



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 06 2015** Office: CALIFORNIA SERVICE CENTER File:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,  
  
John Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center 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.

The petitioner submitted a Petition for a Nonimmigrant Worker (Form I-129) to the California Service Center on April 18, 2014. On the Form I-129 petition, the petitioner describes itself as an "Eco Home Design Company." In order to employ the beneficiary in a position to which it assigned the job title of "Financial Analyst,"<sup>1</sup> the petitioner seeks to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition on August 16, 2014, finding that the petitioner failed to establish that the proffered position qualifies as a specialty occupation in accordance with the applicable statutory and regulatory provisions. On appeal, counsel asserts that the director's basis for denial was erroneous and contends that the petitioner satisfied all evidentiary requirements.

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

For the reasons that will be discussed below, we agree with the director's decision 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. THE 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

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<sup>1</sup> Although the petitioner identifies the proffered position as that of a Financial Analyst, the petitioner submitted a Labor Condition Application (LCA) in support of the instant petition which designates the proffered position within the occupational classification of "Financial Specialists, All Other" - SOC (ONET/OES) Code 13-2099, at a Level I (entry-level) wage.

- (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 (5<sup>th</sup> Cir. 2000). To avoid this illogical and absurd 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), 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.

## II. FACTUAL AND PROCEDURAL HISTORY

As we have already indicated in this matter, the petitioner stated in the Form I-129 that it is an "Eco Home Design Company" established in [REDACTED] and that it had 53 employees and a gross annual income of \$11 million. In the Form I-129 the petitioner also attested that it seeks the beneficiary's services in a position to which it assigned "Financial Analyst" as the job title, for full-time work at a required annual-salary of \$45,000. However, by virtue of its submission of an LCA that had been certified for use with a position within a different occupational classification - that is, not "Financial Analysts" but "Financial Specialists, All Other" (SOC (ONET/OES) Code 13-2099, at a Level I (entry-level) prevailing-wage rate), the petitioner endorsed the proffered position as being less demanding and lower-paying than a position within the Financial Analysts occupational category.

In a letter dated March 15, 2014, the petitioner described itself as "a leading California residential design company providing highly innovative Eco Home services (including concrete/foundation, roofing, flooring, heating/air conditioning and solar services) pursuant to the highest environmental quality standards." The petitioner further asserted that because of "the specific nature of its business" it "requires the constant, ongoing analysis/evaluation of a wide variety of critical financial, budgetary, investment, credit, and other economic data to ensure [the petitioner's] financial health."

The petitioner provided the following description of the proffered position:

Reporting directly to the company's Chief Executive and Chief Operating Officers, [the beneficiary] will apply advanced theoretical and practical knowledge in the fields of financial, budgetary, and economic analysis to evaluate company and departmental financial activities and prepare/present, based on advanced economic and financial analytic techniques, short and long-range budgetary and other financial projections and recommendations. In performing these duties, [the beneficiary] will be responsible for providing fiscal and organizational advice to representatives of the company's various departments concerning projected business programs and financial objectives according to budgetary specifications and procedures; advising the company's departments concerning the formulation of departmental budgets, including the research and performance of budget impact studies; analyzing and evaluating departmental budget requests and preparing for senior management budgetary reports and recommendations; compiling budgetary and fiscal data from assigned departments; preparing revenue balance statements and historical comparisons of departmental financial activities; providing technical assistance to specific departments on budget issues for current or proposed programs; and performing related professional duties including the preparation of charts and diagrams showing prior, current, and projected revenues/expenditures; evaluating deviations from departmental financial practices and procedures; analyzing specific aspects of departmental structure, functions, and operating procedures; and recommending methods to improve efficiency and effectiveness.

The petitioner concluded by stating that the incumbent must have at least a bachelor's degree in Finance or a closely-related quantitative analysis business/economics field.

In further support of eligibility, the petitioner submitted (1) a copy of the beneficiary's resume; (2) a copy of the beneficiary's diplomas and transcripts; and (3) documentation pertaining to the petitioner and its business operations. We note that none of the evidence of record before us on appeal explains in specific details of any particular substantive matters that the beneficiary would have to evaluate/analyze, specific methodologies and applications of a body of highly specialized knowledge that the beneficiary would have to bring to bear to perform that such analyses/evaluation.

The director found the initial evidence insufficient to establish eligibility for the benefit sought, and issued an RFE on May 16, 2014. In the RFE, the director asked the petitioner to provide additional evidence to establish that the proffered position qualifies as a specialty occupation. The notice included a request to provide a more detailed description of the work to be performed by the beneficiary for the entire period requested, including the specific job duties, the percentage of time to be spent on each duty, the level of responsibility, hours per week of work, etc. The director outlined the evidence to be submitted.

The petitioner's counsel responded to the director's RFE and submitted a response letter and additional evidence, including a letter from the petitioner dated June 10, 2014. The petitioner's

letter included an additional description of the duties of the described position, which we shall directly address later in this decision.

The petitioner also provided (1) a job summary of the proffered position; (2) a copy of the beneficiary's academic transcript and letter outlining his prior work experience; (3) an evaluation of the proffered position by Professor [REDACTED] submitted for consideration as an expert opinion; (4) excerpts from the U.S. Department of Labor's (DOL's) *Occupational Outlook Handbook (Handbook)* and information from the Standard Occupational Classification (SOC) system, which the petitioner asserts as pertaining to related occupations; and (5) copies of job postings for positions that the petitioner claimed were parallel to the proffered position within similar organizations.

