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



U.S. Citizenship
and Immigration
Services

DATE: **MAY 29 2014** OFFICE: CALIFORNIA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

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

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

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

I. PROCEDURAL AND FACTUAL BACKGROUND

On the Form I-129 visa petition, the petitioner describes itself as a 12-employee "Technical Recruiter" firm, established in 2001. In order to employ the beneficiary in what it designates as a technical recruiter position, the petitioner seeks to classify her as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

II. THE LAW

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

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

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

Specialty occupation means an occupation which [(1)] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics,

physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [(2)] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.

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

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

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

As such and consonant with section 214(i)(1) of the Act and the regulation at 8 C.F.R. § 214.2(h)(4)(ii), U.S. Citizenship and Immigration Services (USCIS) consistently interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position. *See Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 147 (1st Cir. 2007) (describing "a degree requirement in

a specific specialty" as "one that relates directly to the duties and responsibilities of a particular position"). Applying this standard, USCIS regularly approves H-1B petitions for qualified aliens who are to be employed as engineers, computer scientists, certified public accountants, college professors, and other such occupations. These professions, for which petitioners have regularly been able to establish a minimum entry requirement in the United States of a baccalaureate or higher degree in a specific specialty or its equivalent directly related to the duties and responsibilities of the particular position, fairly represent the types of specialty occupations that Congress contemplated when it created the H-1B visa category.

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

III. EVIDENCE

The Labor Condition Application (LCA) submitted to support the visa petition states that the proffered position is a technical recruiter position, and that it corresponds to Standard Occupational Classification (SOC) code and title 13-1078, Human Resources, Training, and Labor Relations from the Occupational Information Network (O*NET). The LCA further states that the proffered position is a Level I, entry-level, position.

With the visa petition, counsel submitted evidence that the beneficiary received a bachelor's degree in Business Administration (International Business) from the [REDACTED] at Sacramento.

Counsel also submitted a letter, dated March 29, 2013, from the petitioner's president, who provided the following duty description for the proffered position:

- Work with technology owners and hiring managers across the globe to develop, implement, and execute hiring strategy while maintaining efficiency in the full cycle recruiting process for all divisions of their companies;
- Partner with hiring managers to understand business unit objectives related to open positions, such as skills, knowledge, experience, and competencies required in order to effectively source, and qualify candidates;
- Manage multiple, concurrent searches from inception to close;

- Guarantee a positive experience for all candidates beginning with initial contact; keep active candidates interested by maintaining communication throughout the hiring process;
- Understand business and market conditions in order to ensure candidate pipelines stay at appropriate levels to accommodate anticipated demand in line with clients corporate growth and business initiatives;
- Develop creative sourcing strategies to attract and recruit passive candidates including complex internet searching, referral generation, professional and social networking;
- Attend campus recruiting events and job fairs as warranted by business needs;
- Create compelling job postings and pitches to attract top tier talent;
- Guide hiring manager through interviewing process; set manager expectations regarding candidate attributes, facilitate interview and hiring discussions with interviewers/hiring managers;
- Maintain applicant and requisition tracking system, recruitment reports, and data integrity on a regular basis;
- Drive offer process – including generating offer letters, reference checks, offer negotiation and distributing new hire paperwork[.]

As to the educational requirement of the proffered position, the petitioner's president stated that the position requires a minimum of a bachelor's degree in economics or business administration or the equivalent. He further stated that the beneficiary is qualified for the proffered position because she has a bachelor's degree in business administration.

On May 22, 2013, the service center issued an RFE in this matter. The service center requested, *inter alia*, evidence that the petitioner would employ the beneficiary in a specialty occupation. The director outlined the specific evidence to be submitted.

In response, counsel submitted (1) a vacancy announcement the petitioner placed for a technical recruiter position; (2) résumés pertinent to other members of the petitioner's staff; (3) eleven vacancy announcements placed by other companies; (4) counsel's own letter, dated August 5, 2013; (5) an evaluation of the proffered position, dated August 7, 2013; (6) a vacancy announcement the petitioner placed for a technical recruiter position; (7) posting confirmations for vacancy announcements headed "Recruiter" placed on the [REDACTED] job listing site; (8) résumés pertinent to other members of the petitioner's staff; (9) vacancy announcements placed by other companies; and (10) counsel's own letter, dated August 5, 2013.

The petitioner's technical recruiter vacancy announcement states, "4 year College degree is required." It contains no other educational requirement.

The résumés provided describe the credentials of five of the petitioner's current employees. One of those résumés provided shows that the employee's job title is "recruiter." That employee states that she has a bachelor's degree in business administration.

Two of the résumés provided are from employees whose job title is technical recruiter, as is the job title of the position proffered in the instant case. One of those employees states that he has a bachelor's degree in Political Economy from the [REDACTED]. The other states that he has a master's degree in International Business, Business Administration and Management, General from [REDACTED] and a Master of Business Administration, Business Administration and Management from the [REDACTED].

One of the résumés is from a Senior Technical Recruiter and it indicates that the individual has a bachelor's degree in marketing with a minor in business marketing.

