



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **SEP 19 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)

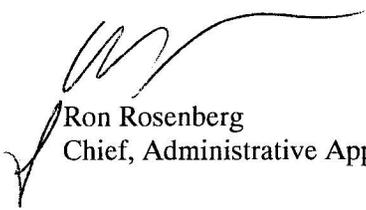
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

On the Petition for a Nonimmigrant Worker (Form I-129), the petitioner describes itself as a data analytics services business established in 2007. In order to employ the beneficiary in what it designates as an analyst position, the petitioner seeks to classify him as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

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

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

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

I. PROCEDURAL AND FACTUAL BACKGROUND

In the Form I-129 signed on March 29, 2013, the petitioner indicates that it wishes to employ the beneficiary as an "analyst" on a full-time basis at the rate of pay of \$70,000 per year. The petitioner attested on the required Labor Condition Application (LCA) that the occupational classification for the position is "Operations Research Analysts," SOC (ONET/OES) Code 15-2031, at a Level I (entry-level) wage.² The LCA was certified on March 8, 2013, for a validity period from August 22, 2013 to August 22, 2016. The petitioner also indicated on the LCA that the beneficiary will work at [REDACTED]. The petitioner did not request any other work sites.

In the support letter dated March 29, 2013, the petitioner states that "[t]he beneficiary would be responsible to provide analytic solutions, conduct business research, provide keen insights and recommendations as well as overall client business support as part of a larger team that delivers

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

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.

³ This appears to be the location of the petitioner's client. [REDACTED]

consulting services to large retail and technology organizations." The petitioner further states that "[a]part from project delivery accountability, the Analyst would be also involved in project management activities." In addition, the petitioner claims that the beneficiary will be responsible for the following duties:

- Attend business meetings with analytics and marketing managers to better understand business problems and arrive at a solution framework;
- Responsible for the conceptualization, design and development of advanced marketing dashboards, marketing campaigns analysis as well as strategic analysis;
- Data mining and work with large amount of unstructured data;
- Build models to better understand and illustrate the results of data analysis;
- Provide deep insights and strategic recommendations about specific business problems faced by client based on sound data analysis;
- Responsible for goal setting, project management and team mentoring;
- Conduct extensive presentations on the analysis done to petitioner's clients as well as the recommendations provided to client managers and discuss the implementation steps.

The petitioner further states that it "requires at least a Bachelor's degree, or the equivalent, in Computer Science, Science, Information Systems, Information Technology, Operations Research, Business, Engineering, or a related field" for the position.

With the initial petition, the petitioner submitted a copy of the beneficiary's foreign diploma and transcript, as well as a credential evaluation from [REDACTED]. The credential evaluation indicates that the beneficiary's foreign education is "equivalent of Bachelor of Science degree in Engineering from a regionally accredited college or university in the United States."

In support of the petition, the petitioner also submitted several documents, including the following:

- An itinerary.
- Copies of the petitioner's offer letter and employment agreement, which have not been completed with the employee's name.
- An organizational chart.
- Documentation regarding the petitioner's business operations, including the petitioner's income tax return for 2011, bank statements, a document entitled "Compendium of analytical approaches methodologies & case studies @ [the petitioner]," and articles regarding the petitioner.
- A Master Services Agreement between the petitioner and [REDACTED] effective

August 2, 2010. The agreement indicates [REDACTED] hereby retains Company [the petitioner] to perform work ('Services') and/or to provide items ('Deliverables') to [REDACTED] as described in a statement of work, in the form set forth in Exhibit A." The petitioner did not provide a statement of work (SOW).

- Invoices from the petitioner to [REDACTED]

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on July 31, 2013. The director outlined the evidence to be submitted.

