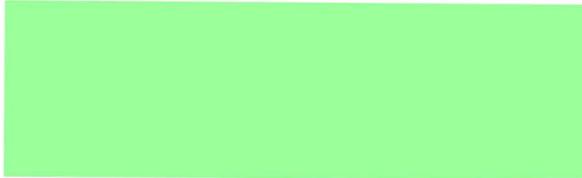




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 08 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 denied the nonimmigrant visa petition. The matter is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed. The petition will be denied.

On the Form I-129 visa petition, the petitioner describes itself as a collection agency established in 1932. In order to employ the beneficiary in what it designates as a vice president of certification compliance position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

The record of proceeding before the AAO contains: (1) the Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the notice of decision; and (5) the Form I-290B and supporting materials. The AAO reviewed the record in its entirety before issuing its decision.

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

I. PROCEDURAL AND FACTUAL HISTORY

In the petition signed on March 29, 2013 and supporting documentation, the petitioner indicates that it wishes to employ the beneficiary in a vice president of certification compliance position on a full-time basis at the rate of pay of \$60,800 per year. In addition, the petitioner indicates that the beneficiary will work at its call center located at [REDACTED] Mishawaka, Indiana [REDACTED]. In the support letter dated April 1, 2013, the petitioner states the following:

In order to assist us with our continuing efforts to remain compliant, to understand and interpret the ever increasing regulations on debt collection, to train and supervise our employee collectors in our Mishawaka call center, to instruct the independent contractor we work with in India on U.S. laws, and to report to management on compliance efforts and recommendations to improve compliance, [the petitioner] seeks to employ [the beneficiary] as its Vice President of Certification Compliance.

With the initial petition, the petitioner submitted a job description of the proffered position. Specifically, the document states that the beneficiary will be employed to perform the following duties:

GENERAL PURPOSE

The Vice President of Certification Compliance monitors and reports results of the compliance/ethics efforts of the company and in providing guidance for the ownership and senior management team on matters relating to compliance with agencies and laws at the federal, state and local levels that regulate collection industry. The Vice President of Certification Compliance is authorized to implement all necessary actions to ensure achievement of the objectives of an effective compliance program.

DUTIES AND RESPONSIBILITIES

1. Develops, initiates, maintains, and revises policies and procedures for the general operation of the Compliance Program and its related activities to prevent illegal, unethical, or improper conduct. Manages day-to-day operation of the Program.
2. Develops and periodically reviews and updates Standards of Conduct to ensure continuing relevance in providing guidance to management and employees.
3. Collaborates with other departments (e.g., Risk Management, Human Resources, etc.) to direct compliance issues to appropriate existing channels for investigation and resolution. Consults with the Corporate attorney as needed to resolve difficult legal compliance issues.
4. Responds to alleged violations of rules, laws, regulations, policies, procedures, and Standards of Conduct by evaluating or recommending the initiation of investigative procedures. Develops and oversees a system for uniform handling of such violations.
5. Acts as an independent review and evaluation body to ensure that compliance issues/concerns within the organization are being appropriately evaluated, investigated and resolved.
6. Monitors, and as necessary, coordinates compliance activities of other departments to remain abreast of the status of all compliance activities and to identify trends.
7. Identifies potential areas of compliance vulnerability and risk; develops/implements corrective action plans for resolution of problematic issues, and provides general guidance on how to avoid or deal with similar situations in the future.
8. Remains current with [sic] all laws that apply to collection agencies on the federal, state and local levels. Remains current with the expectations and

rules set forth by agencies that regulate the collection industry. Prepares the training program for collection representatives to ensure their understanding and complying with collection laws.

9. Provides reports on a regular basis, and as directed or requested, to keep senior management informed of the operation and progress of compliance efforts.
10. Ensures proper reporting of violations or potential violations to duly authorized enforcement agencies as appropriate and/or required.
11. Works with the Human Resources Department and others as appropriate to develop an effective compliance training program, including appropriate introductory training for new employees as well as ongoing training for all employees and managers.
12. Monitors the performance of the Compliance Program and relates activities on a continuing basis, taking appropriate steps to improve its effectiveness.

QUALIFICATIONS

At a minimum, this position requires a bachelor's degree with a preference to an area within the Liberal Arts. A minimum of five years [of] experience in a collection agency organization, to include demonstrated leadership. Familiarity with operational and compliance procedures and knowledge of the U.S. laws that regulate collection agencies is required.

The petitioner also submitted a copy of the beneficiary's foreign diploma and transcript, as well as a credential evaluation from [REDACTED] of [REDACTED]. The credential evaluation indicates that the beneficiary's foreign education and experience amount to the equivalent of "at least a Bachelor of Business Administration degree from an accredited institution of higher education in the United States."