The director denied the petition on August 16, 2014, concluding that the petitioner did not establish that the proffered position qualifies as a specialty occupation.

On appeal, counsel for the petitioner asserts that the director's denial was erroneous, and submits a brief and additional evidence. Counsel contends that the director mischaracterized key aspects of the evidence of record, of the beneficiary's academic qualifications, and of several of the submitted job postings submitted in support of the petition. In addition to the appeal brief, counsel submits two non-precedent decisions issued by the AAO as well as copies of Internet articles discussing "Financial Analysts."

### III. ANALYSIS

We reviewed the record of proceeding in its entirety. To make its determination whether the proffered position qualifies as a specialty occupation, we turn to the supplemental, additional criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A).

When determining whether a position is a specialty occupation, we must look at the nature of the business offering the employment and the description of the specific duties of the position as it relates to the particular employer. To ascertain the intent of a petitioner, USCIS looks to the Form I-129 and the documents filed in support of the petition. It is only in this manner that the agency can determine the exact position proffered, the location of employment, the proffered wage, et cetera. Pursuant to 8 C.F.R. § 214.2(h)(9)(i), the director has the responsibility to consider all of the evidence submitted by a petitioner and such other evidence that he or she may independently require to assist his or her adjudication. Further, the regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation."

We will first review the record of proceeding in relation to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(I), which requires that a baccalaureate or higher degree in a specific specialty or its equivalent is normally the minimum requirement for entry into the particular position that is the subject of the petition.

The petitioner's letter of support filed with the petition described the position in generalized terms. When a more detailed description of the position was requested in the RFE, the petitioner responded with the following overview:

1. Providing fiscal and organizational advice to representatives of the company's various departments concerning projected business programs and financial objectives according to budgetary specifications and procedures (20% of time).
2. Advising the company's departments concerning the formulation of departmental budgets, including the research and performance of budget impact studies (10% of time).
3. Compiling budgetary and fiscal data from assigned departments; Analyzing/Evaluating departmental budget requests; Preparing budgetary reports and recommendations for senior management (25% of time).
4. Preparing revenue balance statements and historical comparisons of departmental financial activities; providing technical assistance to specific departments on budget issues for current or proposed programs (20% of time).
5. Preparing charts and diagrams showing prior, current, and projected revenues/expenditures; Evaluating deviations from departmental financial practices and procedures; Analyzing specific aspects of departmental structure, functions, and operating procedures; and recommending methods to improve efficiency and effectiveness (25% of time).

The petitioner also provided additional details in a separate document which provided a summary of the position. The petitioner claimed the beneficiary would be responsible for functions of accounting and budgetary processes, and would perform such duties under general supervision.

The petitioner stated that the beneficiary would be employed in a position to which it assigned the job title of "Financial Analyst." However, to determine whether a particular job qualifies as a specialty occupation, USCIS does not simply rely on a position's title. As previously mentioned, 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 evidence in the record of proceeding establishes that performance of the particular proffered position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the attainment of a baccalaureate or higher degree in a specific specialty as the minimum for entry into the occupation, as required by the Act.

As previously discussed, the petitioner asserted in the LCA that the proffered position falls within the occupational category "Financial Analysts," yet classified the position under the category of

"Financial Specialists, All Other," thereby suggesting a broader classification of the proffered position than claimed in the title assigned to the position. Although we find that the evidence of record does not establish the proffered position as belonging within the Financial Analysts occupational group, we shall address why the evidence of record would not satisfy any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A) even if the proffered is analyzed as a position within the Financial Analysts occupational group.

The AAO reviewed the information in the *Handbook* regarding the occupational category "Financial Analysts," including the sections regarding the typical duties and requirements for this occupational category.<sup>2</sup> However, the *Handbook* does not support a conclusion that this occupation and its associated duties are the same as those associated with the proffered position here.

In pertinent part, the *Handbook* states the following with regard to the general duties of positions within the Financial Analysts occupational group:

Financial analysts provide guidance to businesses and individuals making investment decisions. They assess the performance of stocks, bonds, and other types of investments. . . .

Financial analysts typically do the following:

- Recommend individual investments and collections of investments, which are known as portfolios
- Evaluate current and historical data
- Study economic and business trends
- Study a company's financial statements and analyze commodity prices, sales, costs, expenses, and tax rates to determine a company's value by projecting the company's future earnings
- Meet with company officials to gain better insight into the company's prospects and management
- Prepare written reports
- Meet with investors to explain recommendations

<sup>2</sup> For additional information regarding the occupational category "Financial Analysts," see U.S. Dep't of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook, 2014-15 ed.*, Financial Analysts, on the Internet at <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm> (last accessed March 31, 2015).

Financial analysts evaluate investment opportunities. They work in banks, pension funds, mutual funds, securities firms, insurance companies, and other businesses. They are also called securities analysts and investment analysts.

Financial analysts can be divided into two categories: buy side analysts and sell side analysts.

- Buy side analysts develop investment strategies for companies that have a lot of money to invest. These companies, called institutional investors, include mutual funds, hedge funds, insurance companies, independent money managers, and nonprofit organizations with large endowments, such as some universities.
- Sell side analysts advise financial services sales agents who sell stocks, bonds, and other investments.