On October 23, 2013, counsel responded with a brief and additional evidence. In the brief, counsel indicated that the parent company of [REDACTED]. In addition, counsel provided a revised description of the duties of the proffered position, along with the approximate percentage of time that the beneficiary will spend performing each duty.⁴ Further, counsel submitted, in part, the following:

- An SOW between the petitioner and [REDACTED] effective August 19, 2011. The SOW indicates that "[t]he work will commence on 1st September 2011, and shall be completed by 31st August 2013 (the 'Service Period')."⁵
- An SOW between the petitioner and [REDACTED] effective May 31, 2012. The SOW indicates that "[the petitioner] will set up an offshore team (in [REDACTED] India) of 1 FTE, who will support the Global Marketing team specifically in customer experience-related projects."⁶ In addition, the document indicates that "[t]he work will commence on 15th May 2012, and shall be completed by 31st December 2012 (the 'Service Period')."
- A letter from [REDACTED] Senior Director Procurement of [REDACTED] dated July 31, 2013. In the letter, Mr. [REDACTED] states that "[the petitioner's] assignment with [REDACTED] is being extended for a period of three years effective 1st Sep 2013,

⁴ It is noted that the revised job description and the percentages of time allocated to each duty provided by counsel is not probative evidence. The description was submitted by counsel, not the petitioner, and counsel's brief was not signed by or endorsed by the petitioner. The record of proceeding does not indicate the source of the expanded duties and responsibilities (and the percentages of time allocated to each duty) that counsel attributes to the proffered position. 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).

⁵ Thus, without further evidence, it appears that the project ended approximately two months prior to the requested period of H-1B employment on the Form I-129.

⁶ We note that the SOW is for a project in India and, thus, the document is irrelevant to the instant case.

once the term of the current Statement of Work ends as of 31st August 2013."⁷

- A letter from [REDACTED] Senior Manager, Alternative Workforce of [REDACTED] dated September 17, 2013. In the letter, Ms. [REDACTED] states that "[w]e anticipate the need for [the beneficiary's] services from 1-Oct-2013 until 31-Aug-2016, with possible extension up to 12 months."
- A description of [REDACTED] Managerial/Executive duties at the petitioner.⁸
- A letter from [REDACTED] of [REDACTED] dated August 27, 2013. In the letter, Mr. [REDACTED] states, "The position of Analyst qualifies as a specialty occupation, requiring a minimum of a Bachelor's in Management Information Systems."⁹
- A letter from [REDACTED] which indicates the beneficiary's duties and responsibilities at the petitioner's offices in India.

The director reviewed the response, and found the evidence insufficient to establish eligibility for the benefit sought. The director denied the petition on November 21, 2013. Counsel submitted an appeal of the denial of the H-1B petition.

II. LAW AND ANALYSIS

A. Standard of Proof

With the appeal, counsel submitted a brief. In the brief, counsel references the preponderance of the evidence standard. We affirm that, in the exercise of our appellate review in this matter, as in all matters that come within our purview, we follow the preponderance of the evidence standard as specified in the controlling precedent decision, *Matter of Chawathe*, 25 I&N Dec. 369, 375-376 (AAO 2010), states in pertinent part 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

⁷ Notably, Mr. [REDACTED] did not provide any documentary evidence, such as an SOW, demonstrating that the project was extended for three years. Further, Mr. [REDACTED] the senior director of procurement, and author of the letter asserted that the assignment was complex and required personnel with a minimum of a bachelor's degree in a relevant field. However, as Mr. [REDACTED] does not identify a relevant field of study, we cannot discuss the requirement of any specific degree. As will be discussed, the requirement of a general bachelor's degree to perform the expected duties is inadequate to establish a position as a specialty occupation.

⁸ [REDACTED] within the record is listed as engagement manager for the petitioning company, and director for the petitioner's offices in India.

⁹ Notably, Mr. [REDACTED] assertion differs from the petitioner's stated requirements for the proffered position in the March 29, 2013 letter of support.

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.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In doing so, we apply the preponderance of the evidence standard as outlined in *Matter of Chawathe*. Upon our review of the present matter pursuant to that standard, however, we find that the evidence in the record of proceeding does not support counsel's contentions that the evidence of record requires that the petition at issue be approved. Applying the preponderance of the evidence standard as stated in *Matter of Chawathe*, we find that the director's determinations in this matter were correct. Upon our 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, we find 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 us to believe that the petitioner's claims are "more likely than not" or "probably" true.

B. Specialty Occupation

1. Law

For an H-1B petition to be granted, the petitioner must provide sufficient evidence to establish that it will employ the beneficiary in a specialty occupation position. To meet its burden of proof in this regard, the petitioner must establish that the employment it is offering to the beneficiary meets the applicable statutory and regulatory requirements.

