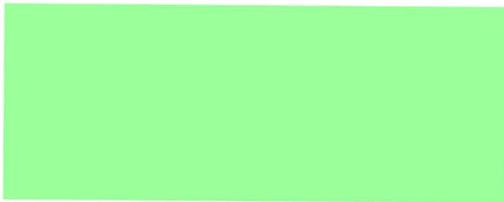




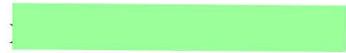
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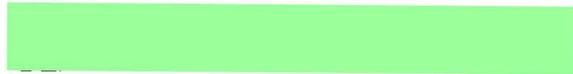
DATE: **MAR 27 2014**

OFFICE: CALIFORNIA SERVICE CENTER



IN RE:

Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

The petitioner is a university founded in 1847. In order to employ the beneficiary in what it designates as an admissions and financial aid counselor 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.

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

II. THE LAW

The issue before the AAO is whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation. Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the

attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college

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

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

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is an Admissions Counselor position, and that it corresponds to Standard Occupational Classification (SOC) code and title 21-1019, "Counselors, All Other" from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level position.

With the visa petition, counsel submitted evidence that the beneficiary has a bachelor's degree in biology with concentrations in marine biology and environmental science, and a master's degree in business administration with no concentration listed. Both of those degrees were awarded to the beneficiary by the petitioner.

Counsel also submitted a letter, dated May 1, 2012, from the petitioner's chief administrative affairs officer, in which she stated:

In this position, [the beneficiary] will be responsible for:

- Reviewing applications of prospective students, conducting interviews of prospective students, and assisting the Admissions Director in selecting which Applicants are qualified for admission to the University
- Outreach efforts include conducting admission and financial aid presentations
- Setting up workshops for prospective students and families on navigating through the on-line application system and through the financial aid and scholarship process

- Assisting in the designing, and implementing recruitment strategies including telemarketing to reach the greatest number of qualified potential Applicants;
- Building and maintaining relationships with prospective students and parents and working closely with guidance counselors and school officials to assure that they can smoothly navigate the Application process
- Work with Applicants and parents to insure that they are aware of and can access all appropriate sources of financial aid available to insure that they will have access to the University whenever possible.

The petitioner's chief administrative affairs officer further stated that the proffered position requires:

- Working with populations from diverse ethnic and socioeconomic backgrounds;
- The ability to comfortably make group presentations;
- Fluency with Microsoft Office Applications;
- Working knowledge of the Jenzabar CX Administrative systems or other database and the Constituent Relationship Management (CRM) module;
- Six to twelve months experience in recruitment, student services, public relations, marketing, education or related fields; and
- A Master's degree in a relevant field of study.

The petitioner's chief administrative affairs officer did list or otherwise discuss which subjects would constitute "relevant field[s] of study" such that a master's degree from one of them would provide sufficient preparation for the duties of the proffered position.

On September 4, 2012, the service center issued an RFE and 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 that the petitioner:

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 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) another letter, also dated May 1, 2012, from the petitioner's chief administrative affairs officer; (2) two vacancy announcements; (3) counsel's own letter, dated October 18, 2012, and (4) a document headed, "Admission and Financial Aid Counselor Role and Responsibilities of the Position."

Although the May 1, 2012 letter from the petitioner's chief administrative affairs officer submitted in response to the RFE differs slightly from his first May 1, 2012 letter, the AAO finds those letters so similar in substance that the second May 1, 2012 letter will not be further discussed.¹

The document titled "Admission and Financial Aid Counselor Role and Responsibilities of the Position" states the following as the duties of the proffered position:

The [proffered position], reporting directly to the Director of Admissions in the Office of Admissions, maintains a high level of internal and external public contact serving as a liaison between the Office of Admissions, various academic unites, and other organizations within the University. The [proffered position] is responsible for outreach efforts in recruiting of prospective undergraduate ad transfer students to the University. Outreach efforts include conducting admission and financial aid presentations; setting up workshops for prospective students and families on navigating through the on-line application system and through the financial aid and scholarship process; participate in recruitment events to provide admission and financial aid assistance/guidance/ bringing prospective students and their families to the campus; making calls to prospects and inquiries for admission counseling; and proactively communicating with admitted and packaged students to ensure the students will be matriculating. [People in the proffered position] are responsible for planning and managing recruitment activities in assigned regions. [They] assume

¹ The petitioner's chief administrative affairs office stated the following in her second May 1, 2012 letter:

In this position, [the beneficiary] will be responsible for:

Building and maintaining relationships with prospective students and parents, working closely with guidance counselors and school officials, campus partners, academic departments and external constituents to achieve department and division goals,' and servicing as a primary facilitator for application review[.]

