

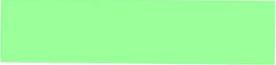
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Service
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

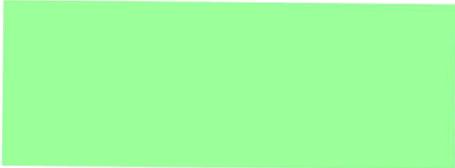


DATE: **MAY 14 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: 

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:

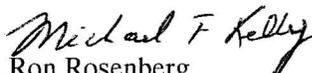


INSTRUCTIONS:

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,

for 
Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), the petitioner states that it is an "IT Development" business. The petitioner indicates that it was established in 2007 and that it employs 284 persons in the United States. It seeks to employ the beneficiary in what it designates as an "Associate Consultant" position from October 1, 2013, until September 13, 2016. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The record of proceeding before the AAO contains: (1) the petitioner's Form I-129 and supporting documentation; (2) the director's request for evidence (RFE); (3) the response to the RFE; (4) the denial decision; and (5) the Form I-290B, Notice of Appeal or Motion, and counsel's letter and additional documentation in support of the appeal. The AAO reviewed the record in its entirety before issuing its decision.¹

The director denied the petition, determining the petitioner had not established: (1) the beneficiary's qualifications in a specialty occupation by virtue of possessing a baccalaureate degree or equivalent in a specific field of study which is directly related to the position being offered; and (2) the proffered position qualifies as a specialty occupation.

Upon review of the entire record of proceeding, including all of the submissions on appeal, the AAO concludes that the evidence of record does not establish that the proffered position is a specialty occupation and that, therefore, the director's decision to deny the petition on the specialty occupation was correct. Accordingly, the appeal will be dismissed, and the petition will be denied.

As the record does not establish the position proffered here is a specialty occupation, the beneficiary's qualifications to perform the duties of the position need not be addressed. Generally, they are relevant only when considered in relation to a proffered position that has been established as a specialty occupation. However, we will later identify some material defects in the beneficiary-qualification evidence that renders it insufficient to establish that the beneficiary has attained the equivalent of a bachelor's degree or the equivalent in a specific specialty.

I. FACTUAL AND PROCEDURAL OVERVIEW

On the Form I-129, the petitioner identified the proffered position as an "Associate Consultant." The petitioner attested on the required LCA that the occupational classification for the position is

¹ The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

"Computer Occupations, All Other," SOC (ONET/OES) Code 15-1799, at a Level I (entry-level) wage.² The LCA was certified on March 20, 2013, for a validity period from September 13, 2013 to September 13, 2016.

In a March 22, 2013 letter appended to the Form I-129 petition, the petitioner stated: "[t]he company focuses its entire research and development budget on SAP services. [The petitioner] provides high end SAP Implementation, Support and Hosting Solutions ranging from the ERP suite of applications to the latest technologies within SAP." The petitioner also provided examples of some of its services, including implementation, offshore support, SAP support services, SAP upgrades, and SAP hosting. This letter also described the duties comprising the proffered "Associate Consultant" position as follows:

- Provide services as an SAP Materials Management processes and functions consultant.
- Understanding [*sic*] client business processes during the blueprint phase[.]
- Gather business requirements and specifications pertaining to the Material Management module for the client needs.
- Understands configuration dependencies and interrelationships between separate functional modules of SAP and designs and troubleshoots in the area with this knowledge.
- Develops functional specifications and works with technical resources to complete object development and testing[.]
- Gathers and prioritizes relevant SAP Business requirements and design[s] appropriate SAP Materials Management solution.
- Customize and configure the SAP systems in the Materials Management module pertaining to:
 - Configure the complete Enterprise structure & setup various Organizational structures like Company Code, Plant, Purchasing Org, Storage locations & the necessary assignments.
 - Logistics General Configuration for Material Master (Material types, Material groups, Field selection Groups) as well as Vendor Master (setup of Account Groups, Screen layout based on Purchasing Org, transaction codes)
 - Configuration of Purchase requisition & PO release strategies based on Classification & associated characteristic assignments
 - Complete Physical Inventory process from creation of PI documents, entering counts & posting differences
 - Complete awareness of various movement types for different goods movements

² 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.

- Posting Invoices using MIRO transactions, reviewing the PO history in the PO's
- Many other interface transactions with FI like Automatic postings to different G/L accounts based on movement types & transactions
- Setup & maintaining all master data related to MM module including the Mass change transactions[, and]
- SAP CRM-Set up of master data, testing & documentation of various unit & integration testing scenarios including all interfaces related testing

It is worth noting at this time that the record of proceeding contains no contractual document executed by the petitioner and any client that identifies, affirms, adopts, or endorses the above as the duties that the beneficiary would actually perform for that client.

The petitioner claimed: "to competently perform these duties, the *Associate Consultant* must have a Bachelor's degree or higher in a related field." The petitioner also claimed that the beneficiary's duties will be performed principally at its company's premises in the city and state named in the certified LCA that the petitioner submitted with the petition.³

The petitioner submitted a document, under a cover document titled "Internal Work Order." The actual document is titled "Schedule A to Master Services Agreement Work Order," and is signed on March 25, 2013 by the petitioner's representative. The document listed the same duties as provided in the petitioner's letter submitted in support of the petition and identified the project details as "Working remotely from [the petitioner's] corporate headquarters in Folsom, California for our clients: [redacted] [the petitioner's] SAP Certified Solutions – [redacted] in the areas of SAP Material Management (MM)." The document listed the project duration as two years and provided a name for a "Client Contact at job site." As this "internal" document was generated by the petitioner and bears no signature of any other party or entity, we accord it no probative value. Further, the document appears irregular on its face, as a "work order" generated by an employer to itself.

The Implementation Services Agreement (ISA), dated October 6, 2011, between [redacted], Inc. and the petitioner as the service provider, indicated that the "initial term of this Agreement shall commence on the Effective Date (October 6, 2011) and, unless terminated earlier ... or extended by the mutual agreement of the Parties in an amendment to this Agreement shall continue until all Milestones are Accepted." Part 3.1 – Milestones - indicated: "[a]s of the Effective Date, the Milestone Schedule contained in the Design-Phase Statement of Work sets forth a schedule of Milestones, [and] their corresponding completion dates . . .". The Exhibit A "Design-Phase Statement of Work" with the date "10/6/11" that appears attached to the ISA is blank.