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

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

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

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

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

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties [is] so specialized and complex that 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 387. 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.

2. The Petitioner's Requirement to Perform the Duties of the Position

As a preliminary matter, we note that the petitioner and counsel have provided inconsistent information regarding the educational requirements of the proffered position.

- In the March 29, 2013 letter of support, the petitioner stated that it "requires at least a Bachelor's degree, or the equivalent, in Computer Science, Science, Information Systems, Information Technology, Operations Research, Business, Engineering, or a related field, for this position."
- In response to the director's RFE, counsel claimed that "[t]he Petitioner requires Analysts to have a minimum of a Bachelor's degree or higher in Computer Science, Information Systems, Management, Operations Research or a related field."
- In the letter from [REDACTED] submitted in

response to the RFE, Dr. [REDACTED] stated that "[t]he position of Analyst qualifies as a specialty occupation, requiring a minimum of a Bachelor's in Management Information Systems."

No explanation for the variances was provided. The petitioner and counsel have provided inconsistent information regarding the minimum educational requirement for the proffered position. 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).

Moreover, it must be noted that within the record of proceeding, the petitioner and its counsel have represented that the position requires a bachelor's degree in computer science, science (without further specification), information systems, information technology, operations research, business, engineering, management, and/or management information systems.

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, for example, would not meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)," unless the petitioner establishes how each field is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added).

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

Again, the petitioner and counsel have represented that a bachelor's degree in a number of disciplines is acceptable, specifically, computer science, science (without further specification), information systems, information technology, operations research, business, engineering, management, and management information systems. However, it must be noted that these include broad categories that cover numerous and various specialties.¹⁰ Therefore, it is not readily apparent

¹⁰ We note that the term "business" is defined as "1. The occupation, work, or trade in which one is engaged. . . . 2. Commercial, industrial, or professional dealings. 3. A commercial enterprise or establishment." WEBSTER'S II NEW COLLEGE DICTIONARY 153 (2008). A degree in business administration may include a range of

that a degree in any and all of these fields is directly related to the duties and responsibilities of the particular position proffered in this matter.

Here and as indicated above, the petitioner, who bears the burden of proof in this proceeding, fails to establish either (1) that all of the disciplines listed are closely related fields, or (2) that all of the disciplines listed are directly related to the duties and responsibilities of the proffered position. Absent this evidence, it cannot be found that normally the minimum requirement for entry into the particular position proffered in this matter is a bachelor's or higher degree in a specific specialty, or its equivalent, under the petitioner's own standards.

As the evidence of record fails to establish how these dissimilar fields of study form either a body of highly specialized knowledge or a specific specialty, or its equivalent, the petitioner's assertion that the job duties of this particular position can be performed by an individual with a bachelor's degree in any of these fields suggests that the proffered position is not in fact a specialty occupation. Therefore, absent probative evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires, at best, anything more than a general bachelor's degree. 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)).

We recognize that the petitioner desires an employee with a strong analytical background who will deliver advanced analytics insights and decision management solutions and will use advanced, data-driven, optimization methods for executing marketing initiatives and business goals and that "[t]his job requires high technical and business knowledge as well as managerial skills" and that "[t]ypical tasks require knowledge in mathematics, statistics, optimization techniques as well as strong understanding of client's business models in addition to exposure of statistical tools." However, the petitioner does not substantiate that only a bachelor's degree in "mathematics,

disciplines, some of which may not directly relate to the duties of the proffered position. For instance, U.S. [REDACTED] publishes a guide for colleges. The entry for [REDACTED] indicates that its business school offers concentrations in a range of disciplines, including arts administration, e-commerce, health care administration, human resources management, not-for-profit management, organizational behavior, public administration, public policy, real estate, sports business, as well as many others. See U.S. News and World Report on the Internet at [http://www.\[REDACTED\]/graduate-\[REDACTED\].px](http://www.[REDACTED]/graduate-[REDACTED].px) (last visited September 19, 2014).