The remaining résumé is from a person who works for the petitioner in a position entitled, "Senior Sales Recruiter." Because no reason exists to believe that the educational requirement for a Senior Sales Recruiter position would be the same as for that of the position proffered in the instant case, that résumé will not be further discussed.

The August 7, 2013 evaluation of the proffered position states that the proffered position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Information Technology, Human Resources, Business Administration, or a related area, or the equivalent."

In his August 5, 2013 letter, counsel cited the August 7, 2013 position evaluation and the other evidence submitted as support for the proposition that the proffered position qualifies as a specialty occupation position.¹

The director denied the petition on September 7, 2013, finding, as was noted above, that the petitioner had not demonstrated that the proffered position qualifies as a position in a specialty occupation by virtue of requiring a minimum of a bachelor's degree in a specific specialty or its equivalent. More specifically, the director found that the petitioner had satisfied none of the supplemental criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A). In that decision, the director analyzed the proffered position as a Human Resources Specialist position as described in the U.S. Department of Labor's *Occupational Outlook Handbook (Handbook)*.

On appeal, counsel submitted, *inter alia*, (1) three memoranda the beneficiary sent to other employees of the petitioner; (2) a printout of what appears to be a PowerPoint presentation pertinent to a company named [REDACTED]; (3) a new description of the duties of the proffered position; and (4) a letter, dated November 13, 2013, from the petitioner's president.

One of the beneficiary's memoranda is dated May 5, 2013 and was sent to the petitioner's president and [REDACTED]. It indicates that, after viewing the first quarter performance of one of the petitioner's clients, the beneficiary had reservations pertinent to the degree of the petitioner's prospective involvement with that company.

¹ The AAO assumes one of the letters was incorrectly dated.

The second memorandum, dated September 29, 2013, is addressed to the petitioner's president. In it, the beneficiary recommends that the petitioner provide one of its clients a more diversified pool of candidates and more guidance in the hiring process.

The third memorandum, dated October 17, 2013, pertains to another client. In it, the beneficiary recommended that the petitioner concentrate that company's candidate search in Austin, Texas, rather than in the San Francisco Bay Area.

The new description of the duties of the proffered position is unsigned and unattributed, and reads as follows:

- Work with technology owners and hiring managers across the globe to develop, implement, and execute hiring strategy while maintaining efficiency in the full cycle recruiting process for all divisions of their companies. The recruiter will work directly with the above listed hiring coordinators to determine the staffing needs of clients' organizations and to establish the best hiring strategies, policies and practices. Upon establishment of those, he or she will search for the finest talent obtainable through the use of social media, professional networking and other stuff [sic] tools, such as professional portals, job boards, industry events etc. The recruiter is responsible for the entire recruiting cycle, from the establishment of initial contact with a potential candidate, candidates' screening, every levels [sic] of interviews; reference and background checks, all the way to new employee's on boarding at the clients' site. It is essential for the recruiter to demonstrate exceptional knowledge of General Management theory and practices of strategic planning for the organizations. Analysis of recruiter's Client Organizations and tasks from general management perspective (which integrates accounting, financials, marketing, personnel as well as Hiring and Human Resources policies) is required to find the balance between cost-effectiveness and quality of services provided. By careful and thorough analysis, recruiter will be able recommend [sic] and conduct unique best practices for each and every individual client, which will result in a successful Full Cycle Recruiting.
- Partner with hiring managers to understand business unit objectives related to open positions, such as skills, knowledge, experience, and competencies required in order to effectively source, and qualify candidates[.] The recruiter is fully accountable for understanding the clients' needs and policies. It is his or her responsibility to become familiar with client's companies background [sic], products, practices and technologies. In addition to completely understanding the character and responsibilities of various roles, conducting industry research on a regular basis is required. Recruiter needs to follow the latest market and technology trends (industry reports, staffing [sic] and tech-industry publications, magazines, newsletter) as well as industry news and events (Forbes, Wall Street

Journal, Crunch-Base, Tech Crunch and similar resources). As a significant part of [the petitioner's] clients are start-ups and privately held companies backed by [redacted] and [redacted] Senior Technical Recruiters must have a deep understanding of Entrepreneurship principals [sic], practices and ways of business conduct. Senior Technical Recruiters need to understand opportunities and challenges involved in the management of new business venture and its growth opportunities, especially in the Tech-Industry. Multi-dimensions of entrepreneurship are also applicable to entrepreneurial initiatives in a corporate context.