³ The certified LCA provided with the petition references two work locations: (1) Folsom, California in Sacramento County, the petitioner's offices; and (2) Fairfield, California in Solano County. The two locations are approximately 65 miles apart.

Part 5 of this [REDACTED] bears the heading Key Service Provider Personnel. Within part 5, the parties represent, in pertinent part, that: (1) the petitioner, prior to assigning an individual to a key position will notify [REDACTED] and obtain [REDACTED]'s written approval; (2) the petitioner shall not replace or reassign any key personnel unless [REDACTED] consents; and (3) [REDACTED] may upon notice to the petitioner require the prompt removal of any key personnel, in its discretion. In part 6 of the document with the heading [REDACTED] Resources, Facilities and Equipment, [REDACTED] agrees: (1) to supply on-site project staff, if any, with suitable office space, desks, storage, furniture, and other customary office equipment; and (2) to allow the petitioner access and use of [REDACTED] Equipment necessary to perform the services of the agreement. The Exhibit B "Key Service Provider Personnel" lists nine individuals as key service providers; however, the beneficiary's name is not included on the list.

Given its content, including the absence of its referenced statement of work, we find no evidentiary value in this October 6, 2011 ISA other than in indicating that the petitioner has had a business relationship with [REDACTED] extending back at least to the date of this Agreement.

The initial record also included the petitioner's employment offer to the beneficiary signed by him on June 11, 2012. The employment offer noted the proffered position of Associate Consultant is a full-time position, the start date of employment is June 18, 2012, the compensation is \$5,000 per month, and that the beneficiary may be assigned to work onsite at one of the petitioner's clients.⁴ The petitioner also included a copy of the employment agreement between the beneficiary and the petitioner, signed by the petitioner on June 8, 2012 and by the beneficiary on June 11, 2012.

The record also included a March 21, 2013 letter signed by [REDACTED] Director, Program Management Office, [REDACTED], Inc., regarding the beneficiary and indicating that the beneficiary will be the petitioner's full-time employee working on [REDACTED] Inc.'s SAP project "as per our statement of work." The letter provided the same duties as listed in the petitioner's initial letter. Under a cover document titled "Work Order," the petitioner provided a document titled "Schedule A to Master Services Agreement[:] Work Order," which identified the project start date as April 2, 2012 and listed the duration of the project as 18 months. The document is signed by Mr. [REDACTED] for [REDACTED] and it names the beneficiary as a "Consultant." . Significantly, however, this "Schedule A" document does not describe the beneficiary's duties and, for "Project Details" provides no information other than the statement "[REDACTED] Realization." We find that this letter does not corroborate Mr. [REDACTED]'s description of the work that his letter says that the beneficiary would perform. We also note that while the "Schedule A" document, which describes identifies itself with a "Master Service Agreement" between the petitioner, no document of that title appears in the record of proceeding. We further note that the aforementioned ISA, at its section 1.3, indicates that its completed content would include a "Statement of Work" which that section describes as meaning:

⁴ The record includes the beneficiary's authorization to work from June 18, 2012 until June 18, 2013 in OPT status.

[A] description of services agreed in a writing executed by the parties that will be provided by [the Petitioner] to [REDACTED] under this agreement. A Statement of Work will specify, as applicable, specifications and requirements for Deliverables, schedule and milestone information for the development and delivery of Deliverables, and other instructions relating to [the Petitioner's provision of Services to [REDACTED]

We find, however, that no document with such content appears anywhere in the record. For all of the reasons noted above, we deem the ISA incomplete and of no probative value towards establishing the actual nature of the duties that the beneficiary would perform.

The petitioner further submitted a document identified as the beneficiary's itinerary which showed the beneficiary working in Fairfield, California at the [REDACTED] location from "present" to October 2, 2014 and then working at the petitioner's location in Folsom, California from October 3, 2014 to September 13, 2016.

Upon review, the director found the evidence insufficient to establish eligibility for the benefit sought and issued an RFE.

In its response to the RFE, dated June 20, 2013, the petitioner stated that it "is a leader in developing customized software solutions for clients using the SAP backbone and functional modules adapted to various industries, such as manufacturing, public utilities and services." The petitioner also stated that it employed 274 people and that approximately 174 people are "in occupations classifiable as SOC (ONET/OES) code 15-1121, Computer Systems Analyst, SOC (ONET/OES) code 15-1132, Software Developers and 15-1799, Computer Occupations, All Other."

In the RFE response, the petitioner repeated the initial job description and indicated that the beneficiary's work location would be either at its offices in Folsom, California or at its client [REDACTED] site in Fairfield, California. In response to the director's request for information on the instrumentalities required to perform the specialty occupation, the petitioner stated: "[ask [REDACTED] who provides the computer and software licenses, etc used by the Consultant]." The petitioner also stated "[w]hile working from [the petitioner's] office, or if he should work off site, [the beneficiary] will be part of a team of [the petitioner's] employees managed by [the petitioner's] manager." The petitioner also submitted a list of supervisors for its different projects. The list did *not* include the [REDACTED] project.

The petitioner re-submitted the information previously provided regarding its client, [REDACTED], and in addition submitted part of "Master Services Agreement" (MSA) between itself and [REDACTED] dated October 2009. As with the [REDACTED] ISA, the agreement referenced a "Statement of Work" as attached as Exhibit A - but the record does not include it. This, too, is a material deficiency, as section 1.1 of the MSA references the not-provided Statement of Work as including "a description of the tasks and deliverables for which the Services will be expended, as well as provisions for a timeframe in which the services will be performed." We also note that the MSA's section 5.1 refers references the non-included Statement of Work as containing the

"Agreement Termination Date." That same section also states describes the Statement of Work as "provid[ing] the specifics of a particular contract between [the Petitioner] and [REDACTED]. For all of these reasons, we also accord no probative value to this MSA document towards establishing the substantive nature of the duties that the beneficiary would perform if this petition were approved.

The petitioner also provided an article, dated July 12, 2012, which provided an overview of SAP Implementation Service Providers, which included the petitioner.