The term "science" is defined as "1a. The observation, identification, description, experimental investigation, and theoretical explanation of natural phenomena. . . . 2. Methodological activity, disciplines, or study <culinary science> 3. An activity that appears to require study and method." WEBSTER'S II NEW COLLEGE DICTIONARY 1012 (2008). [REDACTED] guide for colleges designates science programs into various subcategories, including biological sciences, chemistry, earth sciences, math, physics, statistics, as well as social science programs such as criminology, economics, English, history, political science, psychology, and sociology. See U.S. News and World Report on the Internet at <http://grad-schools.usnews.rankingsandreviews.com/best-graduate-schools/top-science-schools> (last visited September 19, 2014).

statistics, optimization techniques" would provide the specialized knowledge to perform the duties it ascribes to the proffered position. Moreover, counsel in response to the director's RFE, claimed that the occupation of "Analysts" may have different specialties depending on the industry they cater to and that data analytical services are sought by different types of U.S. clients, thus, the Analyst may be expected to have specific knowledge relevant to the client's industry." Although counsel makes this claim, counsel does not provide any evidence that the analyst position proffered here requires specific knowledge relevant to a web-based financial exchange, such as [REDACTED] the organization requesting the petitioner's services and to which the petitioner claims the beneficiary will be assigned.

We have also considered counsel's citation to *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*, 839 F. Supp. 2d 985 (S.D. Ohio 2012), for the proposition that "[t]he knowledge and not the title of the degree is what is important. Diplomas rarely come bearing occupation-specific majors. What is required is an occupation that requires highly specialized knowledge and a prospective employee who has attained the credentialing indicating possession of that knowledge."

We agree with the aforementioned proposition that "[t]he knowledge and not the title of the degree is what is important." As just discussed, 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. As in such a case, the required "body of highly specialized knowledge" would essentially be the same. However, the petitioner in this matter 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.

In any event, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in *Residential Fin. Corp. v. U.S. Citizenship & Immigration Services*.¹¹ In addition, in contrast to the broad precedential authority of the case law of a United States circuit court, we are 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 us, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Similarly, counsel's citation to five unpublished decisions analogizing the matter here to matters involving a software engineer does not establish the position proffered here is a specialty occupation. We note that when "any person makes an application for a visa or any other document

¹¹ 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. We further note that the service center director's decision was not appealed to this office. Based on the district court's findings and description of the record, if that matter had first been appealed through the available administrative process, we 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 our own *de novo* review of the matter.

required for entry, or makes an application for admission, [. . .] the burden of proof shall be upon such person to establish that he is eligible" for such benefit. 8 U.S.C. § 1361; *see also Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972). Any suggestion that USCIS must review unpublished decisions and possibly request and review each case file relevant to those decisions, while being impractical and inefficient, would also be tantamount to a shift in the evidentiary burden in this proceeding from the petitioner to USCIS, which would be contrary to section 291 of the Act, 8 U.S.C. § 1361. Accordingly, neither the director nor this office was required to request and/or obtain a copy of the unpublished decisions cited by counsel.

As the record of proceeding does not contain any evidence of the unpublished decisions, there were no underlying facts to be analyzed and, therefore, no prior, substantive determinations could have been made to determine what facts, if any, were analogous to those in this proceeding. Furthermore, while 8 C.F.R. § 103.3(c) provides that this office's precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Upon review, the petitioner has not provided evidence to establish a factual basis demonstrating that a general science, business, or engineering degree, or any of the degrees it finds acceptable to perform the duties of the position proffered here, meet the statutory requirement that the degree be "in *the* specific specialty (or its equivalent)." The petitioner has not established how each of the acceptable fields is directly related to the duties and responsibilities of the particular position such that the required "body of highly specialized knowledge" is essentially an amalgamation of these different specialties. Section 214(i)(1)(B) of the Act (emphasis added). Rather, the petitioner finds a general educational standard sufficient to perform the duties of the proffered position. A general degree without a specific specialty designated as being required is tantamount to an admission that the proffered position is not in fact a specialty occupation. Again, absent evidence of a direct relationship between the claimed degrees required and the duties and responsibilities of the position, it cannot be found that the proffered position requires anything more than a general bachelor's degree. As explained above, USCIS interprets the degree requirement at 8 C.F.R. § 214.2(h)(4)(iii)(A) to require a degree in a specific specialty that is directly related to the proposed position. For the reasons discussed above, the petitioner has not established the position proffered here as a specialty occupation.