The position of Admissions Counselor requires experience working with populations from diverse ethnic and socioeconomic backgrounds, the ability to comfortably make group presentations, fluency with Microsoft Office Applications, working knowledge of the Jenzabar CX Administrative systems or other database and the Constituent Relationship Management (CRM) module; six to twelve months experience in recruitment, student services, public relations, marketing, education or related field and a Master's degree in a relevant field of study.

However, the second May 1, 2012 letter did not contain a more detailed description of the duties of the proffered position or an explanation as to why those duties require a minimum of a bachelor's degree in a specific specialty or its equivalent, as was requested in the RFE. That omission will be addressed in further detail below.

responsibility for implementing a marketing plan to attract the demographic in their target areas set by the Director of Admissions.

That document also states that "[t]his position requires a Bachelor's degree from an accredited college or university; with undergraduate or graduate coursework in business."

In his October 18, 2012 letter, counsel concentrated on demonstrating that the beneficiary is qualified for the proffered position. The AAO observes that the beneficiary's qualifications are not at issue. Rather, the issue raised by the RFE was whether the petitioner has demonstrated that the proffered position qualifies as a specialty occupation position by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent.

Counsel did, however, cite cases for the proposition that a position may qualify as a specialty occupation position if it requires the equivalent of a minimum of a bachelor's degree in a specific specialty, by requiring a bachelor's degree and specific training related to the position offered.

The director denied the petition on October 31, 2012 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).

On appeal, counsel again devoted considerable argument to demonstrating that the beneficiary is qualified for the proffered position. The AAO reiterates that the visa petition was not denied based on a finding that the evidence of record failed to demonstrate that the beneficiary is qualified for the proffered position; rather, it was denied based on a finding that the evidence of record did not demonstrate that, if the visa petition were approved, the petitioner would employ the beneficiary in a specialty occupation.²

IV. ANALYSIS

As a preliminary matter, the AAO observes that, if the proffered position requires a degree in a specific specialty, the evidence of record does not identify the specific specialty. Although both iterations of the May 1, 2012 letter from the petitioner's chief administrative affairs officer state that

² 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].").

the proffered position requires a master's degree in a "relevant field of study," neither letter identifies any fields that the petitioner would consider sufficiently relevant. This is insufficient to demonstrate that the proffered position requires a minimum of a bachelor's degree in a specific specialty, or the equivalent.

The document titled "Admission and Financial Aid Counselor Role and Responsibilities of the Position," indicates that the proffered position can be filled by a person with a bachelor's degree in any field of study, so long as the candidate's studies included coursework in business. That requirement, in itself, is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The AAO notes, further, that the evidence submitted is contradictory; the petitioner's chief administrative affairs officer has stated that it requires a master's degree, and the "Admission and Financial Aid Counselor Role and Responsibilities of the Position" document states that the position requires a bachelor's degree. 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). Because the evidence of record is contradictory on this point, it does not demonstrate, by a preponderance of the evidence, what education is required for the proffered position.

For all of these reasons, the evidence of record does not contain an assertion from the petitioner that the proffered position requires a minimum of a bachelor's degree in a specific specialty, or the equivalent. The petition must therefore be denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next 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 the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)* on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement at 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* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.³

The petitioner claims in the LCA that the proffered position corresponds to SOC code and title 21-1019, "Counselors, All Other" from O*NET. The *Handbook* does not contain a chapter pertinent to "Counselors, All Other," but it does contain a chapter entitled, "Postsecondary Education Administrators." 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

³ 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.

- 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 Feb. 26, 2014).