The petitioner also submitted a June 5, 2013 opinion prepared by [REDACTED] Ph.D., Professor [REDACTED] Former Dean of the School of Business & Economics [REDACTED]. Dr. [REDACTED] identified the proffered position as an "Associate Consultant" with the petitioner and stated that the "Associate Consultant" is responsible for "guiding [the petitioner's] operations to update their client's policies and procedures to move these processes to SAP Materials management Processes that creates improvement in the client's success and efficiency." Dr. [REDACTED] also included within his submission a one-page description of the "Associate Consultant" position that is taken verbatim from the petitioner's aforementioned description of duties. Dr. [REDACTED] opined: "the Associate Consultant position requires strong knowledge, skills and competencies to understand the firm's client's business processes" and "require[s] a high level of business and personal communication skills and performance as both an individual and team contributor." Dr. [REDACTED] claimed: "[t]he duties are complex and specialized requiring at least a Bachelor's Degree." Dr. [REDACTED] also provided his opinion regarding the beneficiary's qualifications to perform the duties of the proffered position.

The record also included a June 5, 2013 opinion prepared by Dr. [REDACTED] regarding the beneficiary's qualifications for the proffered position.

Upon review, the director denied the petition for the reasons stated above.

As noted above, on appeal, counsel for the petitioner references the petitioner's attestation on the LCA that the occupational classification of the proffered position is 15-1199, Computer Occupations, All Other. Counsel notes that the U.S. Department of Labor (DOL) lists several sub-categories for this occupational classification including 15-1199.08, "Business Intelligence Analysts" and asserts – without substantiating discussion or documentation - that this occupational classification is closely aligned with the petitioner's proffered position.

Counsel also notes that the Department of Labor's *Occupational Outlook Handbook (Handbook)* does not list a "Business Intelligence Analyst" occupation and thus, the petitioner relies on the DOL's Occupational Information Network (O*NET) assignment of Job Zone 4 to a "Business Intelligence Analyst" position. Counsel asserts that the "O*NET data should be given a lot of weight." Counsel contends that the O*NET's information indicates that a degree in the field of Computer Science as well as other disciplines including science, technology, engineering, and mathematics and educational disciplines is the equivalent of attaining a bachelor's degree or higher in a specific specialty. Counsel cites *Tapis Int'l v. INS*, 94 F. Supp. 2d 172 (D. Mass.

2000) and *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), in support of his contention.

Counsel states: "the petitioner's position [is] that a bachelor's degree in Information Systems, Computer Science, Business Administration or related fields, or equivalent, is the normal minimum entry requirement for the job position of Associate Consultant." Counsel avers that the evidence submitted by the petitioner demonstrates that the proffered position is so complex or unique that it can be performed only by an individual with a degree and that the nature of its specific duties are so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. Counsel submits on appeal the petitioner's August 9, 2013 letter which repeats the beneficiary's job description and claims that the position "requires the minimum of a bachelor's degree in Information Systems, Computer Science, Business Administration, or related fields, or its equivalent based on a combination of academic background and appropriate experience in Information Systems or related, including familiarity with SAP technology."

Counsel also submits a number of advertisements for the occupational job of Business Intelligence Analyst and notes that these job advertisements all require at least a bachelor's degree in at least one specialty area, while some allow for a degree in a variety of specialties. Counsel further provides a July 24, 2013 letter signed by [REDACTED] Corporate Controller and SAP FICO lead. Mr. [REDACTED] indicates that he has been a manager over Oracle and SAP projects for ten years and that he has worked with SAP consultants, many of whom have a master's of business administration or are certified public accountants and are often referred to as subject matter experts or business analysts. Mr. [REDACTED] also indicates that he works with consultants who mostly come from an IT background and "[t]hese individuals are required for systems administration, including technical development, customized reporting or other transactions that must be developed based on inputs from the clients as interpreted by the subject matter experts."

Counsel asserts that the beneficiary's educational credentials, asserted as a master's degree with a major in Business Administration and a minor in Information Systems, establish "a direct nexus to the job position of Associate Consultant." Counsel also asserts that the petitioner has specialty occupation work available for the beneficiary for the entire duration of the requested validity period. Counsel claims that the proffered position "requires the ability to work independently and handle complex assignments" and "requires a high degree of autonomy, analytical and decision-making abilities" knowledge gained through a bachelor's degree or equivalent. Counsel further asserts that the petitioner has met its burden of proof by a preponderance of the evidence as set out in the AAO precedent decision *Matter of Chawathe*.

II. LAW AND ANALYSIS

A. Standard of Review

In the exercise of its administrative review in this matter, as in all matters that come within its purview, the AAO follows the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010), unless the

law specifically provides that a different standard applies. In pertinent part, that decision states the following:

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

* * *

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

* * *

Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

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

Id. At 375-76.

Again, the AAO conducts its review of service center decisions on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. In doing so, the AAO applies the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon its review of the present matter pursuant to that standard, however, the AAO finds that the evidence in the record of proceeding does not support the petitioner's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, the AAO finds that the director's determination in this matter was correct. Upon its review of the entire record of proceeding, and with close attention and due regard to all of the evidence, separately and in the aggregate, submitted in support of this petition, the AAO finds that the petitioner has not established that its claims are "more likely than not" or "probably" true. As the evidentiary analysis of this decision will reflect, the petitioner has not submitted relevant, probative, and credible evidence that leads the AAO to believe that the petitioner's claims are "more likely than not" or "probably" true.

B. Material Discrepancies and Evidentiary Deficiencies

Upon review of the entire record of proceeding and the totality of the evidence presented, the AAO notes, as a preliminary matter, that the record contains material inconsistencies regarding the beneficiary's work location, the dates the beneficiary will be assigned to work on a particular project, the petitioner's educational requirement to perform the duties of the proffered position, proffered here. Furthermore, as reflected in this decision's previous discussions of major deficiencies in the documentary evidence submitted to establish the proffered position as a specialty occupation, the record of proceeding fails to substantiate the actual nature of the work that the beneficiary would and so too whatever educational level of specialized knowledge in any specialty that would be required to perform it.