- Manage multiple, concurrent searches from inception to close. The recruiter is responsible for finding the best talent available in the market and engaging that talent with the hiring executives at the client's companies. Furthermore, the recruiter gives the hiring process being the point of contact for both the company and the candidates. The recruiter guides the candidate through the interviewing process and serves as a direct point of reference for the clients. In the final stages of the hiring process, the recruiter is fully engaged in the contract and employment agreements negotiations, as well as in the process of initial on boarding of the new employees. It is important for the Recruiter to constantly analyze and improve performance of staffing operations. As many decisions and problems faced in Full Recruitment Cycle are related to operations strategy, job and process design, as well as forecasting and talent management, and above average business acumen backed by formal education and theoretical knowledge is essential. Sound knowledge of accounting, finance, and operational management will be essential for the recruiter to excel at appropriate planning and forecasts formatting.
- Guarantee a positive experience for all candidates beginning with initial contact; keep active candidates interested by maintaining communication throughout the hiring process. It is the recruiters' responsibility to be on the top of industry news and to be up-to-date with current affairs in the market space. Additionally, due to the sensitive nature of the industry, the recruiter must maintain absolute confidentiality in regards to both the clients and candidates. Being in position of holding often privileged information, it is extremely important for the recruiter to always maintain highest levels of discretion. Awareness of the dynamics of organizational behavior is the key in providing the positive experience stated above. Understanding of compensation, performance management and Employment Law components, together with conflict management skills and direct communication will enable the Recruiter to manage the mutual (client's and candidate's) expectations through the hiring process.
- Understand business and market conditions in order to ensure that candidate pipelines stay at appropriate levels to accommodate anticipated demand in line

with clients corporate growth and business initiatives. The recruiters are required to have a complete understanding of the full business cycles and forces of the economy. Exceptional planning abilities as well as data analysis and forecasts formation capacities are necessary to ensure appropriate levels of "candidates' pipelines" at all times. "Candidates' Pipeline" refers to recruiter's activity levels at any given stage of interviewing process. As the forces of economy shift in the market, the demand and supply of talent fluctuates accordingly. Recruiter needs to always keep that in mind and play/act accordingly. Completion of Business Statistics courses that focus on the application of statistical methods to business problems, together with data analysis involving statistical methods will allow for the Recruiter to keep track of market trends, and account for various market and economy dependent factors.

- Develop creative sourcing strategies to attract and recruit passive candidates including complex internet searching, referral generation, professional and social networking. With the boom of the professional social networking sites and job search engines the recruiter has to be able to use all of these systems concurrently in search for talent. Exceptional interpersonal skills are crucial to the success of the recruiter, and so are the abilities to persuade and influence the candidates by appealing to their logic and reasons. Recruiter needs to understand factors that influence communication between individuals of different cultures and ethical [sic] backgrounds within formal and informal social organizations. Moreover, knowledge related to the acquisitions, introductions, and utilization of innovations and technological advances by businesses, industries, profit and nonprofit organizations will allow the Recruiter to mitigate potential reservations of candidates and guide them through the hiring process.
- Attend campus recruiting events and job fairs as warranted by business needs[.] Recruiters must be able to develop and maintain relationships with fresh talent pools such as Campus' [sic] student associations, clubs and job fairs. They must also partake in different local conferences by the usage of booths, meet ups and personal scouting to target more specialized candidates. By doing so the recruiter can match both the companies and candidates with opportunities that otherwise wouldn't have been possible.
- Create compelling job postings and pitches to attract top tier talent. By making specialized and personalized pitches and postings, the recruiter is able to target the top-tier quality talent, while also creating excitement and hype for their clients. The information presented to the talent encompasses for the company's financials, technologies and any other information that is permitted by the client to be passed on to the potential candidates.

- Guide hiring manager through interviewing process; set manager expectations regarding candidate attributes, facilitate interview and hiring discussions with interviewers/hiring managers. The recruiter briefs the hiring managers on the processes through introductions, calls and other means necessary prior to the interviews. By completing detailed preparations, the recruiter ensures the most effective and efficient conduct of the interviews.
- Maintain applicant and requisition tracking system, recruitment reports, and data integrity on a regular basis;
- Drive offer process – including generating offer letters, reference checks, offer negotiation and distributing new hire paperwork[.]

In his November 13, 2013 letter, the petitioner's president indicated that the beneficiary's May 5, 2013 memorandum was written in response to the petitioner's request that she research the company and determine whether accepting its stock in exchange for the petitioner's services was advisable. The petitioner's president indicated that the beneficiary performed financial analysis using EDGAR online and, that based on the company's negative net income shift, increase in accounts receivable, increase in interest expense, and decrease in assets, warned the petitioner to insist on cash payment for services rendered.

The petitioner's president also referenced the beneficiary's September 29, 2013 memo and stated that both of the memoranda cited show that "only a specialized education, a Bachelor's at least in Business Administration, Economics or a related field, could supply the kind of analytical skills and the knowledge of tech industry pursuiness principles that [the beneficiary exhibited]"

The petitioner's president also noted the PowerPoint presentation provided, stating:

Here, [the beneficiary] has identified the key features of the company's business and the core engineer's role, using text and graphics in an appealing and sophisticated way to create a clear, concise analytical summary from a software engineer's perspective. In a presentation like this, knowing what to include and how to present it requires highly specialized analytical skills and expert knowledge of core business principles as they play out in the tech industry.

The petitioner's president stated that, in the proffered position, the beneficiary must be able not only to devise recruitment strategies and inform and persuade candidates, but "to research and analyze the business dynamics of our clients in order to guide us in our business relations with those clients"

In the appeal brief, counsel asserted that the *Handbook* indicates that Human Resources Specialist positions qualify as specialty occupation positions, stating:

The most reasonable interpretation of [the *Handbook* language] is that a bachelor's degree is the normal requirement for the Human Resources Specialist position, and that the degree would normally be in a field related to the positions – usually business or human resources.

