the position announced. The fourth vacancy announcement indicates that a degree in business, management, or counseling would be sufficient. The seventh indicates that a degree in public relations, business, communication, or education would be sufficient. The educational requirement of the eighth vacancy announcement could be satisfied by a degree in higher education, international studies, or marketing. The educational requirement of the ninth vacancy announcement could be satisfied by a degree in higher education administration, student personnel/development, cultural studies, counseling, admissions, or education. Because a degree in a wide array of fields would satisfy the educational requirements of those positions, they do not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Even further, the second, sixth, seventh, eighth, tenth, eleventh, and twelfth vacancy announcements, in addition to stating that the educational requirement of the positions they announce could be satisfied by a degree in an array of subjects, also state that their educational requirements could be satisfied by a degree in a "related" or "closely related" field. What fields the hiring authority would consider sufficiently closely-related to the specified array of subjects is unknown. As such, even if they otherwise stated a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent, the assertion that the educational requirement might be satisfied by a degree in an unknown number and variety of additional "related" fields prevents

¹² Whether read with the statutory "the" or the regulatory "a," both readings denote a singular "specialty." Section 214(i)(1)(b) of the Act; 8 C.F.R. § 214.2(h)(4)(ii). Still, the AAO does not so narrowly interpret these provisions to exclude positions from qualifying as specialty occupations if they permit, as a minimum entry requirement, degrees in more than one closely related specialty.

them from demonstrating that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the thirteenth vacancy announcement states that the position requires a bachelor's degree in any "relevant field." What fields the hiring authority would consider "relevant" to the position announced is unclear. That vacancy announcement has not been shown to require a minimum of a bachelor's degree in a specific specialty or its equivalent. That vacancy announcement does not contain a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Moreover, the fourth vacancy announcement indicates that an associate's degree and five years of experience would be a sufficient qualification for the position. An associate's degree and five years of experience cannot, consistent with the relevant regulations, be considered equivalent to a bachelor's degree. *See e.g.* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As such, that vacancy announcement does not state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Similarly, the seventh vacancy announcement states that 10 years' work experience may be substituted for its educational requirement. Again, ten years of education is not equivalent to a bachelor's degree pursuant to the salient regulations.

Also, the record contains no evidence regarding how representative these advertisements are of the usual recruiting and hiring practices of the particular industries in which these advertisers operate. Again, simply 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.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what statistically valid inferences, if any, can be drawn from 13 announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.¹³

¹³ Although the size of the relevant study population is unknown, the petitioner fails to demonstrate what statistically valid inferences, if any, can be drawn from these job advertisements with regard to determining the common educational requirements for entry into parallel positions in similar organizations. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995). Moreover, given that there is no indication that the advertisements were randomly selected, the validity of any such inferences could not be accurately determined even if the sampling unit were sufficiently large. *See id.* at 195-196 (explaining that "[r]andom selection is the key to [the] process [of probability sampling]" and that "random selection offers access to the body of probability theory, which provides the basis for estimates of population parameters and estimates of error").

As such, even if the job announcements supported the finding that the position of postsecondary education administrator for institutions similar to and in the same industry as the petitioner required a bachelor's or higher degree in a specific specialty or its equivalent, it cannot be found that such a limited number of postings that appear to have been consciously selected could credibly demonstrate that such an educational

For all of the reasons discussed above, the evidence of record does not satisfy the first of the two alternative prongs described at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), as the evidence of record does not establish a requirement for at least a bachelor's degree in a specific specialty that is common (1) to the petitioner's industry and (2) for positions in that industry that are both (a) parallel to the proffered position and (b) located in organizations that are similar to the petitioner.

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 petitioner has failed to credibly 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 complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

In this particular case, the evidence of record does not credibly demonstrate that the duties the beneficiary will perform on a day-to-day basis constitute a position so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty or its equivalent.

The record of proceeding does not contain evidence establishing relative complexity or uniqueness as aspects of the proffered position, let alone that the position is so complex or unique as to require the theoretical and practical application of a body of highly specialized knowledge such that a person with a bachelor's or higher degree in a specific specialty or its equivalent is required to perform the duties of that position. Rather, the AAO finds, that, as reflected in this decision's earlier quotation of duty descriptions from the record of proceeding, the evidence of record does not distinguish the proffered position from other positions falling within the "Postsecondary Education Administrators" occupational category, which, the *Handbook* indicates, do not necessarily require a person with at least a bachelor's degree in a specific specialty or its equivalent to enter those positions.

Moreover while the assertions of record with regard to the claimed complex and unique nature of the proffered position are acknowledged, those assertions are undermined by the fact that the petitioner submitted an LCA certified for a job prospect with a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation. This factor is inconsistent with the analysis of the relative complexity and uniqueness required to satisfy this criterion. Based upon the wage rate selected by the petitioner, the beneficiary is only required to have a basic understanding of the occupation. Moreover, that wage rate indicates that the beneficiary will perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that she will receive specific

requirement is common throughout the petitioner's industry among companies similar to the petitioner for parallel positions.

instructions on required tasks and expected results; and that her work will be reviewed for accuracy.¹⁴

Accordingly, given the *Handbook's* indication that typical positions located within the "Postsecondary Education Administrators" occupational category do not require at least a bachelor's degree in a specific specialty, or the equivalent, for entry, it is not credible that a position involving limited, if any, exercise of independent judgment, close supervision and monitoring, receipt of specific instructions on required tasks and expected results, and close review *would* contain such a requirement.