With regard to the material deficiencies of the contract-related documents in the record, we here incorporate by reference our earlier comments and findings to the effect that the evidence of record fails to establish the substantive nature and terms of the services that the petitioner claims that it – and by extension – the beneficiary is to perform for ██████████ and for ██████████. In this regard, we also accord no probative weight to Mr. ██████████'s letter as its declaration of duties is not supported by any credible documentation in the record, and because the state of the documentary evidence, as earlier discussed, not only fails to establish the extent and terms of any of the projects to which the petitioner claims that the beneficiary would be assigned, but also leaves unresolved the substantive nature of any contract and attendant work would involve the beneficiary. Also, we have taken into account that, while Mr. ██████████ claims that the beneficiary would perform the entire constellation of SAP duties that are apparently derived from the petitioner's letter of support, we find that neither the beneficiary's educational records nor any other documentation in the record of proceeding establishes that the beneficiary is actually competent enough in SAP to provide that full array of services.

Additionally, we find that the petitioner has submitted documentary evidence that provides inconsistent information regarding when and for how long the beneficiary will work in a specific location. In its March 22, 2013 letter submitted in support of the petition, the petitioner stated that the beneficiary's work will be performed "principally" at its company's premises in the city and state named in the approved LCA. The LCA provides two locations for the beneficiary's proposed work, the petitioner's premises in Folsom, California and an end-client's premises located in Fairfield, California, 65 miles away in a different county and different prevailing wages.

The petitioner submitted an "Internal Work Order" signed by the petitioner on March 25, 2013 which indicates that the beneficiary will work remotely from its premises in Folsom, California and that the duration of the project is two years (March 25, 2015). The petitioner also provided an "Itinerary" for the beneficiary's work noting the beneficiary's start date as "Present" with an end date of October 2, 2014 which identifies the beneficiary's work location as at ██████████'s premises in Fairfield, California. The "Itinerary" continues by indicating that the beneficiary will work from October 3, 2014 to September 13, 2016 at the petitioner's premises in Folsom, California.

That ISA between the petitioner and [REDACTED] dated October 6, 2011, identifies the term of the agreement as October 6, 2011 "until all Milestones are Accepted" unless extended by the mutual agreement of the Parties. The agreement refers to a "Milestone Schedule;" however, the Exhibit A attached to the ISA as the Statement of Work does not include a schedule or any dates. A separate document, signed by both the petitioner and [REDACTED] and also identified as Schedule A to the ISA between the petitioner and [REDACTED] names the beneficiary as "Consultant," and indicates that the project start date is April 2, 2012 and the project duration as 18 months (October 2, 2013). The record does not include additional evidence showing the ISA has been extended or that the Milestones have not yet been accepted. The record also does not include evidence of a work order or statement of work assigning or otherwise documenting the beneficiary work subsequent to October 2, 2012.⁵

Second, the petitioner in its initial letter in support of the petition states "to competently perform these duties, the *Associate Consultant* must have a Bachelor's degree or higher or a related field." In response to the director's RFE, the petitioner provided a letter prepared by Dr. [REDACTED] who opines "[t]o successfully perform the duties of the Associate Consultant position the candidate would need to have a minimum of a Bachelor's Degree." On appeal, however, the petitioner changes the requirements necessary to perform the same described duties by stating the position, proffered here, "requires the minimum of a bachelor's degree in Information Systems, Computer Science, Business Administration, or related fields, or its equivalent based on a combination of academic background and appropriate experience in Information Systems or related, including familiarity with SAP technology."

Thus, based on the petitioner's initial statement and the opinion letter it provided as expert testimony, the educational requirement to perform the duties of the position proffered here is a general bachelor's degree. Only subsequent to the director's decision does the petitioner distance itself from its original characterization of the requirements necessary to competently perform the duties of the position. No explanation for this inconsistency is provided. Thus, the AAO must question the credibility and the accuracy of the later assertions made by the petitioner and counsel in support of the petition.

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

⁵ We have reviewed the March 21, 2013 letter signed by [REDACTED] s Director, Program Management Office, identifying the beneficiary as a consultant on its SAP project as per its statement of work. However, the record does not include a statement of work or work order subsequent to the Schedule A to the Master Services Agreement work order identifying the project duration as 18 months – April 2, 2012 to October 2, 2013.

Furthermore, an inaccurate statement anywhere on the Form I-129 or in the evidence submitted in connection with the petition mandates its denial. *See* 8 C.F.R. § 214.2(h)(10)(ii) (stating in pertinent part that an H "petition will be denied if it is determined that the statements on the petition were inaccurate"); *see also* 8 C.F.R. § 103.2(b)(1) (clarifying that "[a]ny evidence submitted in connection with a [petition] is incorporated into and considered part of the [petition]"). Accordingly, based on the inaccurate statements identified in the petition, *supra*, the AAO here finds that for this reason alone, and independent of the other issues herein, this petition may not be approved.

C. Speculative Employment

The evidence submitted in this matter also fails to establish non-speculative employment for the beneficiary for the entire period requested. Although the petitioner requested, on the Form I-129, that the beneficiary be granted H-1B classification from October 1, 2013 to September 13, 2016, there is a lack of documentation regarding any specific work for the beneficiary for the duration of the requested employment period. As previously noted, the petitioner has provided inconsistent information regarding where the beneficiary's claimed work will be located. In addition, the petitioner has not provided underlying contracts and accompanying statements of work that extend past October 2, 2013. Although the petitioner asserts that it has work for the beneficiary at its premises, the petitioner does not provide documentary evidence of this work. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

The agency made clear long ago that speculative employment is not permitted in the H-1B program. For example, a 1998 proposed rule documented this position as follows:

Historically, the Service has not granted H-1B classification on the basis of speculative, or undetermined, prospective employment. The H-1B classification is not intended as a vehicle for an alien to engage in a job search within the United States, or for employers to bring in temporary foreign workers to meet possible workforce needs arising from potential business expansions or the expectation of potential new customers or contracts. To determine whether an alien is properly classifiable as an H-1B nonimmigrant under the statute, the Service must first examine the duties of the position to be occupied to ascertain whether the duties of the position require the attainment of a specific bachelor's degree. *See* section 214(i) of the Immigration and Nationality Act (the "Act"). The Service must then determine whether the alien has the appropriate degree for the occupation. In the case of speculative employment, the Service is unable to perform either part of this two-prong analysis and, therefore, is unable to adjudicate properly a request for H-1B classification. Moreover, there is no assurance that the alien will engage in a specialty occupation upon arrival in this country.