Counsel also cited the memoranda, the unsigned duty description provided on appeal, the November 13, 2013 letter from the petitioner's president, and the vacancy announcements provided as evidence that the proffered position qualifies as a specialty occupation position.

IV. ANALYSIS

As a preliminary matter, the AAO observes that the petitioner has never claimed that the proffered position is a specialty occupation position. That is, the petitioner's president March 29, 2013, letter indicates that the proffered position requires a minimum of a bachelor's degree in economics or business administration or the equivalent, and that the beneficiary is qualified for the proffered position because she has a bachelor's degree in business administration. In his November 13, 2013 letter the petitioner's president stated that the duties of the proffered position require a minimum of a bachelor's degree in business administration, economics, or a related field, or the equivalent. The petitioner's assertions indicate that the educational requirement of the proffered position may be satisfied by an otherwise unspecified bachelor's degree in business administration.

However, a degree with a generalized title, such as business administration, without further specification, is not a degree in a specific specialty. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988). As such, an educational requirement that may be satisfied by an otherwise undifferentiated bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The assertion that the educational requirement of the proffered position may be satisfied by an otherwise unspecified bachelor's degree in business administration is tantamount to an admission that it does not require a degree in a specific specialty or the equivalent and that it does not qualify as a specialty occupation position. The director's decision must therefore be affirmed and the petition denied on this basis alone.

Nevertheless, for the purpose of performing a comprehensive analysis of whether the proffered position qualifies as a specialty occupation, the AAO turns next to the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position; and a degree requirement in a specific specialty is common to the industry in parallel positions among similar organizations or a particular position is so complex or unique that it can be performed only by an individual with a degree in a specific specialty. Factors considered by the AAO when determining these criteria include: whether the *Handbook*, on which the AAO routinely relies for the educational requirements of particular occupations, reports the industry requires a degree in a specific specialty; whether the industry's professional association has made a degree in a specific specialty a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest

that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Minn. 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D.N.Y. 1989)).

The AAO will first address the requirement under 8 C.F.R. § 214.2(h)(4)(iii)(A)(I): A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position. The AAO recognizes the *Handbook*, cited by counsel, as an authoritative source on the duties and educational requirements of the wide variety of occupations that it addresses.²

As noted, the petitioner claims in the LCA that the proffered position corresponds to SOC code and title 13-1078, Human Resources, Training, and Labor Relations from O*NET. However, that code and that title refer to Human Resources, Training, and Labor Relations Specialists, All Other. Technical recruiter positions are considered under SOC code and title 13-1071.00, Human Resources Specialists. They are therefore not included in 13-1078 Human Resources, Training, and Labor Relations Specialists, *All Other*.

In any event, the AAO reviewed the chapter of the *Handbook* (2014-2015 edition) entitled "Human Resources Specialists and Labor Relations Specialists," including the sections regarding the typical duties and requirements for this occupational category. The *Handbook* states the following with regard to the duties of human resources specialists:

What Human Resources Specialists and Labor Relations Specialists Do

Human resources specialists recruit, screen, interview, and place workers. They often handle other human resources work, such as those related to employee relations, payroll and benefits, and training. Labor relations specialists interpret and administer labor contracts regarding issues such as wages and salaries, employee welfare, healthcare, pensions, and union and management practices.

Duties

Human resources specialists typically do the following:

- Consult with employers to identify employment needs
- Interview applicants about their experience, education, and skills
- Contact references and perform background checks on job applicants
- Inform applicants about job details, such as duties, benefits, and working conditions

² The *Handbook*, which is available in printed form, may also be accessed on the Internet, at <http://www.bls.gov/oco/>. The AAO's references to the *Handbook* are to the 2014 – 2015 edition available online.

- Hire or refer qualified candidates for employers
- Conduct or help with new employee orientation
- Keep employment records and process paperwork

Labor relations specialists typically do the following:

- Advise management on contracts, worker grievances, and disciplinary procedures
- Lead meetings between management and labor
- Draft proposals and rules or regulations in order to help facilitate collective bargaining
- Interpret formal communications between management and labor
- Investigate validity of labor grievances
- Train management on labor relations

Human resources specialists are often trained in all human resources disciplines and perform tasks throughout all areas of the department. In addition to recruiting and placing workers, human resources specialists help guide employees through all human resources procedures and answer questions about policies. They often administer benefits, process payroll, and handle any associated questions or problems. They also ensure that all human resources functions comply with federal, state, and local regulations.

The following are examples of types of human resources specialists:

Employment interviewers work in an employment office and interview potential applicants for job openings. They refer suitable candidates to employers for consideration.

Human resources generalists handle all aspects of human resources work. They may have duties in all areas of human resources including recruitment, employee relations, payroll, benefits, training, as well as the administration of human resources policies, procedures, and programs.

Placement specialists match employers with qualified jobseekers. They search for candidates who have the skills, education, and work experience needed for jobs, and they try to place those candidates with employers. They also may help set up interviews.