In addition, the petitioner submitted a Labor Condition Application (LCA) in support of the instant H-1B petition. The LCA designation for the proffered position corresponds to the occupational category "Managers, All Other" - SOC (ONET/OES Code) 11-9199. Further, the petitioner submitted printouts from its website.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on April 23, 2013. The petitioner was asked to submit probative evidence: (1) to establish that the beneficiary is qualified to serve in a specialty occupation position; and (2) to establish that a specialty occupation position exists for the beneficiary. The director outlined the specific evidence to be submitted.

On July 16, 2013, the petitioner and counsel responded by submitting further information regarding

the proffered position and additional evidence. In a July 16, 2013 Declaration, submitted in response to the RFE, the petitioner provided a revised description of the duties of the proffered position, along with the percentage of time that the beneficiary will spend performing each duty. Specifically, the petitioner stated that the beneficiary will perform the following duties:

Duties	Percentage of Time to be Allocated Per week	Level of Responsibility
Develop, initiates, maintains, and revises policies and procedures for the general operation of the Compliance Program and its related activities to prevent illegal, unethical, or improper conduct. Manages day-to-day operation of the Program. Monitor the performance of the Compliance Program and relates activities on a continuing basis, taking appropriate steps to improve its effectiveness[.]	20%	Primary
Analyze efficiency of each collector by determining time spent per call, whether monies were collected, identify strategies within the bounds of the law that the collectors can use to increase their collectibles, and develop formulas and statistics to monitor same.	15%	Primary
Collaborate with other departments (e.g., Risk Management, Human Resources, etc.) to	5%	Primary

<p>direct compliance issues to appropriate existing channels for investigation and resolution. Consults with the Corporate attorney as needed to resolve difficult legal compliance issues. Works with Corporate attorney to ensure that collection letters sent to debtors are compliant[.]</p>		
<p>Develops and periodically reviews and updates Standards of Conduct to ensure continuing relevance in providing guidance to management and employees[.]</p>	<p>3%</p>	<p>Primary</p>
<p>Respond to alleged violations of rules, laws, regulations, policies, procedures, and Standards of Conduct by evaluating or recommending the initiation of investigative procedures. Develop and oversee a system for uniform handling of such violations. Respond to complaints through the Better Business Bureau, Attorney Generals of each state, American Collectors Association complaint process, and the Consumer Financial Protection Bureau[.]</p>	<p>3%</p>	<p>Primary</p>

Act as an independent review and evaluation body to ensure that compliance issues/concerns within the organization are being appropriately evaluated, investigated and resolved.	10%	Primary
Monitor, and as necessary, coordinate compliance activities of other departments to remain abreast of the status of all compliance activities and to identify trends[.]	3%	Primary
Identify potential areas of compliance vulnerability and risk; develops/implements corrective action plans for resolution of problematic issues, and provides general guidance on how to avoid or deal with similar situations in the future[.]	3%	Primary
Remain current will [sic] all laws that apply to collection agencies on the federal, state and local levels. Remain current with the expectations and rules set forth by agencies that regulate the collection industry. Prepare the training program for collection representatives to ensure their understanding and	5%	Primary

complying with collection laws[.]		
Provide reports on a regular basis, and as directed or requested, to keep senior management informed of the operation and progress of compliance efforts[.]	2%	Primary
Ensure proper reporting of violations or potential violations to duly authorized enforcement agencies as appropriate and/or required[.]	1%	Primary
Work with the Human Resources Department and others as appropriate to develop an effective compliance training program, including appropriate introductory training for new employees as well as ongoing training for all employees and managers[.]	2%	Shared
Maintain and develop processes and reporting for auditing staff, clients, and outside vendors for potential violations in all areas of compliance in the collection industry. Such as but not limited to Red Flag Rules, Fair Debt Collection Practices Act, Health Information Portability	5%	Primary

and Accountability Act, HIPPA Security Rule, HIPPA Privacy Rule, Gramm-Leach Bliley Act, FCRA, TCPA, and Bankruptcy Laws[.]		
Review, draft, and maintain agency contracts/Business Associate agreements with clients, vendors and others[.]	5%	Primary
Maintain state licensing compliance [.]	7%	Primary
Oversee Company Dispute Department- this will include all consumer and client disputes.	4%	Primary
Supervise approximately 30 collectors/team leaders/compliance team in U.S. by monitoring calls, performance, establishing expectations and goals for collection and make recommendations for termination. Work with collectors in India, conduct training via Internet and develop and update written test materials on laws to ensure continued education.	7%	Primary

* * *

At a minimum, the Vice-President of Compliance and Certification requires a 4-year

Bachelor's degree (or its equivalent) with a preference to an area within the Liberal Arts. A minimum of five years in a collection agency organization, to include demonstrated leadership, is also required for the position. . . . [T]he Vice-President of Compliance and Certification Position requires an individual who, at the very least, has a 4-year Bachelor's degree (or its equivalent) and five years [of] work experience in a collection agency organization.