63 Fed. Reg. 30419, 30419 - 30420 (June 4, 1998). While a petitioner is certainly permitted to change its intent with regard to non-speculative employment, e.g., a change in duties or job location, it must nonetheless document such a material change in intent through an amended or new petition in accordance with 8 C.F.R. § 214.2(h)(2)(i)(E). For this additional reason, the petition may not be approved.

D. Relevance of *Tapis Int'l v. INS* and *Residential Residential Finance Corporation v. USCIS* to the Instant Matter

Although counsel's reference to these two cases relies, in part, on the petitioner's change to the educational requirements for the position proffered here, the AAO will briefly discuss their relevance as if the petitioner had initially claimed that the position "requires the minimum of a bachelor's degree in Information Systems, Computer Science, Business Administration, or related fields, or its equivalent based on a combination of academic background and appropriate experience in Information Systems or related, including familiarity with SAP technology."

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

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

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

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

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

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

Similarly, counsel cites to *Residential Finance Corporation v. USCIS*, for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

The AAO agrees with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." However, for the reasons discussed below, 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.

Additionally, as in *Tapis*, 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*.⁶ Again, 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).

E. Beneficiary's Qualifications

The director determined that because the beneficiary held a degree of general application, the beneficiary did not qualify to perform the duties of a specialty occupation as defined by the pertinent statute and regulations. As will be discussed in the next section below, the evidence of record does not establish the proffered position as a specialty occupation. Generally, a beneficiary's credentials to perform a particular job are relevant only when the job is found to be a specialty occupation. The petitioner must then, of course, satisfy the pertinent statutory requirements governing a beneficiary's qualification to serve in that particular specialty occupation position.

⁶ 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.

As discussed below in this decision, the petitioner did not submit sufficient evidence to establish the proffered position as a specialty occupation, that is, as a particular position whose performance would require the theoretical and practical application of at least a bachelor's degree level of highly specialized knowledge in a specific specialty. Consequently, as the evidence of record does not establish the need for any baccalaureate or higher degree, or degree-equivalency, in a specific specialty, the beneficiary's credentials are irrelevant to the disposition of this appeal. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not address the beneficiary's qualifications further, because the petitioner has not provided sufficient evidence to demonstrate that the proffered position is a specialty occupation.

That being said, however, there is a material defect in the August 7, 2013 Academic Equivalency Evaluation document submitted into the record from The [REDACTED]. That is, the evaluator correctly states that the beneficiary "was awarded a Diploma for a Master of Business Administration Degree by [REDACTED]" but then states - without any documentary support for this declaration:

Thus, [the beneficiary] earned a Master of Business degree with a major concentration in Business Administration *and a minor concentration in Information Systems*, from an accredited US college or university.

(Emphasis added).

We note that there is no statement in the Diploma or in the academic transcripts that justify this declaration. Further, there is no evidence of record from [REDACTED] validating the evaluator's declaration of a "minor concentration in Information Systems." Further, the evaluator's declaration of this "minor concentration" is inconsistent with the two earlier evaluations submitted into the record of proceeding. Accordingly, the AAO accords no weight to the [REDACTED] declaration that the beneficiary had earned a "minor concentration in Information Systems." Further, there is no provision anywhere in the regulations for any person or institution other than the U.S. educational institution that awarded a particular degree to re-designate the nature or title of that degree. Further still, the author of the evaluation document that attempts to re-characterize the [REDACTED] MBA degree here by adding to it a "a minor concentration in Information Systems" provides no corroboration or endorsement from an appropriate level of the [REDACTED] administration. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

Therefore, we accord no credibility and no probative value to the [REDACTED] submission's declaration that the beneficiary has attained a minor concentration in Information Systems. It follows that the petitioner's reliance upon this aspect of the record is without merit.

Next, we also have considered counsel's argument on appeal that the beneficiary has "gained training and experience on the specific SAP technology that will be a major component of the H-1B job duties." However, we find no evidence in the record of proceeding that establishes the substantive content of that training and experience, the educational attainments in a pertinent field of the persons providing that training or experience, the specific duration of the periods of training or experience, or that the beneficiary has attained recognition for expertise in the pertinent area. In this regard, we refer the petitioner to the section of the beneficiary qualification regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that addresses USCIS assigning years of college-education equivalency based upon its own evaluation of a beneficiary's training and/or experience. Clearly, the record of proceeding lacks evidence to satisfy the multiple elements of this section.

According to its express terms, to satisfy the beneficiary qualification criterion at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), a petitioner must demonstrate three years of specialized training and/or work experience for each year of college-level training the alien lacks. This provision allows crediting *only* training and/or work experience that the petitioner establishes as "specialized" according to the following standards (emphasis added):

[I]t must be clearly demonstrated [(1)] that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; [(2)] that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and [(3)] that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation⁷;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or

⁷ *Recognized authority* means a person or organization with expertise in a particular field, special skills or knowledge in that field, and the expertise to render the type of opinion requested. A recognized authority's opinion must state: (1) the writer's qualifications as an expert; (2) the writer's experience giving such opinions, citing specific instances where past opinions have been accepted as authoritative and by whom; (3) how the conclusions were reached; and (4) the basis for the conclusions supported by copies or citations of any research material used. 8 C.F.R. § 214.2(h)(4)(ii).

- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The evidence of record regarding the beneficiary's training and work experience does not meet the above standards and, therefore, has no relevance to a USCIS determination on this beneficiary's qualification to serve in a specialty occupation.

Thus, although the issue is moot to the extent that the petitioner has not established that the position qualifies as a specialty occupation – and that it therefore requires that the beneficiary have at least a bachelor's degree, or the equivalent, in a specific specialty, the evidence of record has not established that the beneficiary has attained at least a bachelor's degree or the equivalent in a specific specialty in any Information Technology or computer-related specialty. Consequently, if the petitioner had established that the proffered position required such educational credential, which is not the case, the appeal would have to be dismissed and the petition would have to be denied, for failure to establish the beneficiary as qualified to serve in such a position.