Recruitment specialists, sometimes known as ***personnel recruiters***, find, screen, and interview applicants for job openings in an organization. They search for applicants by posting listings, attending job fairs, and visiting college campuses. They also may test applicants, contact references, and extend job offers.

Labor relations specialists work with a labor union and a company's management. In addition to leading meetings between the two groups, these specialists draft formal language as part of the collective bargaining process. They often address specific grievances a worker might have, and ensure that all labor and management solutions comply within the relevant collective bargaining agreement.

U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2014-15 ed., "Human Resources Specialists and Labor Relations Specialists," <http://www.bls.gov/ooh/business-and-financial/human-resources-specialists-and-labor-relations-specialists.htm#tab-2> (last visited Apr. 23, 2014).

The duties the petitioner's president attributed to the proffered position are generally consistent with the duties of human resources specialists as described in the *Handbook*. When the director issued the decision of denial, the evidence of record supported her treatment of the proffered position as a human resources specialist position.

Because the vast majority of the duties of the proffered position appear to correspond to the duties of a human resources specialist, the AAO will analyze the proffered position as a human resources specialist position. The AAO will discuss the effect of the additional duty of financial analysis after the conclusion of the specialty occupation analysis. The *Handbook* states the following about the educational requirements of human resources specialist and labor relations specialist positions:

How to Become a Human Resources Specialist or Labor Relations Specialist

Applicants must usually have a bachelor's degree. However, the level of education and experience required to become a human resources specialist or labor relations specialist varies by position and employer.

Education

Applicants seeking positions as human resources specialists or labor relations specialists must usually have a bachelor's degree in human resources, business, or a related field.

Coursework should include business, professional writing, human resource management, and accounting.

Work Experience in a Related Occupation

Although candidates with a high school diploma may qualify for some interviewing and recruiting positions, employers usually require several years of related work experience as a substitute for education.

Some positions, particularly human resources generalists, may require previous work experience. Candidates can gain experience as human resources assistants, in customer service positions, or in other related jobs.

Licenses, Certifications, and Registrations

Many professional associations that specialize in human resources offer courses intended to enhance the skills of their members, and some offer certification programs.

Although certification is usually voluntary, some employers may prefer or require it. Human resources generalists, in particular, can benefit from certification because it shows knowledge and professional competence across all human resources areas. Some colleges and universities offer labor relations certificates to specialists who prefer greater specialization in mediation.

Important Qualities

Decision-making skills. Human resources specialists and labor relations specialists use decision-making skills when reviewing candidates' qualifications or when working to resolve labor disputes.

Detail oriented. Specialists must be detail oriented when evaluating applicants' qualifications, performing background checks, and maintaining records of an employee grievance.

Interpersonal skills. Interpersonal skills are essential for human resources specialists and labor relations specialists. When recruiting candidates and mediating between labor and management, specialists continually interact with new people and must be able to converse and connect with people from different backgrounds.

Listening skills. Listening skills are essential for human resources specialists and labor relations specialists. When interviewing job applicants, for example, they must pay careful attention to candidates' responses, understand the points they are making, and ask relevant followup questions.

Speaking skills. All specialists need strong speaking skills to be effective at their job. They often give presentations and must be able to convey information about their organizations and jobs within them.

Id. at <http://www.bls.gov/ooh/business-and-financial/human-resources-specialists-and-labor-relations-specialists.htm#tab-4> (last visited Apr. 23, 2014).

As was explained above, a requirement that may be satisfied by an otherwise unspecified degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. The *Handbook* makes clear that the educational requirement of human resources specialist positions may be satisfied by an otherwise unspecified bachelor's degree in business. As such, the *Handbook* indicates that those positions do not normally require a minimum of a bachelor's degree in a specific specialty or its equivalent.

The August 7, 2013 letter states that the proffered position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Information Technology, Human Resources, Business Administration, or a related area, or the equivalent."

Initially, the AAO observes, again, that an educational requirement that may be satisfied by an otherwise unspecified bachelor's degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, the evaluation provided does not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent, and does not support the proposition that it qualifies as a specialty occupation position.

Further, the evaluation indicates that a bachelor's degree in either information technology or human resources would satisfy the educational requirement of the proffered position.

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" 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 either of two disparate fields, such as business management and engineering, would not meet the statutory requirement that the degree be "in *the* specific specialty." Section 214(i)(1)(B) (emphasis added).

In the instant case, counsel provided no argument to support the proposition that information technology and human resources are subjects so closely related that the bodies of specialized knowledge of those two subjects are essentially identical. Therefore, even if the position evaluation did not indicate that an otherwise undifferentiated bachelor's degree in business administration is a sufficient educational qualification for the proffered position, it would not indicate that the proffered position requires a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the petitioner has designated the proffered position as a Level I position on the submitted Labor Condition Application (LCA), indicating that it is an entry-level position for an employee who has only a 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. The classification of the proffered position as a Level I position does not support the assertion that it is a position that cannot be performed without a minimum of a bachelor's degree in a specific specialty or its equivalent, especially as the *Handbook* suggests that some human resources specialist positions do not require such a degree. To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

Finally, the AAO finds that, to the extent that they are described in the record of proceeding, the numerous duties that the petitioner ascribes to the proffered position indicate a need for a range of knowledge, but do not establish any particular level of formal, postsecondary education leading to a bachelor's or higher degree in a specific specialty as minimally necessary to attain such knowledge.