Some analysts work for the business media and are impartial, falling into neither the buy side nor the sell side.

Financial analysts generally focus on trends affecting a specific industry, geographical region, or type of product. For example, an analyst may focus on a subject area such as the energy industry, a world region such as Eastern Europe, or the foreign exchange market. They must understand how new regulations, policies, and political and economic trends may affect investments.

Investing is become more global, and some financial analysts specialize in a particular country or region. Companies want those financial analysts to understand the language, culture, business environment, and political conditions in the country or region that they cover.

The following are examples of types of financial analysts:

**Portfolio managers** supervise a team of analysts and select the mix of products, industries, and regions for their company's investment portfolio. These managers not only are responsible for the overall portfolio but also are expected to explain investment decisions and strategies in meetings with investors.

**Fund managers** work exclusively with hedge funds or mutual funds. Both fund and portfolio managers frequently make split-second buy or sell decisions in reaction to quickly changing market conditions.

**Ratings analysts** evaluate the ability of companies or governments to pay their debts, including bonds. On the basis of their evaluation, a management team rates the risk of a company or government not being able to repay its bonds.

**Risk analysts** evaluate the risk in investment decisions and determine how to manage unpredictability and limit potential losses. This job is carried out by making investment decisions such as selecting dissimilar stocks or having a combination of stocks, bonds, and mutual funds in a portfolio.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Financial Analysts," <http://www.bls.gov/ooh/business-and-financial/financial-analysts.htm#tab-2> (last accessed March 31, 2015).

Read in the total context of all of the information in the *Handbook* about the Financial Analysts occupational group, it is clear that the associated research, monitoring, analysis and other functions with regard to a business entity or entities does not refer to activities directed to the employer that is engaging the services of a financial analyst, but rather to business entities that the employer firm is evaluating for potential investment. Based on this observation, we find that the record's earlier-quoted descriptions of the duties associated with the proffered position do not appear to fall within the scope of the Financial Analysts occupational category as addressed in the *Handbook*. Specifically, it appears that the beneficiary is tasked with duties more applicable to the occupation of a budget analyst, since the majority of his claimed duties require compiling budget and fiscal data and advising departments on the formulation of budgets.

The *Handbook* describes the Budget Analysts occupational group as follows:

Budget analysts help public and private institutions organize their finances. They prepare budget reports and monitor institutional spending.

#### Duties

Budget analysts typically do the following:

- Work with program and project managers to develop the organization's budget
- Review managers' budget proposals for completeness, accuracy, and compliance with laws and other regulations
- Combine all the program and department budgets together into a consolidated organizational budget and review all funding requests for merit
- Explain their recommendations for funding requests to others in the organization, legislators, and the public
- Help the chief operations officer, agency head, or other top managers analyze proposed plans and find alternatives if the projected results are unsatisfactory
- Monitor organizational spending to ensure that it is within budget
- Inform program managers of the status and availability of funds
- Estimate future financial needs

Budget analysts advise various institutions—including governments, universities, and businesses—on how to organize their finances. They prepare annual and special reports and evaluate budget proposals. They analyze data to determine the costs and benefits of various programs and recommend funding levels based on their findings. Although elected officials (in government) or top executives (in a private company)

usually make the final decision on an organization's budget, they rely on the work of budget analysts to prepare the information for that decision.

Sometimes, budget analysts use cost-benefit analyses to review financial requests, assess program tradeoffs, and explore alternative funding methods. Budget analysts also may examine past budgets and research economic and financial developments that affect the organization's income and expenditures. Budget analysts may recommend program spending cuts or redistributing extra funds.

Throughout the year, budget analysts oversee spending to ensure compliance with the budget and determine whether changes to funding levels are needed for certain programs. Analysts also evaluate programs to determine whether they are producing the desired results.

In addition to providing technical analysis, budget analysts must effectively communicate their recommendations to officials within the organization. For example, if there is a difference between the approved budget and actual spending, budget analysts may write a report explaining the variations and recommend changes to reconcile the differences.

Budget analysts working in government attend committee hearings to explain their recommendations to legislators. Occasionally, budget analysts may evaluate how well a program is doing, provide policy analysis, and draft budget-related legislation.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Budget Analysts," <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-2> (last accessed March 31, 2015).

It is apparent from a comparison of the duties of the proffered position to those described above in the *Handbook's* section pertaining to the Budget Analysts occupational group that the proffered position is more akin to this classification. Therefore, we will evaluate the proffered position as such.

The *Handbook* does not indicate that a degree in a specific specialty is required to perform the duties of a budget analyst. Specifically, the *Handbook* states:

Employers generally require budget analysts to have at least a bachelor's degree. However, some employers may require candidates to have a master's degree. Because developing a budget requires strong numerical and analytical skills, courses in statistics or accounting are helpful. For the federal government, a bachelor's degree in any field is enough for an entry-level budget analyst position. State and local governments have varying requirements but usually require a bachelor's degree in one of many areas, such as accounting, finance, business, public administration, economics, statistics, political science, or sociology.

Sometimes, budget-related or finance-related work experience can be substituted for formal education.

U.S. Dept. of Labor, Bureau of Labor Statistics, *Occupational Outlook Handbook*, 2012-13 ed., "Budget Analysts," <http://www.bls.gov/ooh/business-and-financial/budget-analysts.htm#tab-4> (last accessed March 31, 2015).