F. Specialty Occupation

We will now discuss whether the petitioner has established that the position proffered here qualifies as a specialty occupation. To meet its burden of proof on this issue, the petitioner must establish that the employment it is offering to the beneficiary meets the following 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. As noted above 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 evidence of record in this matter presents only a broad overview of the duties that the petitioner ascribes to the proffered position. Consequently, as will be evident below, the AAO finds that the evidence of record does not present the proffered position or its constituent duties in sufficient detail to establish that the substantive nature of either the position or its duties as actually performed within the context of the petitioner's business operations would be so specialized, complex, and/or unique that their actual performance would require at least a bachelor's degree in a specific specialty or its equivalent.

As evident in the petitioner's description of the duties, the duties are described in terms of general SAP functions that the beneficiary would perform. As such, they do not inform the AAO of the substantive nature of the work that the beneficiary would perform, the substantive application of specialized knowledge that performance of those duties would involve, or any particular level of educational attainment in any specialty that would be required to perform them. Even more fundamentally, as evident in our previous discussions and findings with regard to the material deficiencies of the documentary evidence, which we now adopt for this discussion, the evidence of record fails to substantiate that the beneficiary would employ the beneficiary as claimed in the petition, and for the period there specified.

The petitioner's failure to establish the substantive nature of the work to be performed 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.

Accordingly, as the petitioner has not established that it has satisfied any of the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A), it cannot be found that the proffered position qualifies as a specialty occupation.

Furthermore, the petitioner and the letter submitted by Dr. [REDACTED] describe the duties of the proffered position and assert that those duties may be performed by an individual with a bachelor's degree, without any limitation as to a specific major or academic concentration or any particular range of majors or academic concentrations. Such an assertion is tantamount to an admission that the position proffered here is not a specialty occupation. Accordingly, the instant petition cannot be approved for this additional reason. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). In addition to proving that a job requires the theoretical and practical application of a body of specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must also establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As explained above, USCIS interprets the supplemental degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) as requiring 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, 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 139, 147 (1st Cir. 2007).

The material deficiencies in the evidentiary record are decisive in this matter and they conclusively require that the appeal be dismissed. However, we will continue our analysis in order to apprise the petitioner of additional deficiencies in the record that would also require dismissal of the appeal. Assuming *arguendo* that the proffered duties as generally described by the petitioner in its initial letter and reiterated in response to the director's RFE and on appeal would in fact be the duties to be performed by the beneficiary, the AAO will analyze them and the evidence of record to determine whether the proffered position as described would qualify as a specialty occupation.

The AAO turns first to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is the normal minimum requirement for entry into the particular position.

The AAO recognizes DOL's *Handbook* as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.⁸

⁸ The AAO's references to the *Handbook* are to the 2014-2015 edition, which may be accessed at the Internet site <http://www.bls.gov/OCO/>.

Counsel correctly observes that the *Handbook* does not include a report on the occupation of a Business Intelligence Analyst, the occupation which counsel claims most closely aligns with the duties of the proffered position.

As the *Handbook* does not directly address the occupation counsel claims most closely corresponds to proffered position, to satisfy this first alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide other authoritative and persuasive evidence that the particular position here proffered is one for which a baccalaureate or higher degree in a specific specialty is normally the minimum requirement for entry.

In this matter, counsel for the petitioner cites the Occupational Information Network (O*NET) as a source that establishes the normal minimum requirement for entry into the position proffered here requires a baccalaureate or higher degree in a specific specialty or its equivalent.

The AAO finds, however, that the O*NET Summary Reports, referenced by counsel, are insufficient to establish that the proffered position is one that normally requires at least a bachelor's degree, or the equivalent, in a specific specialty.

On April 21, 2014, the AAO accessed the pertinent section of the O*NET OnLine Internet site relevant to 15-1199.00, "Computer Occupations, All Other," and also 15-1199.08, "Business Intelligence Analysts". Contrary to the assertions of counsel, O*NET OnLine does not state a requirement for a bachelor's degree.

It is important that we note and highlight here our disagreement with counsel's identification of the proffered position as falling within the Business Intelligence Analysts occupational group.

Review of the proffered position's duties, as quoted from the record at page 3 of this decision, indicates that they do not square with the duties and overall functions that the O*NET identifies as generally associated with Business Intelligence Analysts. The O*NET Summary Report for the Business Intelligence Analysts occupational group introduces that group as follows:

15-1199.08 - Business Intelligence Analysts

Produce financial and market intelligence by querying data repositories and generating periodic reports. Devise methods for identifying data patterns and trends in available information sources.

Sample of reported job titles: Business Intelligence Analyst; Business Intelligence Manager; Commercial Intelligence Manager; Competitive Intelligence Analyst; Consultant, Strategic Business and Technology Intelligence; Director of Enterprise Strategy; Director of Market Intelligence; Director, Global Intelligence; Intelligence Analyst; Manager, Market Intelligence

O*NET OnLine, Summary Report, 15-1199.08 Business Intelligence Analysts, on the Internet at <http://www.onetonline.org/link/summary/15-1199.08> (last visited May 12, 2014).

The O*NET Tasks Section, accessible at that same Internet site, outlines the "Tasks" generally associated with Business intelligence Analysts as follows:

Tasks

- Analyze competitive market strategies through analysis of related product, market, or share trends.
- Synthesize current business intelligence or trend data to support recommendations for action.
- Communicate with customers, competitors, suppliers, professional organizations, or others to stay abreast of industry or business trends.
- Manage timely flow of business intelligence information to users.
- Collect business intelligence data from available industry reports, public information, field reports, or purchased sources.
- Identify and analyze industry or geographic trends with business strategy implications.
- Analyze technology trends to identify markets for future product development or to improve sales of existing products.
- Generate standard or custom reports summarizing business, financial, or economic data for review by executives, managers, clients, and other stakeholders.
- Identify or monitor current and potential customers, using business intelligence tools.
- Maintain or update business intelligence tools, databases, dashboards, systems, or methods.

Id., on the Internet at <http://www.onetonline.org/link/summary/15-1199.08> (last visited May 12, 2014).

It appears that the petitioner, erroneously, views the subgroup 15-1199.08 (Business Intelligence Analysts) and the elements of its Summary Report as interchangeable with whatever as yet unidentified occupational subgroups fall within the major group "Computer Occupations, All Others." The AAO however is aware of no O*NET guidance that supports that view. Further, the very definition of the major group - 15-1199.00, "Computer Occupations, All Others"-excludes such interchangeability, as its own introduction reserves that group for occupations for which no O*NET information has been developed. That section, which reads as follows for the general occupational classification "Computer Occupations, All Others," differentiates that general classification from its differently numbered subgroups by the fact that – as opposed to those subgroups – it has no O*NET information developed for it:

**Summary Report for:
15-1199.00 - Computer Occupations, All Other**

All computer occupations not listed separately.