Therefore, the evidence of 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 petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that may 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 AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.¹⁵

The AAO's review of the record of proceeding under this criterion necessarily includes whatever evidence the petitioner has submitted with regard to its past recruiting and hiring practices and employees who previously held the position in question.

To satisfy this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency, in a specific specialty, in its prior

¹⁴ 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 (last visited Mar. 14, 2014).

¹⁵ 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").

recruiting and hiring for the position. Additionally, 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 proffered position.¹⁶

In her February 8, 2013 letter, the petitioner's vice president for administration stated that a degree in management, finance, or a closely related field is the minimum educational requirement for the proffered position.

One item of evidence provided in support of that assertion was the petitioner's vacancy announcement for an Admissions and Recruitment Coordinator position with the petitioner's [REDACTED]. The AAO observes that the title of that position, Admissions and Recruitment Coordinator, suggests that it is a higher-level position than the proffered position, which the petitioner has designated an associate admissions officer position. Further, that vacancy announcement states that the position announced requires "[e]xperience in a college/university admissions department and/or two or more years of customer service, sales or marketing experience." Such an experience requirement makes clear that the position announced in that vacancy announcement is not the same position proffered here, which the petitioner indicated on the LCA is an entry-level position requiring limited, if any, exercise of judgment.

In any event, the minimum educational requirement for the position announced is a bachelor's degree "or [an] equivalent combination of education and relevant experience." What amount and type of experience the hiring authority would consider to be equivalent to a bachelor's degree is unknown. As such, the position cannot be shown to require a minimum of a bachelor's degree or its equivalent within the meaning of the salient regulations. Further, that minimum educational requirement does not include a requirement of a minimum of a bachelor's degree *in a specific specialty* or its equivalent.

For all of those reasons, the vacancy announcement provided does not demonstrate that the petitioner requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the position that vacancy announcement announces, and does not support the proposition that, by extension, the petitioner requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

In her April 18, 2013 letter the petitioner's vice president for administration asserted that a bachelor's degree in management, finance, or a related field is the minimum educational requirement for the proffered position. In support of that assertion, she stated that, in addition to employing the beneficiary as an associate admissions officer, the petitioner's school of management also employs an admissions officer who is enrolled in an MBA program. She did not, however, identify that admissions officer or that admissions officer's current degree. The record does not demonstrate that the petitioner's school of management's admissions officer has a minimum hiring requirement of a

¹⁶ That assertion would be undermined in this particular case by the fact that the petitioner indicated in the LCA that its proffered position is a comparatively low, entry-level position relative to others within the same occupation.

bachelor's degree in management, finance, or a related field, which the petitioner's vice president for administration asserted is the minimum requirement for the proffered position. Although the AAO will assume, given that the petitioner's school of management's admissions officer is in an MBA program, that he or she has a bachelor's degree, the record does not demonstrate that he or she has a bachelor's degree in any specific specialty closely related to her admissions officer position, and that his or her hiring was conditioned upon her possession of such a credential.

The petitioner's vice president for administration also stated that the petitioner's psychology and forensic psychology schools employ six admissions officers, all of whom have bachelor's degrees in psychology or in unidentified related fields. She did not identify the other fields in which they may have bachelor's degrees, which fields she considers to be related to psychology. Further, the AAO observes that she indicated that those are admissions officer positions, whereas the petitioner has designated the proffered position in the instant case as an *associate* admissions officer position. The record contains no indication that the educational requirement of admissions officer positions is identical to the educational requirement of associate admissions officer positions in general or, more specifically, identical to the educational requirement of the proffered position. For both reasons, that the petitioner's vice president for administration has asserted that the six admissions officers in the petitioner's psychology and forensic psychology schools have bachelor's degrees in psychology or related fields does not demonstrate that the proffered position in the instant case requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

None of the evidence submitted shows that the petitioner normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The petitioner has not, therefore, satisfied the criterion at 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. The duties of the proffered position, such as reviewing applications, conducting interviews of prospective students, assisting in selecting applicants, conducting admission and financial aid presentations, etc., have not been shown to be 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. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of postsecondary education administrator positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent.

Finally, the AAO finds that both on its own terms and also in comparison with the three higher wage-levels that can be designated in an LCA, by the submission of an LCA certified for a Level I wage-level, the petitioner effectively attests that the proposed duties are of relatively low complexity

as compared to others within the same occupational category. This fact is materially inconsistent with the level of complexity required by this criterion.

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

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

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 (last visited Mar. 14, 2014).

The pertinent guidance from DOL, at page 7 of its *Prevailing Wage Determination Policy Guidance* describes the next higher wage-level as follows:

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

Id.

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

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

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

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

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

Id.

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

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

Id.

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

For all of these reasons, the evidence in the record of proceeding fails to establish that the proposed duties meet the specialization and complexity threshold at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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. Conclusion and Order

The evidence of record does not demonstrate that the proffered position is a specialty occupation and therefore does not overcome the director's ground for denying this petition. Consequently, the appeal will be dismissed, and the petition will be denied.

Beyond the decision of the director, the petition will also be denied because the LCA filed by the petitioner in support of this petition does not correspond to it, and it fails to establish that the petitioner will pay the beneficiary an adequate salary. Consequently, this petition could be approved even if it were determined that the petitioner had overcome the director's ground for denying this petition, which it has not.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO 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 at 1043, *aff'd*, 345 F.3d 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

Moreover, when the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it shows that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*. 345 F.3d 683.

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the denial. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *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.