A portion of the duties of the proffered position consists of administering admissions. The duties the *Handbook* attributes to postsecondary education administrators working in admissions are entirely consistent with the duties described for the proffered position pertinent to admissions. Although the *Handbook* chapter pertinent to postsecondary education administrators does not specifically mention financial aid administration, it does state that they often work with the financial aid department, and indicates that postsecondary education administrators may work in various areas within a college or university, and specifically mentions student services. Financial aid is among the student services offered at colleges and universities. Moreover, the O*NET at SOC code and title 11-9033.00, Education Administrators, Postsecondary, states that the duties of such positions include, "Direct[ing] scholarship, fellowship, and loan programs[;] performing activities such as selecting recipients and distributing aid;" and "Participat[ing] in student recruitment, selection, and admission, making admissions recommendations when required to do so."⁴

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.

⁴ See http://www.onetonline.org/link/result/11-9033.00?c=tk&e_tk=1&c_tk=10&s_tk=IM&c_tt=10&s_tt=s&e_tt=L&e_tt=C&c_kn=50&s_kn=IM&c_sk=50&s_sk=IM&c_ab=50&s_ab=IM&c_wa=50&s_wa=IM&c_cx=50&c_in=50&c_ws=50&c_wv=50&c_wn=50&s_cw=CIP&g=Go

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 Feb. 26, 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,⁵ 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).

⁵ As noted above, the petitioner submitted an LCA certified for a Level I (entry-level) prevailing wage-rate, the lowest of the four assignable wage levels. 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.

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 Feb. 26, 2014).

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.

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 marketing⁶ 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).

Where, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies this criterion by a preponderance of the evidence standard, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty

⁶ 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 may also also prepare an individual to perform those duties.

occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In this case, the *Handbook* does not support the proposition that the proffered position satisfies 8 C.F.R. § 214.2(h)(4)(iii)(A)(1), and the record of proceeding does not contain any persuasive documentary evidence from any other relevant authoritative source establishing that the proffered position's inclusion in this occupational category would be sufficient in and of itself to establish that a bachelor's or higher degree in a specific specialty or its equivalent "is normally the minimum requirement for entry into [this] particular position."

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

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

The petitioner did submit two 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. Financial Aid Counselor for [REDACTED], requiring a "Bachelor's degree in Public Administration, Business, Humanities or other related field AND one year of experience in financial aid student counseling OR, five years of experience in financial aid or student counseling or related experience; OR, any equivalent combination of experience and/or education from which comparable knowledge, skills and abilities have been achieved"; and
2. Financial Aid Counselor for [REDACTED] requiring a bachelor's degree in business management, accounting or other related field and two years of relevant work experience performing student orientated duties relating to financial aid, admissions counseling, or relevant student affairs activities.

The evidence of record does not demonstrate that the positions described in these announcements are "parallel" to the one being proffered here. The petitioner has submitted no information about any of these positions, other than the vacancy announcements themselves. Moreover, it is noted that work experience is required for both of these positions. However, as noted above, the petitioner indicated by the wage-level in the LCA that its proffered position is 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. Absent evidence to the contrary, it is therefore difficult to envision how these attributes assigned to the proffered position by the petitioner by virtue of its wage-level designation on the LCA would be parallel to the positions described in these job vacancy announcements. 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.

The vacancy announcement from [REDACTED] does not indicate that the organization requires an individual with a bachelor's degree in a specific specialty, or the equivalent. The announcement states that the organization would find acceptable bachelor's degrees in public administration, business, humanities, or other related fields. It is not readily apparent that public administration, business, the humanities, and unspecified "related fields" are closely related to one another.

Moreover, while the AAO does not dispute that [REDACTED] University are located within the petitioner's industry, the evidence of record does not explain how either institution is also "similar" to the petitioner. Again, the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) 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 other words, the petitioner must establish that [REDACTED] are in the petitioner's industry and that they are organizations within that industry that are *also* similar to the petitioner. 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.

Nor does the record contain any 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 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 two vacancy announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.⁷

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.

⁷ 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 requirement is common throughout the petitioner's industry among companies similar to the petitioner for parallel positions.

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 instructions on required tasks and expected results; and that her work will be reviewed for accuracy.⁸

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 turns next to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which entails an employer demonstrating that it normally requires a bachelor's degree in a specific specialty or its equivalent for the position.