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

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

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

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

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

Counsel did submit 11 vacancy announcements in support of its assertion that the degree requirement is common to the petitioner's industry in parallel positions among similar organizations. Specifically, the petitioner submitted advertisements for the following positions posted on the Internet:

1. Technical recruiter for Blackstone Technology Group, an information technology firm, requiring an unspecified bachelor's degree and two to eight years' experience with a technical agency;
2. Technical recruiter for Tribola Tech Inc., an information technology staffing and consulting company requiring an unspecified bachelor's degree and "3+ year's professional experience in sales & recruiting";
3. Technical recruiter for ProQuest, a library and research services firm, requiring an unspecified bachelor's degree and five to seven years of experience in corporate recruiting, including two years in recruiting for information technology positions;
4. Technical recruiter for Airtel Staffing requiring an unspecified bachelor's degree and requiring at least one year of experience;
5. Tech recruiter for CyberCoders, a recruiting firm, requiring an unspecified bachelor's degree and one year of business-to-business sales experience;
6. Technical recruiter for EdgeLink, a staffing firm, requiring an unspecified bachelor's degree and at least one year of sales experience;
7. Corporate recruiter for Waters Corporation, which designs, manufactures, sells, and services liquid chromatography and mass spectrometry systems, requiring an unspecified bachelor's degree and a "Minimum of 2 years full life-cycle recruiting experience";
8. Technical recruiter for AdRoll, an advertising technology firm, requiring an unspecified bachelor's degree and at least five years of experience in software engineering recruiting;
9. Recruiter for Zephyr Health requiring an unspecified bachelor's degree and at least two years of "full-cycle in-house or agency experience";
10. Technical recruiter for Kore1 Technologies, an information technology consulting and staffing services firm, requiring an unspecified bachelor's degree and at least two years of experience in information technology and/or information technology staffing;
11. Entry level sales/recruiter for Aerotek, a staffing company, requiring an unspecified bachelor's degree "or related sales or recruiting experience."

Each of the 11 vacancy announcements states that the positions they announce require a bachelor's degree, but they do not specify that the degree must, or even should, be in any specific specialty. Counsel asserted, on appeal, that the failure of the vacancy announcements to indicate a specific degree requirement, or even a specific degree preference, "is most likely related to their character as recruitment ads: generally, applicants would assume, where a bachelor's degree is required for a particular position, that the degree sought would be in a related field."

However, counsel provided no evidence to support this contention. 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). The vacancy announcements upon which counsel relies do not state that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent. Therefore, they are not evidence that the positions they announce require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further, the eleventh vacancy announcement indicates that it does not necessarily require any bachelor's degree. It states that the employer will accept, in lieu of an unspecified bachelor's degree, an unspecified amount of sales or recruiting experience. However, whether the experience this hiring authority requires would be equivalent to a bachelor's degree in a specific specialty within the meaning of the salient regulations (*e.g.*, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)). is unknown. For this additional reason, that vacancy announcement does not appear to state a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.

Further still, the alternative requirement of the first of the two alternative prongs of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2) pertains to organizations in the petitioner's industry and otherwise similar to the petitioner. Some of the organizations that placed the vacancy announcements have not been shown to be in the petitioner's industry and some others are clearly not in the petitioner's industry. Further, none have been shown to be otherwise similar to the petitioner in that they have not been shown to share the same general characteristics, such as the particular scope of operations and the level of revenue and staffing (to list just a few elements that may be considered).

Yet further, as was noted above, the petitioner has designated the proffered position as a Level I position on the LCA, indicating that it is an entry-level position for an employee who has only basic understanding of the occupation. In order to attempt to show that parallel positions require a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner would be obliged to demonstrate that other Level I human resources specialist positions, entry-level positions requiring only a basic understanding of the duties of human resources specialist positions, require a minimum of a bachelor's degree in a specific specialty or its equivalent.

However, ten of the eleven vacancy announcements require experience, and several require a considerable amount of very specific experience. As such, they do not appear to be entry-level positions. For this additional reason, they are of very little weight in demonstrating that positions parallel to the proffered position require a minimum of a bachelor's degree in a specific specialty or its equivalent.

Finally, even if all of the vacancy announcements were for parallel positions with organizations similar to the petitioner and in the petitioner's industry and required a minimum of a bachelor's degree in a specific specialty or its equivalent, the petitioner has failed to demonstrate what

statistically valid inferences, if any, can be drawn from eleven announcements with regard to the common educational requirements for entry into parallel positions in similar organizations.³

The August 7, 2013 evaluation also addressed this alternative criterion, by stating:

[I]t is standard for a company such as [the petitioner] to hire a Technical Recruiter and require that individual to have attained at least a Bachelor's Degree. It is typical for an information technology service company offering staffing and recruitment services to hire a Technical Recruiter or someone in a similar professional position, and require the minimum attainment of a Bachelor's Degree for the position.