In response to the RFE, the petitioner and counsel also submitted, in part, the following: (1) a letter from [REDACTED] of [REDACTED]; (2) a second credential evaluation from [REDACTED];² (3) articles from ACA International – The Association of Credit and Collection Professionals; (4) an organizational chart; (5) a copy of the University of Illinois' Economics 203 Syllabus for Economics Statistics II; (6) an article entitled "Using Documented Problem Solving in Economics" from SERC (Science Education Resource Center) at Carleton College; (7) an unsigned copy of the petitioner's Income Tax Return for 2012; (8) a Declaration by [REDACTED] Vice President of Production for the petitioning company; (9) a copy of the beneficiary's Professional Collection Specialist Certificate; (10) a printout from the ACA International's website regarding the Professional Collection Specialist Certificate; (11) an excerpt entitled "Management Analysts" from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook* (hereinafter the *Handbook*), 2012-13 edition; and (12) an excerpt entitled "Training and Development Managers" from the *Handbook*, 2012-13 edition; (13) job vacancy announcements; and (14) course descriptions for economic classes.

The director reviewed the documentation and found it insufficient to establish eligibility for the benefit sought. Although the petitioner claimed that the beneficiary would serve in a specialty occupation, the director determined that the petitioner failed to establish how the beneficiary's immediate duties would necessitate services at a level 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 its equivalent) as a minimum for entry. The director denied the petition on July 30, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

II. BEYOND THE DIRECTOR'S DECISION

The AAO reviewed the record of proceeding in its entirety and, as will be discussed later in the decision, agrees with the director that the petitioner has not established eligibility for the benefit sought. Moreover, the AAO has identified an additional issue that precludes the approval of the H-1B petition that was not identified by the director. Consequently, even if the petitioner overcame the ground for the director's denial of the petition (which it has not), it could not be found eligible for the benefit sought.³

² The second credential evaluation is on the [REDACTED] letterhead.

³ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

More specifically, the record of proceeding contains numerous inconsistencies and discrepancies, which undermine the petitioner's credibility with regard to the services the beneficiary will perform and the wages to be paid, as well as the actual nature and requirements of the proffered position.

As previously discussed, the petitioner provided an LCA in support of the instant petition that indicates the occupational classification for the position is "Managers, All Other" at a Level III wage. The place of employment is listed as [REDACTED] Mishawaka, Indiana [REDACTED].⁴

Notably, in response to the RFE, the petitioner and counsel submitted documentation regarding the occupational category "Management Analysts" and "Training and Development Managers" from the *Handbook* in support of the assertion that the proffered position qualifies as a specialty occupation. In the July 16, 2013 brief, counsel states the duties of these occupational categories correspond to the duties of the proffered position and that "[t]here are no material differences between the positions." In the appeal, counsel states that "the duties for Management Analysts and Training and Development Manager do correspond with the proffered position."

The AAO notes that "Managers, All Other," "Management Analysts," and "Training and Development Managers" are three separate occupational categories. When the duties of the proffered position involve more than one occupational category, DOL provides guidance for selecting the most relevant Occupation Information Network (O*NET) occupational code classification. The "Prevailing Wage Determination Policy Guidance" states the following:

In determining the *nature of the job offer*, the first order is to review the requirements of the employer's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the employer's job offer shall be used to identify the appropriate occupational classification If the employer's job opportunity has worker requirements described in a combination of O*NET occupations, the SWA should default directly to the relevant O*NET-SOC occupational code for the highest paying occupation. For example, if the employer's job offer is for an engineer-pilot, the SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

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.

⁴ It must be noted for the record that the Form I-129 petition indicates that the place of employment is located at [REDACTED] Mishawaka, Indiana [REDACTED]. However, the LCA indicates that the place of employment is located at [REDACTED] Mishawaka, Indiana [REDACTED]. No explanation was provided. The AAO will not attempt to "guess" whether the address is a typographical error. 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).

In determining the nature of the job offer, DOL guidance indicates that the first step is to review the requirements of the petitioner's job offer and determine the appropriate occupational classification. The O*NET description that corresponds to the petitioner's job offer is used to identify the appropriate occupational classification. If the petitioner believes that its position is described as a combination of O*NET occupations, then according to DOL guidance the petitioner should select the relevant occupational code for the highest paying occupation.

The Online Wage Library (OWL) lists the prevailing wage for "Managers, All Other" at a Level III as \$60,778 per year at the time the petition was filed in this matter, in the area of intended employment. The prevailing wage for "Management Analysts" is listed as \$108,389 per year for a Level III, and the wage for "Training and Development Managers" is listed as \$87,984 per year for a Level III.⁵ The prevailing wages for "Management Analysts" and "Training and Development Managers" are significantly higher than the prevailing wage for "Managers, All Other." Thus, according to DOL guidance, if the petitioner believed its position was a combination of the occupations "Managers, All Other," "Management Analysts," and "Training and Development Managers," it should have chosen the relevant occupational code for the highest paying occupation. However, the petitioner selected the occupational category for the lowest paying occupational category for the proffered position on the LCA.

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]").