The *Handbook* indicates that the occupational category accepts a wide variety of degrees for entry in to the occupation, including disparate fields such as sociology, political science, and public administration. It also indicates that sometimes, related work experience can be substituted for a formal education. The *Handbook*, therefore, does not support a claim that "Budget Analysts" comprise an occupational group for which at least a bachelor's degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry into the occupation.

When, as here, the *Handbook* does not support the proposition that the proffered position satisfies this first criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A), it is incumbent upon the petitioner to provide persuasive evidence that the proffered position otherwise satisfies the criterion, notwithstanding the absence of the *Handbook's* support on the issue. In such case, it is the petitioner's responsibility to provide probative evidence (e.g., documentation from other authoritative sources) that supports a favorable finding with regard to this criterion. The regulation at 8 C.F.R. § 214.2(h)(4)(iv) provides that "[a]n H-1B petition involving a specialty occupation shall be accompanied by [d]ocumentation . . . or any other required evidence sufficient to establish . . . that the services the beneficiary is to perform are in a specialty occupation." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190).

In the above regard, the petitioner should note that while we considered the aforementioned Internet articles we do not regard them as authoritative or probative.

The copy of the article " [REDACTED] " indicates that it was "[w]ritten by [REDACTED] ," but this 34-page article provides no information about the author, other than his acknowledgement that "As many of you know, I love to write on Financial Analyst Careers." Also, neither the article itself nor any other documentation within the record establishes the author's background and whatever educational and/or experiential credentials he may have that relate to the Financial Analysts or Financial Specialists, All Other occupational categories – that is, other than counsel's undocumented declarations, in his appeal letter, that the author is "the founder of [REDACTED] ," and that [REDACTED] is "one of the world's leading finance training websites." Additionally, we see that the author does not specify any studies, surveys, industry publications, or relevant empirical-data resource for his pronouncements about educational requirements.

Likewise, the two-page copy of the article " [REDACTED] " is introduced by the by-line " [REDACTED] "; but the record develops neither the nature of that organization nor any information regarding any special recognition that the organization has earned for reliable and authoritative opinions in the area which its article addresses. Also, while

we note the article's references to certain BLS (Bureau of Labor Statistics) information, the article does not specify the particular sources of that information. Of greater concern, however, is the fact that the article does not identify whatever research led to its narrative descriptions of "financial analysts" at the article's first page. This is a significant matter in light of the fact that, as we now find, the narrative at the first page of [REDACTED] does not comport with the information that the *Handbook's* "Financial Analysts" chapter provides about the Financial Analysts occupational group. As the stature of the *Handbook* as an authoritative resource on the nature and educational requirements of Standard Occupational Classification (SOC) occupational categories is not in question, and as SOC occupational categories are a critical part of USCIS specialty-occupation analysis, and as the article's characterization of the "financial analysts" that it addresses is materially different from the *Handbook's* characterization of positions within the Financial Analysts SOC occupational group, the petitioner has not even established the relevance of the "[REDACTED]" article.

Further still, the articles submitted on appeal indicate that financial analysts typically hold bachelor's degrees in business, business administration, finance, accounting, or a related field. Counsel asserts that these articles, along with the educational requirements set forth in the *Handbook*, clearly establish the proffered position as being that of a specialty occupation.

The fact that these articles claim that a bachelor's degree in business or "business administration," among other fields, is a sufficient minimum requirement for entry into the proffered position is inadequate to establish that the proposed position qualifies as a specialty occupation. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not establish the position as a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

To prove that a job requires the theoretical and practical application of a body of highly specialized knowledge as required by section 214(i)(1) of the Act, a petitioner must establish that the position requires the attainment of a bachelor's or higher degree in a specialized field of study or its equivalent. As discussed *supra*, 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. Although a general-purpose bachelor's degree, such as a degree in business administration, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify a finding that a particular position qualifies for classification as a specialty occupation. *See Royal Siam Corp. v. Chertoff*, 484 F.3d at 147.<sup>3</sup> For this reason, too,

<sup>3</sup> Specifically, the United States Court of Appeals for the First Circuit explained in *Royal Siam* that:

[t]he courts and the agency consistently have stated that, although a general-purpose bachelor's degree, such as a business administration degree, may be a legitimate prerequisite for a particular position, requiring such a degree, without more, will not justify the granting of a petition for an H-1B specialty occupation visa. *See, e.g., Tapis*

we accord no probative weight to these Internet articles towards establishing the proffered position as a specialty occupation.

While it appears to us that the duties that the petitioner ascribed to the proffered position more closely comport with a position within the Budget Analysts occupational group - as reflected in the discussions above - even if the petitioner had established that the proffered position falls within the Financial Analysts occupational category, the evidence of record is insufficient to establish that such a position satisfies any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

We note that, while the petitioner repeatedly contends that the proffered position should be recognized and assessed as one within the Financial Analysts occupational group, both the petitioner and its counsel contend that the proffered position encompasses a variety of duties associated with budget, credit-analysis, and investment-analysis occupations. While we stand by our finding that the proffered position more closely comports with a position within the Budget Analysts occupational group, we will nevertheless evaluate the additional evidence submitted by the petitioner in support of eligibility, which seeks to encompass virtues from all these financial-related areas into the collective title of "Financial Analyst."