In that paragraph, the evaluator asserted a common degree requirement, but not that the degree commonly required must be a minimum of a bachelor's degree in a specific specialty, or its equivalent, or even that it should be in any range of subjects. As stated, it is clearly not a requirement of a minimum of a bachelor's degree in a specific specialty, or its equivalent. As was observed above, elsewhere, the evaluation indicates that the proffered position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Information Technology, Human Resources, Business Administration, or a related area, or the equivalent." As was also observed above, however, that language does not denote a minimum of a bachelor's degree in a specific specialty, or its equivalent.

Thus, based upon a complete review of the record, the petitioner has not established that a requirement of a bachelor's or higher degree in a specific specialty, or its equivalent, is common to parallel positions in organizations that are within the petitioner's industry and that are otherwise similar to the petitioner. The petitioner has not, therefore, satisfied the first alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The petitioner also has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2), which provides that "an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree." The duties included in the duty descriptions provided, such as developing, implementing, and executing hiring strategy; understanding business objectives pertinent to open positions; managing concurrent searches, etc., have not been demonstrated to be so complex or unique that they can only be performed by an individual with a minimum of a bachelor's degree in a specific specialty or its equivalent. A review of the record indicates that the petitioner has failed to credibly demonstrate that the duties the

³ 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. 369, 376 (AAO 2010). 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).

beneficiary will be responsible for or perform on a day-to-day basis entail such complexity or uniqueness as to constitute a position so complex or unique that it can be performed only by a person with at least a bachelor's degree in a specific specialty.

Specifically, the petitioner failed to demonstrate how the duties described require the theoretical and practical application of a body of highly specialized knowledge such that a bachelor's or higher degree in a specific specialty, or its equivalent, is required to perform them. For instance, the petitioner did not submit information relevant to a detailed course of study leading to a specialty degree and did not establish how such a curriculum is necessary to perform the duties of the proffered position. While a few related courses may be beneficial, or even required, in performing certain duties of the proffered position, the petitioner has failed to demonstrate how an established curriculum of such courses leading to a baccalaureate or higher degree in a specific specialty, or its equivalent, is required to perform the duties of the particular position here.

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

Therefore, the evidence of record does not establish that this position is significantly different from other positions in the occupation such that it refutes the *Handbook's* information to the effect that there is a spectrum of preferred degrees acceptable for such positions, including degrees not in a specific specialty. In other words, the record lacks sufficiently detailed information to distinguish the proffered position as unique from or more complex than positions that can be performed by persons without at least a bachelor's degree in a specific specialty, or its equivalent. As the petitioner fails to demonstrate how the proffered position is so complex or unique relative to other positions within the same occupational category that do not require at least a baccalaureate degree in a specific specialty or its equivalent for entry into the occupation in the United States, it cannot be concluded that the petitioner has satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

The AAO will next address the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3), which may be satisfied if the petitioner demonstrates that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.⁴

⁴ While a petitioner may believe or otherwise assert that a proffered position requires a degree, that opinion alone without corroborating evidence cannot establish the position as a specialty occupation. Were USCIS limited solely to reviewing a petitioner's claimed self-imposed requirements, then any individual with a bachelor's degree could be brought to the United States to perform any occupation as long as the employer artificially created a token degree requirement, whereby all individuals employed in a particular position possessed a baccalaureate or higher degree in a specific specialty or its equivalent. See *Defensor v. Meissner*,

The résumés provided make clear that the petitioner has not previously required a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position. The résumé of the person in the position denoted "recruiter" indicates that she has a bachelor's degree in business administration. As was noted above, an otherwise unspecified degree in business administration is not a degree in a specific specialty, and does not qualify one to work in a specialty occupation position. The position of "recruiter" in the petitioner's organization is clearly not a specialty occupation position. However, the AAO acknowledges that the educational requirements of a "recruiter" position could differ from those of a "technical recruiter" position.⁵ The AAO will continue its analysis pertinent to the petitioner's technical recruiters and its senior technical recruiter, as the proffered position is designated a technical recruiter position.

The résumé of one of the petitioner technical recruiters states that he has "a Masters degree in Business Management majoring in International Business from both the [redacted] and [redacted]" The résumé of the petitioner's other technical recruiter states that he has a bachelor's degree in political economy. The résumé of the petitioner's senior technical recruiter states that he has a bachelor's degree in psychology with a minor in business marketing.

A master's degree in business management with a major in international business is a degree in a specific specialty. A bachelor's degree in political economy is also a degree in a specific specialty. However, neither has been shown to be in a specific specialty directly related to the proffered position. Even the petitioner's senior technical recruiter position, which position would be expected to have an educational requirement at least as stringent as that of its other technical recruiter positions, is held by a person with a bachelor's degree in psychology, which has not been shown to be a subject directly related to the proffered position. The petitioner's senior technical recruiter also studied business marketing but those studies were insufficient to constitute a major course of study.