As noted below, 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

⁵ For additional information regarding the prevailing wage for these occupations, see the All Industries Database for 7/2012 - 6/2013 at the Foreign Labor Certification Data Center, Online Wage Library on the Internet at <http://www.flcdatacenter.com> (last visited May 6, 2014). For the occupational category "Training and Development Managers" the prevailing wage was \$61,027 per year for a Level I position, \$74,506 per year for a Level II position, \$87,984 per year for a Level III position, and \$101,462 per year for a Level IV position. Thus, the prevailing wage for "Training and Development Managers" at a Level I is higher than the petitioner's offered wage.

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.

While DOL is the agency that certifies LCA applications before they are submitted to U.S. Citizenship and Immigration Services (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 . . . 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. The petitioner was required to provide, at the time of filing the H-1B petition, an LCA certified for the correct occupational category and 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 occupation at a lower prevailing wage than the one that it claims it is offering to the beneficiary. As such, the petitioner has failed to establish that it submitted a certified LCA that properly corresponds to the claimed occupation and duties of the proffered position and that it would pay the beneficiary an adequate salary for his work, as required under the Act, if the petition were granted. Thus, for these additional reasons, the H-1B could still not be approved.

III. REVIEW OF THE DIRECTOR'S DECISION

Specialty Occupation

The AAO will now address the director's basis for denial of the petition, namely that the petitioner failed to establish that it would employ the beneficiary in a specialty occupation position. Based upon a complete review of the record of proceeding, the AAO agrees with the director and finds that the evidence fails to establish that the position as described constitutes a specialty occupation. For efficiency's sake, the AAO hereby incorporates the above discussion and analysis into the record of proceeding regarding the beneficiary's proposed employment.

The primary issue for consideration is whether the petitioner's proffered position qualifies as a specialty occupation. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

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

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

As a threshold issue, it is noted that 8 C.F.R. § 214.2(h)(4)(iii)(A) must logically be read together with section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). In other words, this regulatory language must be construed in harmony with the thrust of the related provisions and with the statute as a whole. *See K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291 (1988) (holding that construction of language which takes into account the design of the statute as a whole is preferred); *see also COIT Independence Joint Venture v. Federal Sav. and Loan Ins. Corp.*, 489 U.S. 561 (1989); *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996). As such, the criteria stated in 8 C.F.R. § 214.2(h)(4)(iii)(A) should logically be read as being necessary but not necessarily sufficient to meet the statutory and regulatory definition of specialty occupation. To otherwise interpret this

section as stating the necessary *and* sufficient conditions for meeting the definition of specialty occupation would result in particular positions meeting a condition under 8 C.F.R. § 214.2(h)(4)(iii)(A) but not the statutory or regulatory definition. *See Defensor v. Meissner*, 201 F.3d 384, 387 (5th Cir. 2000). To avoid this 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.

The issue before the AAO is whether the petitioner has provided sufficient evidence to establish that it would employ the beneficiary in a specialty occupation position. To make this determination, the AAO turns to the record of proceeding. To ascertain the intent of a petitioner, USCIS must look to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position offered, the location of employment, the proffered wage, et cetera. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

As a preliminary matter, the AAO observes that in the April 1, 2013 letter of support, the petitioner stated that the proffered position "requires at a minimum, a Bachelor's degree, with a preference in an area of Liberal Arts [and a] minimum of five years [of] experience in a collection agency organization, to include demonstrated leadership." In the July 16, 2013 Declaration, submitted in

response to the director's RFE, the petitioner claimed that "[a]t a minimum, the Vice-President of Compliance and Certification position requires a 4-year Bachelor's degree (or its equivalent) with a preference to an area within the Liberal Arts" and "five years in a collection agency organization, to include demonstrated leadership."⁷ Importantly, a *preference* is not an indication of a *requirement* for a degree in a particular discipline. Accordingly, based upon the petitioner's own standards a degree in a specific specialty, or its equivalent, is not required for the proffered position.

The degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the proffered position. See *Royal Siam Corp. v. Chertoff*, 484 F.3d 147 (describing "a degree requirement in a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Thus, the petitioner's assertion that a general-purpose degree or a degree in any field is acceptable is tantamount to an admission that the proffered position is not in fact a specialty occupation.

The AAO notes 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. See *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass. 2000). The AAO does not find, however, 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. Furthermore, the AAO does not find (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].").

⁷ Thereafter, in the same Declaration, the petitioner stated that "an emphasis is [sic] Economics or a related field is needed" for the proffered position. On appeal, counsel claims that the director "erred by ignoring that [the] Petitioner clarified in its response to the RFE that subject position requires a Bachelor's degree with an emphasis in Economics." The petitioner did not provide an explanation for failing to include this requirement in the initial petition or in failing to consistently state this requirement in the Declaration. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998).

Second, in promulgating the H-1B regulations, the former Immigration and Naturalization Service (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 the instant case, the petitioner claims that it requires at least a bachelor's degree, with a preference in liberal arts, along with five years of experience in a collection agency organization, to include demonstrated leadership. Upon review, the record of proceeding does not support the conclusion that the petitioner's claimed requirement of a degree plus experience is equivalent to a bachelor's or higher degree in a specific specialty.