⁸ 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 Feb. 26, 2014).

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 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.⁹

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 the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's assertion of a particular degree requirement is not necessitated by the actual performance requirements of the proffered position, the position would not meet the statutory or regulatory definition of a specialty occupation. *See* section 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

The director's April 19, 2013 RFE specifically requested the petitioner to document its past recruiting and hiring history with regard to the proffered position. The third section of the RFE includes the following specific requests for such documentation:

- Position Announcement: To support the petitioner's contention that the position is a "specialty occupation," provide copies of the petitioner's present and past job vacancy announcements. The petitioner may also provide classified advertisements soliciting for the current position, showing that the petitioner requires its applicants to have a minimum of a baccalaureate or higher degree or its equivalent for the position.
- Past Employment Practices: Provide evidence to establish that the petitioner has a past practice of hiring persons with a baccalaureate degree, or higher[,] in a specific specialty, to perform the duties of the proffered position. Indicate the number of persons employed in similar positions. Further, submit documentation to establish how many of those persons have a baccalaureate degree or higher and the particular field of study in which the degree was attained. Documentation should include copies of transcripts and pay records or Quarterly Wage Reports for the employees claimed to hold a baccalaureate degree in the specific field of study.

⁹ Any such 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.

Although the director provided the petitioner with the opportunity to establish a history of recruiting and hiring only individuals for this position with a bachelor's degree in a specific specialty, the petitioner submitted no such evidence. While a first-time hiring for a position is certainly not a basis for precluding a position from recognition as a specialty occupation, it is unclear how an employer that has never recruited and hired for the position would be able to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which requires a demonstration that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position.

As the record of proceeding does not demonstrate that the petitioner normally requires at least a bachelor's degree in a specific specialty or its equivalent for the proffered position, it does not satisfy 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 Feb. 26, 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).

Nor does the caselaw cited by counsel on appeal establish any error in the director's decision denying the petition or otherwise establish the proffered position as a specialty occupation.

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

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. 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 at 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. at

560 ("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 general 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). For the aforementioned reasons, however, the petitioner has failed to meet its burden and establish that the particular position offered in this matter requires a bachelor's or higher degree in a specific specialty, or its equivalent, directly related to its duties in order to perform those duties. 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*.¹⁰ Again, 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 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.

Counsel also cites *Button Depot, Inc. v. U.S. Dept. of Homeland Sec.*, 386 F. Supp. 2d 1140 (C.D. Cal. 2005). However, in that case the court addressed the issue of a beneficiary's qualifications to perform the duties of a proffered position which, again, is not the issue here.

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

V. ADDITIONAL BASES

The record suggests two additional issues that were not addressed in the decision of denial but that, nonetheless, also preclude approval of this visa petition.

The September 4, 2012 RFE issued in this matter specifically requested that the petitioner submit a more detailed description of the duties of the proffered position, which evidence was relevant to the material issue of whether the proffered position qualifies as a specialty occupation position. The petitioner provided no such more detailed description. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The visa petition must be denied for this additional reason.

Further, as was observed above, the LCA submitted to support the instant visa petition is certified for an SOC code and title [REDACTED] "Counselors, All Other" position. However, the proffered position, for reasons explained above, corresponds to SOC code and title [REDACTED] "Education Administrators, Postsecondary" from O*NET. The record contains no explanation as to why the petitioner submitted an LCA certified for a position falling under the occupational category of

¹⁰ 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.

“Counselors, All Other” rather than under the occupational category of “Education Administrators, Postsecondary.” As such, the LCA submitted by the petitioner does not correspond to the proffered position.

The regulation at 8 C.F.R. § 214.2(h)(4)(i)(B)(1) stipulates the following:

Before filing a petition for H-1B classification in a specialty occupation, the petitioner shall obtain a certification from the Department of Labor that it has filed a labor condition application in the occupational specialty in which the alien(s) will be employed.

While DOL is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of 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:

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. . . .

[Italics added]

The AAO has found that the LCA submitted does not correspond to the instant visa petition. The visa petition must be denied for this additional reason.

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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that 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.

IV. CONCLUSION

The director's decision will be affirmed and the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. In visa petition

(b)(6)

NON-PRECEDENT DECISION

Page 27

proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.