These 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.

3. Expert Letter

Here we discuss the opinion submitted by Dr. [REDACTED] in support of the petitioner's claim that the proffered position is a specialty occupation. Dr. [REDACTED] opined:

The bachelor's degree in Management Information Systems (hereafter MIS) is intended to prepare those who earn it to pursue careers in software development and

software management, generally in a business setting. It is less rigorous and mathematically informed than a standard Computer Science Degree which exceeds all of the technical content of a degree in MIS. The curricula for such degrees will consist of (1) instruction in software development technologies and (2) instruction in some application area such as business or manufacturing.

Dr. [REDACTED] concluded that the position proffered by the petitioner "qualifies as a specialty occupation, requiring a minimum of a baccalaureate degree in Management Information Systems or a closely related degree."

First, although Dr. [REDACTED] indicated he had reviewed the petitioner's description of the duties of the proffered position and a separate official company description, he does not provide a copy of the "separate official company description" for our review. Moreover, Dr. [REDACTED] does not indicate whether he visited the petitioner's business premises or spoke with anyone affiliated with the petitioner, so as to ascertain and base his opinions upon the substantive nature and educational requirements of the proposed duties as they would be actually performed. Further, no statements in his opinion submission indicate the extent to which the author reviewed the particular position upon which he opined. For example, it is unclear whether Dr. [REDACTED] was aware the beneficiary would be assigned to work on a project for a third party.

In regard to his review of the petitioner's initial description, the duties described are general. Dr. [REDACTED] fails to provide a substantive statement of specific duties that the beneficiary would actually perform within the context of the petitioner's particular business operations. Rather, it appears that Dr. [REDACTED] bases his opinion upon generalized and relatively abstract descriptions of functions that could relate to a general analytic occupation and without regard to actual educational requirements. The content of his opinion is not indicative of more than a cursory and superficial consideration of the proffered position. The extent of meaningful analysis involved in the formulation of the position-evaluation opinion, therefore, is questionable.

Next, we find that Dr. [REDACTED] fails to establish a sufficient basis so that we may accord any deference to his opinion with regard to the particular area for which the petitioner offers it, namely, the minimum education requirements for the performance of the particular position that is the subject of this petition. Even considered in the aggregate, Dr. [REDACTED] curriculum vitae, the lists of publications, the lists of memberships, and all of the other documents submitted by Dr. [REDACTED] to support his claim of expertise do not establish that he has published, conducted research, run surveys, or engaged in any enterprise, pursuit, or employment - academic or otherwise - to equip him to render an opinion that we should regard as authoritative or expert in that particular area. While Dr. [REDACTED] claims expertise on the basis of his position and the contents of his curriculum vitae, he does not persuasively articulate - and the documents that he presents do not show - exactly how his background so recommends his knowledge of H-1B specialty occupation requirements or of the minimum educational requirements for the position of an analyst that we should accord probative value to his opinion in this matter. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, Dr. [REDACTED] does not discuss the fact that the petitioner submitted an LCA certified for a wage-level that is only appropriate for a comparatively low, entry-level position relative to others within its occupation, which signifies that the beneficiary is only expected to possess a basic understanding of the occupation.¹²

We may, in our 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, we are not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988).

For all of these reasons, we find that the opinion letter from Dr. [REDACTED] does not merit recognition or weight as an expert opinion, and that it is not probative evidence towards satisfying any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

4. Failure to Satisfy any Criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)

The petitioner in this matter provided a list of the beneficiary's proposed duties.¹³ As observed above, USCIS in this matter must review the actual duties the beneficiary will be expected to perform to ascertain whether those duties require at least a baccalaureate degree in a specific specialty, or its equivalent, as required for classification as a specialty occupation. To accomplish that task in this matter, USCIS must analyze the actual duties in conjunction with the specific project(s) to which the beneficiary will be assigned. To allow otherwise, results in generic descriptions of duties that, while they may appear (in some instances) to comprise the duties of a specialty occupation, are not related to any actual services the beneficiary is expected to provide. In that regard, we have reviewed the information in the record regarding the petitioner's data

¹² The *Prevailing Wage Determination Policy Guidance* (available at http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf) 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].