On appeal, counsel cites 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."⁸

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, in this matter, the petitioner has not demonstrated that it requires a degree in a specific specialty that is directly related to the proposed position. Further, and as just discussed, there are discrepancies in the petitioner's statements with regard to its claimed requirements for the proffered position. Moreover, 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*.⁹ Accordingly, counsel's reliance on this United States district court's decision is misplaced.

⁸ It must be noted 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.

⁹ 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 the 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 fact that a person may be employed in a position designated by a petitioner as that of a vice-president of cortication compliance and may apply some related principles in the course of his or her job is not in itself sufficient to establish the position as one that qualifies as a specialty occupation. Thus, it is incumbent on the petitioner to provide sufficient evidence to establish that the particular position that it proffers would necessitate services at a level requiring both the theoretical and practical application of a body of highly specialized knowledge and the attainment of at least a bachelor's degree in a specific specialty, or its equivalent. 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 benefit. Section 291 of the Act; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190.

Furthermore, as discussed previously, the petitioner and its counsel have provided inconsistent information regarding the nature of the proffered position. In the LCA, the petitioner claimed that the position falls under the occupational category "Managers, All Other." Thereafter, in response to the RFE and on appeal, the petitioner and its counsel asserted that the proffered position falls under the occupational categories "Management Analysts," and "Training and Development Managers." No explanation was provided for failing to select the highest paying occupational category for the LCA in accordance with DOL guidance. This discrepancy raises questions as to the services the beneficiary will perform, as well as the actual nature and requirements of the proffered position.

The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), because it is the substantive nature of that work that determines (1) the normal minimum educational requirement for the particular position, which is the focus of criterion 1; (2) industry positions which are parallel to the proffered position and thus appropriate for review for a common degree requirement, under the first alternate prong of criterion 2; (3) the level of complexity or uniqueness of the proffered position, which is the focus of the second alternate prong of criterion 2; (4) the factual justification for a petitioner normally requiring a degree or its equivalent, when that is an issue under criterion 3; and (5) the degree of specialization and complexity of the specific duties, which is the focus of criterion 4.

Nevertheless, the AAO will address each criterion of the regulations for the purpose of providing a comprehensive discussion on this issue. For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. The AAO first turns 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 *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 recognizes the *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.¹⁰ As previously mentioned, the petitioner asserts in the LCA that the proffered position falls under the occupational category "Managers, All Other."

The AAO reviewed the *Handbook* regarding the occupational category "Managers, All Other." However, the *Handbook* simply describes this category as "[a]ll managers not listed separately." The *Handbook* does not provide a detailed narrative account nor does it provide summary data for the occupational category "Managers, All Other." More specifically, the *Handbook* does not provide the typical duties and responsibilities for this category. Moreover, the *Handbook* does not provide any information regarding the academic and/or professional requirements for these positions.

The AAO notes there are occupational categories which are not covered in detail by the *Handbook*, as well as occupations for which the *Handbook* does not provide any information. The *Handbook* states the following about these occupations:

Data for Occupations Not Covered in Detail

Although employment for hundreds of occupations are covered in detail in the *Occupational Outlook Handbook*, [the Handbook] presents summary data on additional occupations for which employment projections are prepared but detailed occupational information is not developed. For each occupation, the Occupational Information Network (O*NET) code, the occupational definition, 2012 employment, the May 2012 median annual wage, the projected employment change and growth rate from 2012 to 2022, and education and training categories are presented.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Data for Occupations Not Covered in Detail," <http://www.bls.gov/ooh/About/Data-for-Occupations-Not-Covered-in-Detail.htm> (last visited May 6, 2014).

Thus, the narrative of the *Handbook* indicates that there are many occupations for which only brief summaries are presented. That is, detailed occupational profiles for these occupations are not developed.¹¹ The *Handbook* continues by stating that approximately five percent of all employment is

¹⁰ The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.stats.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

¹¹ The AAO notes that occupational categories for which the *Handbook* only includes summary data includes a range of occupations, including for example, postmasters and mail superintendents; agents and business managers of artists, performers, and athletes; farm and home management advisors; audio visual and multimedia collections specialists; clergy; merchandise displayers and window trimmers; radio operators;

not covered either in the detailed occupational profiles or in the summary data. The *Handbook* suggests that for at least some of the occupations, little meaningful information could be developed.

Accordingly, in certain instances, the *Handbook* is not determinative. When the *Handbook* does not support the proposition that a proffered position is one that meets the statutory and regulatory provisions of a specialty occupation, it is incumbent upon the petitioner to provide persuasive evidence that the proffered position more likely than not satisfies this or one of the other three criteria, 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 objection, authoritative sources) that supports a finding that the particular position in question qualifies as a specialty occupation. Whenever more than one authoritative source exists, an adjudicator will consider and weigh all of the evidence presented to determine whether the particular position qualifies as a specialty occupation. Upon review of the record, the petitioner has failed to do so in the instant case. That is, the petitioner has failed to submit probative evidence that normally the minimum requirement for positions falling under the occupational category "Managers, All Other" is at least a bachelor's degree in a specific specialty, or its equivalent.