On appeal, counsel further refers to two unpublished decisions in which we determined that the position of financial analyst proffered in that matter qualified as a specialty occupation. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. Further, while 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding.

Finally, the petitioner submitted a letter, dated June 2, 2014, from [REDACTED] Professor of Finance at [REDACTED] School of Business. Professor [REDACTED] stated that "the position of Financial Analyst is clearly a specialty position" and requires someone with "advanced training through a Bachelor's program in Finance or a closely related field." We reviewed the letter in its entirety. However, as discussed below, the letter from Professor [REDACTED] is not persuasive in establishing that the proffered position qualifies as a specialty occupation position.

Professor [REDACTED] submitted his curriculum vitae, along with a letter from [REDACTED] of [REDACTED] (position and title not specified) confirming the professor's employment at the university and his experience reviewing credentials. Professor [REDACTED] did not provide any further supporting documentation to establish his credentials as a person particularly qualified to provide us with a

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*Int'l v. INS*, 94 F.Supp.2d 172, 175-76 (D.Mass.2000); *Shanti*, 36 F. Supp.2d at 1164-66; cf. *Matter of Michael Hertz Assocs.*, 19 I & N Dec. 558, 560 ([Comm'r] 1988) (providing frequently cited analysis in connection with a conceptually similar provision). This is as it should be: otherwise, an employer could ensure the granting of a specialty occupation visa petition by the simple expedient of creating a generic (and essentially artificial) degree requirement.

*Id.*

helpful and reliable opinion on whether or not the proffered position qualifies as a specialty occupation.

We observe that Professor [REDACTED] states in his letter that his "evaluation relies upon copies of original documents provided by [the beneficiary] and represented by him to be authentic and true copies of those documents." As the professor neither describes nor provides copies of these documents, he has not established that his opinion letter is based upon the same information provided in the record of proceeding. Further, without establishing that we have had the opportunity to review whatever documentation the petitioner has submitted to the petitioner, the professor has not established that he is basing his opinion upon substantially the same information that the petitioner has submitted to USCIS to support its petition. Accordingly, even the relevancy of Professor [REDACTED] submission to the particular position that is the subject of this petition is in question.

Further, the content of the professor's letter does not specify any direct observation that he has had of the petitioner's business operations and the content and relative specialization or complexity of any matters within those operations that would be focus of the beneficiary's work. The author does not demonstrate or assert in-depth knowledge of the petitioner's specific business operations or how the duties of the position would actually be performed in the context of the petitioner's business enterprise.

Moreover, upon review of the letter, Professor [REDACTED] did not indicate that he visited the petitioner's business, or interviewed or otherwise queried the petitioner's knowledgeable officers regarding the substantive applications of financial knowledge that the beneficiary would actually have to employ in the particular contexts of the proffered position and the specific types of work products that the position would generate. Further still, neither the letter nor any other evidence of record indicates that the petitioner had apprised Professor [REDACTED] that, with regard to the proffered position's place in occupational hierarchies, the petitioner characterized the proffered position not as a position within the Financial Analysts occupational group, but as a low, entry-level position in the lower-paying Financial Specialists occupational group, for a beginning employee who has only a basic understanding of the occupation (as indicated by the prevailing-wage level on the LCA). Not only was the LCA not certified for a position within, and entitled to the pay of, the Financial Analysts occupational group, but the LCA's prevailing-wage rate indicates the petitioner's view that the beneficiary will be expected to perform routine tasks that require limited, if any, exercise of judgment; that he will be closely supervised and his work closely monitored and reviewed for accuracy; and that he will receive specific instructions on required tasks and expected results. It appears that Professor [REDACTED] would have found this information relevant for his opinion letter. Moreover, without this information, the petitioner has not demonstrated that Professor [REDACTED] possessed the requisite information necessary to adequately assess the nature of the petitioner's position and appropriately determine the educational requirements based upon the job duties and responsibilities. Professor [REDACTED] has not provided sufficient facts that would support the contention that the proffered position requires at least a bachelor's degree in a specific specialty. Also, Professor [REDACTED] does not provide a sufficiently substantive and analytical basis for his opinion.

In summary, and for each and all of the reasons discussed above, we conclude that the opinion letter rendered by Professor [REDACTED] is not probative evidence towards establishing the proffered position as a specialty occupation. The conclusion reached by the author lacks the requisite factual and analytical specificity and detail and it is not supported by independent, objective evidence demonstrating the manner in which he reached such conclusions (such as, for instance, industry studies or DOL resources.) There is an inadequate factual foundation established to support the opinion and we find that the opinion is not in accord with other information in the record. Therefore, we find that the letter from Professor [REDACTED] does not establish that the proffered position is a specialty occupation. As such, neither his findings nor his ultimate conclusion are worthy of any deference, and the opinion letter is not probative evidence towards satisfying any criterion of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(A).

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). As a reasonable exercise of its discretion we discount the professor's advisory opinion letter as not probative of any criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A). For efficiency's sake, we hereby incorporate the above discussion and analysis regarding the opinion letter into each of the bases in this decision for dismissing the appeal.