The petitioner does not indicate that the proffered position is for a research fellow, a worker in training, or an internship, but appears to believe that the beneficiary will be expected to perform high-level tasks, inconsistent with this LCA designation.

¹³ Again, with regard to the duties, we note that the petitioner designated the proffered position on the LCA under the occupational category "Operations Research Analysts" as a Level I (entry) position.

analytics services business. Upon review of this information, we find that the record of proceeding lacks documentation regarding the petitioner's business activities and the actual work that the beneficiary will perform to sufficiently substantiate the claim that the petitioner has H-1B caliber work for the beneficiary for the period of employment requested in the petition. That is, the record does not include sufficient work product or other documentary evidence to confirm that the petitioner has ongoing projects to which the beneficiary will be assigned. Thus, the petitioner has not provided the underlying documentation necessary to corroborate that the beneficiary would perform the claimed duties set out in the petitioner's letter of support.¹⁴ Again going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Furthermore, we note that the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. 8 C.F.R. § 103.2(b)(1).

Without statements of work describing the specific duties the petitioner requires the beneficiary to perform, as those duties relate to specific projects, USCIS is unable to discern the nature of the position and whether the position indeed qualifies as a specialty occupation.¹⁵ Without a

¹⁴ For instance, the petitioner submitted documentation regarding the proffered position and its business operations, including an itinerary, an offer of employment letter and employment agreement (which have not been completed with the employee's name), organizational charts, the petitioner's income tax return for 2011, bank statements, a document entitled "Compendium of analytical approaches methodologies & case studies @ [the petitioner]," articles regarding the petitioner, SOWs, and letters from [REDACTED]. The evidence does not establish, however, the substantive nature of the work to be performed by the beneficiary. There is a lack of documentation regarding the claimed project and the beneficiary's specific role in the project. Here, the petitioner has failed to establish that the petition was filed for non-speculative work for the beneficiary that existed *as of the time of the petition's filing*. There is insufficient documentary evidence in the record corroborating the availability of work for the beneficiary for the requested period of employment and, consequently, what the beneficiary would do and how this would impact the circumstances of his relationship with the petitioner.

¹⁵ 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.

meaningful job description within the context of non-speculative employment, the petitioner may not establish any of the alternate criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We acknowledge the petitioner's claim that the position of analyst qualifies for H-1B classification; however, an assertion without supporting evidence is insufficient for a petitioner to satisfy its burden of proof. The petitioner's failure to establish the substantive nature of the work to be performed by the beneficiary precludes a finding that the proffered position is a specialty occupation under 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.

For the reasons discussed above, 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.

III. BEYOND THE DIRECTOR'S DECISION

Finally, beyond the decision of the director, the petition must be denied due to the petitioner's failure to establish that it qualifies as a United States employer. As detailed above, the record of proceeding lacks sufficient documentation evidencing what exactly the beneficiary would do for the period of time requested or where exactly and for whom the beneficiary would be providing services. Given this specific lack of evidence, the petitioner has failed to establish who has or will have actual control over the beneficiary's work or duties, or the condition and scope of the beneficiary's services. In other words, the petitioner has failed to establish whether it has made a *bona fide* offer of employment to the beneficiary based on the evidence of record or that the petitioner, or any other company which it may represent, will have and maintain the requisite employer-employee relationship with the beneficiary for the duration of the requested employment period. *See* 8 C.F.R. § 214.2(h)(4)(ii) (defining the term "United States employer" and requiring the petitioner to engage the beneficiary to work such that it will have and maintain an employer-employee relationship with respect to the sponsored H-1B nonimmigrant worker). Again and as previously discussed, there is insufficient evidence detailing where the beneficiary will work, the specific projects to be performed by the beneficiary, or for which company the beneficiary will ultimately perform these services. Therefore, the appeal must be dismissed and the petition must be denied for this additional reason.

IV. CONCLUSION AND ORDER

An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 (noting that the AAO conducts appellate review on a *de novo* basis).

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act; *see e.g., Matter of Otiende*, 26 I&N Dec. at 128. Here, that burden has not been met.

ORDER: The appeal is dismissed.