With the initial petition, the petitioner an O*NET OnLine Summary Report for the occupational category "Compliance Managers," which falls under "Managers, All Other." The AAO reviewed the Summary Report in its entirety. However, upon review of the Summary Report, the AAO finds that it is insufficient to establish that the position qualifies as a specialty occupation. The Summary Report for compliance managers has a designation of Job Zone 4. This indicates that a position requires considerable preparation. It does not, however, demonstrate that a bachelor's degree in any *specific specialty* is required, and does not, therefore, demonstrate that a position so designated is in a specialty occupation as defined in section 214(i)(1) of the Act and 8 C.F.R. § 214.2(h)(4)(ii). The O*NET OnLine Help Center provides a discussion of the Job Zone 4 designation and explains that this zone signifies only that most, but not all of the occupations within it, require a bachelor's degree. See O*NET OnLine Help Center at <http://www.onetonline.org/help/online/zones>. Further, the Help Center discussion confirms that a designation of Job Zone 4 does not indicate any requirements for particular majors or academic concentrations. Therefore, despite the petitioner's assertion to the contrary, the O*NET Summary Report is not probative evidence that the proffered position qualifies as a specialty occupation.

The AAO will now discuss the letter from [REDACTED] which was submitted in response to the RFE. The letter is dated July 8, 2013. In the letter, Mr. [REDACTED] claims that the proffered position is a specialty occupation, and requires a Bachelor's Degree in Business Administration or a closely related field. Notably, Mr. [REDACTED]'s assertion differs from the petitioner's claimed requirement of "a bachelor's degree with a preference to an area within the Liberal Arts. A minimum of five years [of] experience in a collection agency organization, to include demonstrated leadership."

Moreover, it must be noted that Mr. [REDACTED]'s conclusion that a degree in business

first-line supervisors of police and detectives; crossing guards; travel guides; agricultural inspectors, as well as others.

administration is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. Although a general-purpose bachelor's degree, such as a degree in business administration, 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 147.¹²

Mr. [REDACTED] provided a summary of his experience and attached a copy of his curriculum vitae.¹³ The opinion letter is on [REDACTED] letterhead, and Mr. [REDACTED] indicates that he is a professor emeritus, but does not provide the date of his retirement. His curriculum vitae lacks specific information with regard to his experience and credentials since his retirement. Based upon a complete review of Mr. [REDACTED]'s letter and curriculum vitae, he has failed to provide sufficient information regarding the basis of his claimed expertise on this particular issue. Without further clarification, it is unclear how his education, training, skills or experience would translate to expertise or specialized knowledge regarding the *current* recruiting and hiring practices of collection agencies similar to the petitioner for vice president of certification compliance positions (or parallel positions).

Mr. [REDACTED]'s opinion letter and curriculum vitae do not cite specific instances in which his past opinions have been accepted or recognized as authoritative on this particular issue. There is no indication that he has published any work or conducted any research or studies pertinent to the

¹² 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.

Id.

¹³ Mr. [REDACTED] claims that he is qualified to comment on the position of vice president of certification compliance because of the position he holds, and has held at the [REDACTED] [1968-1972], The [REDACTED] [1976-1979], [REDACTED] [1972-1976], and the [REDACTED] [dates not provided]. Mr. [REDACTED] further claims that he is qualified to determine whether the proffered position requires the candidate to have specialized knowledge because of his publications and professional memberships. Upon review of his curriculum vitae, Mr. [REDACTED] primarily published in the 1970s to 1990s, with his most recent two articles being published in 2007 (approximately six years prior to the RFE response). None of the publications appear to relate to the issue in this matter, specifically the academic requirements for vice president of certification compliance positions. Likewise, he has not established how any particular professional memberships are relevant to the instant proceeding.

educational requirements for vice presidents of certification compliance (or parallel positions) in the petitioner's industry for similar organizations, and no indication of recognition by professional organizations that he is an authority on those specific requirements. The opinion letter contains no evidence that it was based on scholarly research conducted by Mr. [REDACTED] in the specific area upon which he is opining. In reaching this determination, Mr. [REDACTED] provides no documentary support for his ultimate conclusion regarding the education required for the position (e.g., statistical surveys, authoritative industry or government publications, or professional studies). Mr. [REDACTED] asserts a general industry educational standard for organizations similar to the petitioner, without referencing any supporting authority or any empirical basis for the pronouncement.