Further, the petitioner was established in 2001 and states that it currently has twelve employees. How many technical recruiters the petitioner has employed since its establishment is unknown, but it seems that a "Technical Recruiter" firm with twelve employees likely employs more than four people in recruiting positions and has likely employed others in the past. Absent evidence on that point, the degrees held by two of the petitioner's technical recruiters and one of its senior technical

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").

⁵ On the other hand, as the petitioner describes itself as a "technical recruiter" firm, all of its recruiters may be technical recruiters. If this were so, then the fact that the petitioner's recruiter has an otherwise unspecified bachelor's degree in business administration would make yet more clear that the petitioner does not require a minimum of a bachelor's degree in a specific specialty or its equivalent for the position of technical recruiter.

recruiters, even if they were all a minimum of a bachelor's degree in a specific specialty directly related to the proffered position, or its equivalent, could not show that the petitioner "normally" requires a minimum of a bachelor's degree in a specific specialty or its equivalent for such positions.

Further, the petitioner's vacancy announcement indicates that it would accept an otherwise unspecified bachelor's degree in business administration as a sufficient educational qualification for the proffered position. As explained above, a requirement of an otherwise undifferentiated degree in business administration is not a requirement of a minimum of a bachelor's degree in a specific specialty or its equivalent.⁶ This demonstrates that the petitioner does not require a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position.

For both of the reasons explained above, the petitioner has not demonstrated that it normally requires a minimum of a bachelor's degree in a specific specialty or its equivalent for the proffered position, and it has not satisfied the alternative criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A)(3).

Finally, the AAO will address the alternative criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4), which is satisfied if the petitioner establishes that the nature of the specific duties of the proffered position is so specialized and complex that knowledge required to perform them is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty or its equivalent.

Counsel provided an evaluation of the proffered position to address this point. However, that August 7, 2013 evaluation states that the proffered position "would normally be filled by a graduate with a minimum of a Bachelor's Degree in Information Technology, Human Resources, Business Administration, or a related area, or the equivalent." As was explained in detail above, that does not denote a requirement of a minimum of a bachelor's degree in a specific specialty, or its equivalent.

Further still, as was noted above, the petitioner filed the instant visa petition for a Level I position, a position for a beginning level employee with only a basic understanding of the occupation. This does not support the proposition that the nature of the specific duties of the proffered position is so specialized and complex that their performance is usually associated with the attainment of a minimum of a bachelor's degree in a specific specialty or its equivalent, directly related to the position, especially as the *Handbook* indicates that some human resources positions require no such degree. To the contrary, the LCA's wage-level indicates that the proffered position is actually a low-level, entry position relative to others within the same occupation. In accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary is only required to possess a basic understanding of the occupation; that she will be expected to perform routine tasks requiring limited, if any, exercise of judgment; that she will be closely supervised and her work closely monitored and reviewed for accuracy; and that she will receive specific instructions on required tasks and expected results.

⁶ Cf. *Matter of Michael Hertz Associates*, 19 I&N Dec. at 558.

Relative specialization and complexity have not been sufficiently developed by the petitioner as aspects of the duties of the proffered position. In other words, the proposed duties have not been described with sufficient specificity to show that they are more specialized and complex than the duties of human resources specialist positions that are not usually associated with at least a bachelor's degree in a specific specialty or its equivalent. The petitioner has not, therefore, satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

V. AN ADDITIONAL ISSUE

The record suggests an additional issue that was not addressed in the decision of denial but that, nonetheless, also precludes approval of this visa petition.

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

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

While the U.S. Department of Labor (DOL) is the agency that certifies LCAs before they are submitted to USCIS, the DOL regulations note that it is within the discretion of the U.S. Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) to determine whether the content of an LCA filed for a particular Form I-129 actually supports that petition. *See* 20 C.F.R. § 655.705(b), which states, in pertinent part:

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

[Italics added]

The LCA stated that the proffered position is described at SOC code 13-1078. As was pointed out above, that SOC code refers to Human Resources, Training, and Labor Relations Specialists, All Other. Technical recruiter positions are not included in that SOC code, as they are included in SOC code and title 13-1071.00, Human Resources Specialists. In order to correspond to the instant visa petition, the LCA would necessarily be for a 13-1071.00, Human Resources Specialists position.

The LCA is for a position in SOC 13-1078. The visa petition is for a position in SOC 13-1071. Therefore, the LCA submitted does not correspond to the visa petition.

Further, the amended description of the duties of the proffered position submitted on appeal refers to the proffered position, several times, as a "senior technical recruiter" position. Although a job title is not dispositive, if the proffered position is designated a senior position this would suggest, at least, that it is not a Level I entry level position. The LCA submitted is valid only for employment in an Level I, entry level position.

Further still, the beneficiary's May 5, 2013 memorandum and the petitioner's president's November 13, 2013 letter both indicate that one of the beneficiary's duties is to perform financial analyses on the petitioner's clients.

Financial analysis is not included in the duties of a technical recruiter. It is more typical of the duties of a financial analyst or an accountant. That the beneficiary performs financial analysis in the proffered position is another indication that the LCA submitted does not correspond to the proffered position.

In various respects, the LCA submitted does not correspond to the visa petition. The petition must be denied for this additional reason.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

VI. CONCLUSION

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