"All Other" titles represent occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations. O*NET data is not available for this type of title. For more detailed occupations under this title, see below.

- 15-1199.01 Software Quality Assurance Engineers and Testers ☼ **Bright Outlook**
- 15-1199.02 Computer Systems Engineers/Architects ☼
- 15-1199.03 Web Administrators ☼
- 15-1199.04 Geospatial Information Scientists and Technologists ☼ **Green**
- 15-1199.05 Geographic Information Systems Technicians ☼
- 15-1199.06 Database Architects ☼
- 15-1199.07 Data Warehousing Specialists ☼
- 15-1199.08 Business Intelligence Analysts ☼
- 15-1199.09 Information Technology Project Managers ☼
- 15-1199.10 Search Marketing Strategists ☼
- 15-1199.11 Video Game Designers ☼
- 15-1199.12 Document Management Specialists ☼

O*NET OnLine, Summary Report, 15-1199.00 – Computer Occupations, All Other, accessible on the Internet at <http://www.onetonline.org/link/summary/15-1199.08> (last visited May 12, 2014).

The accuracy of our assessment will become clear if it reviews the varied detailed information that the O*NET has developed for the particular subgroups that have been assigned the differentiating numbers ".01" through ".12." Further, the petitioner errs in apparently viewing the "Computer Occupations, All Others."

This is noteworthy for not all of the subgroups 15-1199.01 through 15-1199.12 share the same Job Zone assignments and reported educational requirement percentages. Thus, we find that the petitioner's reliance on the O*NET information for the Business Intelligence Analysts subgroup 15-1199.08 is not supported by the record. The petitioner simply has not established the relevance of that information.

In any event, we will note that O*NET assigns to Business Intelligence Analysts a Job Zone "Four" rating, which groups it among occupations of which "most," but not all, "require a four-year bachelor's degree." Further, O*NET OnLine does not indicate that, where required by Job Zone Four occupations, a four-year bachelor's degree must be in a specific specialty directly

related to the occupation. Therefore, O*NET OnLine information is not probative evidence towards satisfying the first criterion of the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(A).

As observed above, the opinion of Dr. [REDACTED] also fails to establish the proffered position is a specialty occupation. Not only does Dr. [REDACTED] fail to discuss the duties of the proffered position in substantive detail, but he also concluded that the duties of the petitioner's proffered position may be performed by an individual who has completed any bachelor's-level degree. Thus, even if taken at face value, that is, without regard to its defective foundation, Dr. [REDACTED]'s opinion regarding the educational requirements for the proffered position would undermine the petitioner's attempt to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

The petitioner has not established that the proffered position falls within an occupational group for which the *Handbook* or other authoritative source indicates that there is a normal minimum entry requirement for at least a bachelor's degree in a specific specialty or its equivalent. Thus, the proffered position's inclusion within the "Computer Occupations, All Other" occupational group is not in itself sufficient to establish the position as one for which a bachelor's degree or higher, or the equivalent, in a specific specialty is normally the minimum requirement for entry.

For all of the reasons discussed above, the petitioner has failed to satisfy the first 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 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).

As already discussed, the *Handbook* does not include direct information on the occupation of "business intelligence analyst" and the petitioner did not submit letters from its industry's professional association regarding the educational requirements of the position proffered here.

The record on appeal does include a July 24, 2013 letter signed by [REDACTED] Corporate Controller and SAP FICO lead, a manager over Oracle and SAP projects, who claims to have worked with SAP consultants. Mr. [REDACTED] states generally that many SAP consultants he has worked with have a master's of business administration or are certified public accountants. Mr. [REDACTED] also indicates generally that many of the consultants he has worked with come from an IT background. The general observations of Mr. [REDACTED] confirm that a variety of educational paths may provide the necessary background to perform the duties of the occupation of a "SAP

consultant." His letter is not probative in establishing that the consulting or development industry routinely employs and recruits only degreed individuals in a specific specialty for the position proffered here, a "business intelligence analyst."

The petitioner has also included a number of advertisements for the occupational job of Business Intelligence Analyst in support of his assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Counsel contends that all of the advertisements require at least a bachelor's degree in at least one specialty area, while some allow for a degree in a variety of specialties. Upon review, the sampling of advertisements provided requires the successful applicant to have: a bachelor's degree in finance or equivalent experience; a bachelor's degree in information systems, statistics, business or the equivalent; a bachelor's degree or equivalent experience in business administration, systems design, or equivalent field; a bachelor's degree or equivalent experience; a bachelor's degree in business administration, information systems or other related education and experience can be substituted for education; a bachelor's degree in computer science, information management or business administration or five to ten years of related experience in business reporting systems; a bachelor's degree (or equivalent) in computer science, management info systems or closely related field with two years of experience in specific occupations; a bachelor's degree in business/logistics/finance/accounting or equivalent work experience; a bachelor's degree in computer science, engineering, computer information systems or mathematics preferred; a computer science or technology related degree; a degree in computer science or equivalent work experience preferred; a bachelor's degree in business/computer science or related field (preferred); a bachelor's degree in computer science, business information management, or other related technical discipline; a bachelor's degree (computer science concentration preferred); a bachelor's degree in computer science, MIS, mathematics or other analytical or technological field; a bachelor's or master's degree in computer science or related field; a bachelor's degree with focus on IT, CS or related field; and a bachelor's degree in business, computer science or related field and/or equivalent relevant work experience.

In fact, the advertisements do not even indicate that the firms advertising the vacancy announcements commonly require at least a bachelor's degree, or the equivalent in a specific discipline for the advertised positions. Some of the advertisements do not specify the type of degree required and some indicate that a bachelor's degree is preferred. Some of the advertisements indicate that experience, alone is sufficient. Most importantly, the advertisements provided depict a range of degrees from business administration, a degree of general application, to engineering. Accordingly, the aggregate of submitted advertisements do not reflect a common requirement for at least a bachelor's degree, or the equivalent, in a specific specialty.