Upon review of the opinion letter, there is no indication that Mr. [REDACTED] possesses any knowledge of the petitioner's proffered position beyond the job description. The fact that he attributes a degree requirement to such a generalized treatment of the proffered position undermines the credibility of his opinion. Mr. [REDACTED] does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise. His opinion does not relate his conclusion to specific, concrete aspects of this petitioner's business operations to demonstrate a sound factual basis for the conclusion about the educational requirements for the particular position here at issue. For instance, there is no evidence that Mr. [REDACTED] has visited the petitioner's business, observed the petitioner's employees, interviewed them about the nature of their work, or documented the knowledge that they apply on the job. Mr. [REDACTED] provides general conclusory statements regarding the proffered position, but he does not provide a substantive, analytical basis for his opinion and ultimate conclusions.

In summary, and for each and all of the reasons discussed above, the AAO concludes that the advisory opinion rendered by Mr. [REDACTED] is not probative evidence to establish the proffered position as a specialty occupation. The conclusions reached by Mr. [REDACTED] lack the requisite specificity and detail and are not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions. There is an inadequate factual foundation established to support the opinion and the AAO finds that the opinion is not in accord with other information in the record.

The AAO may, in its discretion, use as advisory opinions or statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). As a reasonable exercise of its discretion, and for the reasons discussed above, the AAO finds the advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, the AAO hereby incorporates the above discussion and analysis regarding Mr. [REDACTED]'s opinion letter into its analyses of each criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

In the instant case, the petitioner has not established that the proffered position falls under an occupational category for which the *Handbook* (or other objective, authoritative source) indicates that at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum

requirement for entry into the occupation. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding do not indicate that the position is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

Next, the AAO will review the record regarding the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2). This prong alternatively calls for a petitioner to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

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

Here and as already discussed, the petitioner has not established that its proffered position is one for which the *Handbook* (or other objective, authoritative source), reports a standard, industry-wide requirement of at least a bachelor's degree in a specific specialty, or its equivalent. Thus, the AAO incorporates by reference the previous discussion on the matter. The record does not contain any letters from the industry's professional association, indicating that it has made a degree a minimum entry requirement.

In response to the RFE, the petitioner submitted a printout from the [REDACTED] website regarding the requirements for Professional Collection Specialists. The documentation indicates that candidates must complete a few courses and pass an exam. There is no indication that certification requires any particular academic credentials or professional experience. Thus, contrary to the purpose for which it was submitted, it does not establish that the proffered position qualifies as a specialty occupation.

The AAO acknowledges that the record of proceeding contains an opinion letter from Mr. [REDACTED]. However, as previously discussed in detail, the AAO finds that the opinion letter does not merit probative weight towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) or establishing the proffered position as qualifying as a specialty occupation.

In response to the director's RFE, the petitioner and counsel submitted copies of job advertisements in support of the assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. However, upon review of the evidence, the AAO finds that the petitioner and counsel's reliance on the job announcements is misplaced.

In the Form I-129 petition, the petitioner describes itself as a collection agency established in 1932, with 30 employees. The petitioner claims that it has a gross annual income of approximately \$3

million and a net annual income of approximately \$38,900. On the Form I-129, the petitioner designated its business operations under the North American Industry Classification System (NAICS) code 119199. Notably, the U.S. Department of Commerce, Census Bureau website indicates that this is not a valid code. See U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 119199, on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last visited May 6, 2014). On the LCA, the petitioner utilized an entirely different code, specifically 561440, which is designated for "Collection Agencies." This website indicates that "[t]his industry comprises establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients." *Id.*

Upon review of the documentation, the petitioner fails to establish that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner.

For instance, the petitioner and counsel submitted job postings for Rushmore Loan Management Services (a company "dedicated to providing outstanding loan servicing and customer support" that "understand[s] the importance of home ownership"); On Deck Capital (a company that "offers loans ranging from \$5,000 - \$250,000, with terms between 3 - 18 months" and provides loan financing to small and medium businesses in the United States); and Professional Finance Company, Inc. ("one of the nation's leading debt collection agencies" that recovers debt for healthcare providers, retailers, financial organizations and government agencies, and has over 175 employees). For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, documentation submitted by a petitioner is generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner. When determining whether the petitioner and the advertising organization share the same general characteristics, such factors may include information regarding the nature or type of organization, and, when pertinent, the particular scope of operations, as well as the level of revenue and staffing (to list just a few elements that may be considered). It is not sufficient for the petitioner and counsel to claim that an organization is similar and in the same industry without providing a legitimate basis for such an assertion. Here, while it appears that Professional Finance Company, Inc. is a debt collection agency, there is no evidence that Rushmore Loan Management Services and On Deck Capital are similar companies in the same industry as the petitioner.

Moreover, the petitioner has not sufficiently established that the primary duties and responsibilities of the advertised positions are parallel to the proffered position. For instance, some of the advertising employers provided brief and/or vague job descriptions for the advertised positions. Thus, these advertisements do not contain sufficient information regarding the day-to-day duties, complexity of the job duties, supervisory duties (if any), independent judgment required, the amount of supervision received, or other relevant factors within the context of the advertising employers' business operations to make a legitimate comparison of the advertised positions to the proffered position.