Upon review of the totality of the evidence in the entire record of proceeding, we conclude that the petitioner has not established that the proffered position falls within an occupational category for which the *Handbook*, or other authoritative source, indicates that normally the minimum requirement for entry into the occupation is at least a bachelor's degree in a specific specialty, or its equivalent. Furthermore, the duties and requirements of the proffered position as described in the record of proceeding by the petitioner do not indicate that the particular position that is the subject of this petition is one for which a baccalaureate or higher degree in a specific specialty, or its equivalent, is normally the minimum requirement for entry. Thus, the petitioner failed to satisfy the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1).

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

In determining whether there is such a common degree requirement, factors often considered by USCIS include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (*D. Minn.* 1999) (quoting *Hird/Blaker Corp. v. Sava*, 712 F. Supp. 1095, 1102 (S.D. N.Y. 1989).

As previously discussed, the petitioner has not established that its proffered position is one for which the *Handbook*, or other authoritative source, reports an industry-wide requirement for at least

a bachelor's degree in a specific specialty, or its equivalent. Thus, we incorporate the AAO incorporates by reference the previous discussion on the matter.

The petitioner designated its business operations under the corresponding North American Industry Classification System (NAICS) code 236118 designated for "Residential Remodelers" on the LCA.<sup>4</sup> The U.S. Department of Commerce, Census Bureau website describes this NAICS code by stating the following:

This U.S. industry comprises establishments primarily responsible for the remodeling construction (including additions, alterations, reconstruction, maintenance, and repair work) of houses and other residential buildings, single-family, and multifamily. Included in this industry are remodeling general contractors, for-sale remodelers, remodeling design-build firms, and remodeling project construction management firms.

U.S. Dep't of Commerce, U.S. Census Bureau, 2012 NAICS Definition, 236118 – Residential Remodelers on the Internet at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch> (last accessed March 31, 2015).

The petitioner must establish that similar organizations in fact routinely require specialty-degreed individuals in parallel positions. For the petitioner to establish that an organization is similar, it must demonstrate that the petitioner and the organization share the same general characteristics. Without such evidence, postings submitted by a petitioner are generally outside the scope of consideration for this criterion, which encompasses only organizations that are similar to the petitioner.

We note that the petitioner did not provide any independent evidence of how representative the job advertisements are of the particular advertising employer's recruiting history for the type of job advertised. As the advertisements are only solicitations for hire, they are not evidence of the employer's actual hiring practices. Upon review of the documents, we find that they do not establish that a requirement for a bachelor's degree, in a specific specialty, is common to the petitioner's industry in similar organizations for parallel positions to the proffered position.

All of the job announcements are for positions within companies outside of the petitioner's industry. For example, the advertisements include postings from a Credit Union and a bank; however, because the position involves real estate analysis, the petitioner deems it similar. Moreover, we note that most of the provided job advertisements solicit a financial analyst for work in real estate management firms. Although they have a common connection by virtue of

<sup>4</sup> According to the U.S. Census Bureau, the North American Industry Classification System (NAICS) is used to classify business establishments according to type of economic activity and each establishment is classified to an industry according to the primary business activity taking place there. See <http://www.census.gov/eos/www/naics/> (last accessed March 31, 2015).

being engaged in the same general subject matter, the petitioner is a residential remodeler, whereas the companies in these postings provide real estate analysis and management services.<sup>5</sup>

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

For instance, aside from the fact that the firms advertising the vacancies are vastly different from the petition, they all involve real estate or financial planning/analysis as a service for customers. As discussed in detail above, the position as described by the petitioner in this matter is more akin to a budget analyst, which provides internally budgetary and fiscal management service for the petitioner's enterprise. This fact alone disqualifies these postings as they do not represent positions akin to the proffered position in this matter.

Moreover, contrary to the purpose for which the advertisements were submitted, some of the postings do not establish that at least a bachelor's degree in a specific specialty, or the equivalent, is required for the positions. For example, some of the postings state that a bachelor's degree is required, but they do not indicate that a bachelor's degree in a *specific specialty* that is directly related to the occupation is required. Others accept a variety of degrees, including business administration, as well as equivalent work experience. The AAO here reiterates that the degree requirement set by the statutory and regulatory framework of the H-1B program is not just a bachelor's or higher degree, but such a degree in a *specific specialty* that is directly related to the specialty occupation claimed in the petition. Moreover, the AAO observes that some of the advertisements indicate that a bachelor's degree in business or business administration is acceptable. Since there must be a close correlation between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration, without further specification, does not support the assertion that a position is a specialty occupation. *Cf. Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm'r 1988).

We reviewed all of the submitted advertisements. As the documentation does not establish that the petitioner has met this prong of the regulations, further analysis regarding the specific information contained in each of the job postings is not necessary. That is, not every deficit of every job posting has been addressed. The evidence does not establish that organizations that are both similar to and in the in the same industry as the petitioner routinely require at least a bachelor's degree in a specific specialty or its equivalent for parallel positions.<sup>6</sup>

<sup>5</sup> We note that "Real Estate Management" companies are classified separately from "Residential Remodelers" under NAICS code 531390. *See id.*

<sup>6</sup> USCIS "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. at 376. As just discussed, the petitioner has failed to establish the relevance of the job advertisements submitted to the position proffered in this case. Even if their relevance had been established, the petitioner still fails to demonstrate what inferences, if any, can be drawn from these few job postings with regard to determining the common educational requirements for entry into parallel positions in similar organizations in the same

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

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

At the outset, we refer the petitioner back to our earlier comments and findings with regard to the record's presentation of the proffered position and its duties in terms of generalized functions that are not described in sufficient detail to establish either whatever substantive work their actual performance would entail or the nature and educational or education-equivalency level of knowledge in any specific specialty that such work would require. As reflected in those discussions, we find that the evidence of record does not establish relative complexity or uniqueness as distinguishing features of the proffered position, let alone as aspects that would establish the position as requiring the service of a person with at least bachelor's degree, or the equivalent, in a specific specialty.