Also, it is not evident that the duties described in the advertisements are similar to those that the petitioner described for the proffered position, or that the advertised positions themselves are parallel to the proffered position. It is the petitioner's burden to establish those aspects of the evidence that it introduced, and the AAO notes no substantial agreement between the duties described by the petitioner and the duties as described in the advertisements. This is not surprising in light of our earlier discussion of the record's lack of evidence to substantiate that the proffered position is a Business Intelligence Analyst position. Further, the petitioner has not

provided evidence establishing that the organizations that submitted the advertisements - which include a beer company, several health companies, as well as companies that are unidentified - are similar to the petitioner and within its industry, as would be required to merit consideration under this particular criterion.

Still further, even if the job announcements submitted into the record specified a minimum requirement of at least a bachelor's degree in a specific specialty - which they do not - the record of proceeding does not supplement those advertisements with authoritative evidence showing that they are representative of recruiting and hiring practices in the petitioner's industry for positions that are both parallel to the proffered position and within organizations that are similar to the petitioner. USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same industry. *See generally* Earl Babbie, *The Practice of Social Research* 186-228 (1995).

Accordingly, based upon a complete review, the AAO concludes that the evidence of record petitioner has not established that at least a bachelor's degree in a specific specialty is commonly required for position's that are (1) within the petitioner's industry, (2) parallel to the proffered position; and (3) located in organizations similar to the petitioner. Therefore, the petitioner has not satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also failed to satisfy 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."

The petitioner in this matter fails to develop relative complexity or uniqueness as an aspect of the proffered position, let alone as one that would elevate the position above other positions within the pertinent specialty that can be performed by persons with less than a bachelor's degree or the equivalent in a specific specialty.

The descriptions of the duties comprising the proffered position contain many unexplained acronyms and terms of art that indicate that performance of the proffered position as described would require technical knowledge in SAP. However, neither the duty descriptions nor any other credible evidence in the record demonstrate that the proffered position is more complex or unique than other positions in its pertinent occupational group that can be performed by persons without at least a bachelor's degree in a specific specialty.

The record of proceeding does not present objective standards by which the proffered position would succeed in establishing the requisite levels of complexity or uniqueness. Nor does the petitioner explain why the duties comprising the particular position here proffered would elevate

its complexity or uniqueness above the complexity or uniqueness of positions within the pertinent occupational group that do not require the services of a person with at least a bachelor's degree in a specific specialty.

Again we note that the petitioner's descriptions of the constituent duties contain many unexplained acronyms and terms of art apparently related to SAP processes. However, while that aspect of the record indicates that performance of the proffered position would require a person with some level of SAP-related technical knowledge, it does not establish that performance would require a person with at least a bachelor's degree in a specific specialty.

In support of the requisite complexity or uniqueness counsel contends that the proffered position "requires the ability to work independently and handle complex assignments" and "requires a high degree of autonomy, analytical and decision-making abilities." However, we observe that the claim that the beneficiary must work independently and handle complex assignments is inconsistent with by the petitioner's submission of an LCA certified only for use with a Level I (entry level) wage-level classification.⁹

In any event, as the evidence of record does not establish the requisite complexity or uniqueness, the contentions in this regard cannot prevail. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

⁹ 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].

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.

Consequently, as the evidence of record does not establish that the proffered position is more complex or unique than other positions in the pertinent occupational group not requiring the services of a person with at least a bachelor's degree in a specific specialty, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

Turning to the third criterion, the AAO observes that the petitioner has not provided any evidence that it has previously employed anyone to perform the duties of the proffered position. Thus, the petitioner has not offered evidence to demonstrate that it normally requires at least a bachelor's degree in a specific specialty or its equivalent for the position as set out in the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3). The petitioner's recruiting and hiring history is insufficient to establish this element.

We also observe that while a petitioner may believe and assert that a proffered position requires a degree in a specific specialty, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in the specific specialty or its equivalent. *See Defensor v. Meissner*, 201 F. 3d at 387. In other words, if a petitioner's degree requirement is only symbolic and the proffered position does not in fact require such a specialty degree or its equivalent to perform its duties, the occupation would not meet the statutory or regulatory definition of a specialty occupation. *See* § 214(i)(1) of the Act; 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "specialty occupation").

Finally, the petitioner has not satisfied the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), which is reserved for positions with specific duties so specialized and complex that their performance requires knowledge that is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Relative specialization and complexity have not been sufficiently developed by the petitioner as an aspect of the proffered position. In other words, the proposed duties as described do not show that their nature is more specialized and complex than the nature of the duties of other positions in the pertinent occupational group whose performance requirements are not usually associated with attainment of at least a bachelor's degree in a specific specialty.

In addition to the lack of sufficient specificity to distinguish the nature of the duties of the proffered position as so specialized and complex as to require knowledge usually associated with at least a bachelor's degree or the equivalent in a specific specialty, we turn again to the implications of the petitioner's having submitted an LCA that had been certified for use with a Level I wage-level position, thereby attesting to the proffered position as an entry-level position for an employee who has only basic understanding of the occupation. *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.

Moreover, the Level I wage rate indicates that the beneficiary would perform routine tasks requiring limited, if any, exercise of independent judgment; that the beneficiary's work will be closely supervised and monitored; that he will receive specific instructions on required tasks and expected results; and that his work will be reviewed for accuracy. *Id.*

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 wage-level I, 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.

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].

See U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf.

The *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 its 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.

By virtue of the petitioner's LCA submission at the lowest possible wage-level, the petitioner effectively attested that the proffered position is a low-level, entry position relative to others within the 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."

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

The current record does not establish that the petitioner has satisfied the statutory requirement for a specialty occupation found at section 214(i)(1) of the Act and further has failed to satisfy any of the additional, supplemental requirements at 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, it cannot be found that the proffered position qualifies as a specialty occupation.

As discussed in this decision, the petitioner did not submit sufficient evidence regarding the proffered position to determine whether it will require a baccalaureate or higher degree in a specific specialty or its equivalent. Absent this determination that a baccalaureate or higher degree in a specific specialty or its equivalent is required to perform the duties of the proffered position, it also cannot be determined whether the beneficiary possesses that degree or its equivalent. Therefore, the AAO need not and will not address the beneficiary's qualifications further.

III. CONCLUSION

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

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