Additionally, contrary to the purpose for which the advertisements were submitted, some of the

postings do not establish that at least a bachelor's degree in a specific specialty, or its equivalent, is required for the positions. For example, two of the postings (specifically, Professional Finance Company, Inc. and On Deck Capital) state that a bachelor's degree is required, but they do not provide any further specification. Thus, they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the duties is required. Moreover, the AAO observes that the petitioner and counsel submitted an advertisement indicating that a bachelor's degree in business administration is acceptable. As previously mentioned, although a general-purpose bachelor's degree, such as a degree in business administration, 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.

As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that the proffered position qualifies as a specialty occupation under this criterion of the regulations.¹⁴

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to the petitioner's industry in positions that are both: (1) parallel to the proffered position; and (2) located in organizations that are similar to the petitioner. For the reasons discussed above, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

In support of the assertion that the proffered position qualifies as a specialty occupation, the petitioner and its counsel submitted documentation regarding the proffered position and the petitioner's business operations, including printouts from the petitioner's website; articles from [REDACTED] an organizational chart; and the petitioner's Income Tax Return for 2012. However, upon review of the record of proceeding, the AAO finds that the petitioner has failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. That is, the AAO reviewed the record in its entirety and finds that the petitioner has not provided sufficient

¹⁴ 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 advertisements with regard to determining the common educational requirements for entry into parallel positions in similar companies. *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").

documentation to support a claim that its particular position is so complex or unique that it can only be performed by an individual with a baccalaureate or higher degree in a specific specialty, or its equivalent.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the vice president of certification compliance position. Specifically, the petitioner failed to demonstrate how the vice president of certification compliance duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. The AAO notes that the petitioner and counsel submitted a copy of the University of Illinois' Economics 203 Syllabus for Economics Statistics II, course descriptions for economic classes, and an article entitled "Using Documented Problem Solving in Economics" in response to the RFE; however, the petitioner and counsel did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even essential, in performing certain duties of a vice president of certification compliance position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here proffered.

The description of the duties does not specifically identify any tasks that are so complex or unique that only a specifically degreed individual could perform them. The record lacks sufficiently detailed information to distinguish the proffered position as more complex or unique from other positions that can be performed by persons without at least a bachelor's degree in a specific specialty or its equivalent.

The AAO observes that the petitioner has indicated that the beneficiary's educational background and experience in debt collection will assist him in carrying out the duties of the proffered position. However, as previously mentioned, the test to establish a position as a specialty occupation is not the skill set or education of a proposed beneficiary, but whether the position itself requires 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 its equivalent). The petitioner does not sufficiently explain or clarify which of the duties, if any, of the proffered position would be so complex or unique as to be distinguishable from those of similar but non-degreed or non-specialty degreed employment. Upon review of the record of proceeding, the AAO finds that the petitioner has failed to establish the proffered position as satisfying the second prong of the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its

prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by performance requirements of the position. In the instant case, the record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

While a petitioner may assert that a proffered position requires a specific degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the petitioner artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F.3d at 388. In other words, if a petitioner's stated degree requirement is only designed to artificially meet the standards for an H-1B visa and/or to underemploy an individual in a position for which he or she is overqualified and if the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

To satisfy this criterion, the evidence of record must show that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements, and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. *See generally Defensor v. Meissner*, 201 F. 3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in the specific specialty as the minimum for entry into the occupation as required by the Act. To interpret the regulations any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position - and without consideration of how a beneficiary is to be specifically employed - then any alien with a bachelor's degree in a specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner stated in the Form I-129 petition that it has 30 employees and was established in 1932 (over 80 years prior to the filing of the H-1B petition). However, upon review of the record, the petitioner did not provide documentary evidence regarding employees who currently or previously held the position. The record does not establish a prior history of recruiting and hiring for the proffered position only persons with at least a bachelor's degree in a specific specialty, or its equivalent.

Upon review of the record, the petitioner has not provided evidence to establish that it normally

requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. Thus, the petitioner has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) requires a petitioner to establish that the nature of the specific duties is so specialized and complex that the knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

The petitioner and its counsel assert that the nature of the specific duties is so specialized and complex that the 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 the instant case, the petitioner and its counsel submitted documentation regarding the proffered position and the petitioner's business operations, including the documentation previously outlined. Upon review of the record of the proceeding, the AAO notes that relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. That is, the proposed duties have not been described with sufficient specificity to establish that they are more specialized and complex than positions that are not usually associated with at least a bachelor's degree in a specific specialty, or its equivalent.

The petitioner has submitted inadequate probative evidence to satisfy this criterion of the regulations. Thus, the petitioner has not established that the nature of the specific duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent. The AAO, therefore, concludes that the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

For the reasons related in the preceding discussion, 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

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 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 appeal will be dismissed for the above stated reasons, with each considered as an independent

and alternate basis for the decision.¹⁵ In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

¹⁵ As the identified grounds for denial are dispositive of the petitioner's eligibility, the AAO need not address any additional issues in the record of proceeding.