In the instant case, the petitioner failed to sufficiently develop relative complexity or uniqueness as an aspect of the proffered position. Specifically, the petitioner failed to demonstrate how the proffered position's duties as described require the theoretical and practical application of a body of highly specialized knowledge such that a person who has attained a bachelor's or higher degree in a specific specialty or its equivalent is required to perform them.

In addition to this decisive evidentiary deficiency, we also find that the content of LCA submitted into the record weighs against a favorable finding here. The LCA indicates a wage level based upon the occupational classification "Financial Analysts" at a Level I (entry) wage.<sup>7</sup>

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industry. See generally Earl Babbie, *The Practice of Social Research* 186-228 (1995).

<sup>7</sup> Wage levels should be determined only after selecting the most relevant Occupational Information Network (O\*NET) code classification. Then, a prevailing wage determination is made by selecting one of four wage levels for an occupation based on a comparison of the employer's job requirements to the occupational requirements, including tasks, knowledge, skills, and specific vocational preparation (education, training and experience) generally required for acceptable performance in that occupation.

Prevailing wage determinations start with a Level I (entry) and progress to a wage that is commensurate with that of a Level II (qualified), Level III (experienced), or Level IV (fully competent) after considering the job requirements, experience, education, special skills/other requirements and supervisory duties. Factors to be considered when determining the prevailing wage level for a position include the

This wage-level designation is appropriate for positions for which the petitioner expects the beneficiary to only have a basic understanding of the occupation.<sup>8</sup> That is, in accordance with the relevant DOL explanatory information on wage levels, this wage rate indicates that the beneficiary will be expected to perform routine tasks that require 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. Without further evidence, it is simply not credible that the petitioner's proffered position is sufficiently complex or unique to satisfy this criterion. Also, a position with the independence of judgment, possibility of supervising staff, lack of an overlooking first-line supervisor, and reliance by the petitioner's Chief Executive and Chief Operating Officer to whom the petitioner stated that the beneficiary would directly report – claimed job-aspects reflected in the petitioner's support letter and job advertisement - would likely merit classification at a higher prevailing-wage level, such as a Level IV (fully competent) position, requiring a significantly higher prevailing wage. For example, a Level IV (fully competent) position is designated by DOL for employees who "use advanced skills and diversified knowledge to solve unusual and complex problems."<sup>9</sup> Thus, the wage level designated by the petitioner in the LCA for the proffered position is not consistent with claims that the position would entail any particularly complex or unique duties or that the position itself would be so complex or unique as to require the services

complexity of the job duties, the level of judgment, the amount and level of supervision, and the level of understanding required to perform the job duties. DOL emphasizes that these guidelines should not be implemented in a mechanical fashion and that the wage level should be commensurate with the complexity of the tasks, independent judgment required, and amount of close supervision received.

See DOL, Employment and Training Administration's *Prevailing Wage Determination Policy Guidance*, Nonagricultural Immigration Programs (Rev. Nov. 2009), available on the Internet at: [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

<sup>8</sup> The wage levels are defined in DOL's "Prevailing Wage Determination Policy Guidance." A Level I wage rate is describes as follows:

**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.

<sup>9</sup> For additional information regarding wage levels as defined by DOL, see U.S. Dep't of Labor, Emp't & Training Admin., *Prevailing Wage Determination Policy Guidance*, Nonagric. Immigration Programs (rev. Nov. 2009), available on the Internet at [http://www.foreignlaborcert.doleta.gov/pdf/NPWHC\\_Guidance\\_Revised\\_11\\_2009.pdf](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

of a person with at least a bachelor's degree in a specific specialty.

As the record lacks sufficiently detailed information to distinguish the proffered position as so complex or unique that it can only be performed by a person with at least a bachelor's degree in a specific specialty, or its equivalent, the petitioner has not satisfied the second alternative prong of 8 C.F.R. § 214.2(h)(4)(iii)(A)(2).

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

Of course, we will necessarily review and consider whatever evidence the petitioner may have submitted with regard to its history of recruiting and hiring for the proffered position and with regard to the educational credentials of the persons who have held the proffered position in the past.

To merit approval of the petition under this criterion, the record must contain documentary evidence demonstrating that the petitioner has a history of requiring the degree or degree equivalency in its prior recruiting and hiring for the position. Further, it should be noted that the record must establish that a petitioner's imposition of a degree requirement is not merely a matter of preference for high-caliber candidates but is necessitated by the performance requirements of the position.

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

Moreover, to satisfy this criterion, the record must establish that the specific performance requirements of the position generated the recruiting and hiring history. A petitioner's perfunctory declaration of a particular educational requirement will not mask the fact that the position is not a specialty occupation. USCIS must examine the actual employment requirements and, on the basis of that examination, determine whether the position qualifies as a specialty occupation. See generally *Defensor v. Meissner*, 201 F.3d 384. In this pursuit, the critical element is not the title of the position, or the fact that an employer has routinely insisted on certain educational standards, but whether performance of the position actually requires the theoretical and practical application of a body of highly specialized knowledge, and the

attainment of a baccalaureate or higher degree in the specific specialty or its equivalent as the minimum for entry into the occupation as required by section 214(i)(1) of the Act. To interpret the regulation any other way would lead to absurd results: if USCIS were constrained to recognize a specialty occupation merely because the petitioner has an established practice of demanding certain educational requirements for the proffered position – and without consideration of how a beneficiary is to be specifically employed – then any alien with a bachelor's degree in specific specialty could be brought into the United States to perform non-specialty occupations, so long as the employer required all such employees to have baccalaureate or higher degrees. *See id.* at 388.

The petitioner submits no evidence in support of the contention that it has routinely employed only specialty-degreed individuals in the proffered position. Although it discusses its current staffing and their educational background when discussing the organizational hierarchy of the company, there is no claim, nor is there evidence to support a finding, that the petitioner previously employed a specialty-degreed person in the proffered position and/or that it normally requires at least a bachelor's degree in a specific specialty, or its equivalent, for the proffered position. The petitioner, therefore, has not satisfied the third criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

Next, we find that the petitioner has not satisfied the fourth criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A), which requires the petitioner to establish that the nature of the proffered position's duties is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent.

Upon review of the entire record of the proceeding, we find that the petitioner has not provided sufficient evidence to satisfy this criterion of the regulations.

We again refer the petitioner to our earlier discussion with regard to the generalized and relatively abstract information provided about the nature of the proposed duties. As there reflected, the evidence of record simply does not provide sufficient details about the nature of the proposed duties to establish the level of specialization and complexity required to satisfy this particular criterion.

By the same token, the proposed duties have not been described with sufficient specificity to establish their nature as so specialized and complex as to satisfy this criterion, even if we consider the proffered position as comprised of duties from the several occupational categories that the petitioner argues are included within the proffered position.

In this regard, we also here incorporate into this analysis our earlier comments and findings with regard to the implication of the Level I wage-rate designation (the lowest of four possible wage-levels) in the LCA. That is, that the proffered position's Level I wage designation is appropriate for a low, entry-level position relative to others within the Financial Specialists (not Financial Analysts) occupational category which the petitioner's LCA attested as the correct occupational category. As noted earlier, the DOL indicates that a Level I designation is appropriate for "beginning level employees who have only a basic understanding of the occupation."

As the evidence of record has not established that the nature of the duties of the proffered position is so specialized and complex that the knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree in a specific specialty, or its equivalent, the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

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

#### IV. BEYOND THE DIRECTOR'S DECISION

We will also address an additional, independent ground for denial of the petition, not identified by the director's decision, which also precludes approval of this petition. Specifically, beyond the decision of the director, we find that the petitioner failed to submit an LCA that corresponds to the petition. On the LCA, the petitioner specified that the occupational classification for the proffered position falls under "Financial Specialists, All Other" and listed the SOC (O\*NET/OES) Code as 13-2099. We note that by completing and submitting the LCA with the petition, and by signing the LCA, the petitioner attested that the information contained in the LCA was true and accurate.

In the petitioner's Form I-129 support letter, the petitioner asserted that the duties of the proffered position fall under the heading of Financial Analyst, for which the code is 13-2051. The assertion of the petitioner that the occupational category for the proffered position is that of a "Financial Analyst" is contradicted by the occupational classification designated in the LCA that the petitioner submitted to support the petition.

With respect to the LCA, DOL provides clear guidance for selecting the most relevant O\*NET occupational code classification.<sup>10</sup> The "Prevailing Wage Determination Policy Guidance" states the following:

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

<sup>10</sup> 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](http://www.foreignlaborcert.doleta.gov/pdf/NPWHC_Guidance_Revised_11_2009.pdf).

SWA shall use the education, skill and experience levels for the higher paying occupation when making the wage level determination.

We note that the petitioner stated on the LCA that the wage level for the proffered position is Level I (entry). The petitioner provided the prevailing wage that corresponds to the occupation "Financial Specialists, All Other," which is \$39,936 per year.

We observe that the prevailing wage for the position of "Financial Analyst " at a Level I prevailing-wage is significantly higher at \$59,925 per year than the prevailing wage for "Financial Specialists, All Other." Thus, according to DOL guidance, if the petitioner believed its position was appropriately described in the category of "Financial Analysts " or was a combination of "Financial Analysts" and "Financial Specialists, All Other," or perhaps a combination of the two with "Credit Analysts," information for which the petitioner submitted in response to the RFE, it should have chosen the relevant occupational code for the highest paying occupation. However, the petitioner chose the occupational category for the lower paying occupation "Financial Specialists, All Other" for the proffered position on the LCA.

While DOL is the agency that certifies LCA applications before they are submitted to USCIS, DOL regulations note that the Department of Homeland Security (DHS) (i.e., its immigration benefits branch, USCIS) is the department responsible for determining whether 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 (emphasis added):

For H-1B visas . . . DHS accepts the employer's petition (DHS Form I-129) with the DOL certified LCA attached. *In doing so, the DHS determines whether the petition is supported by an LCA which corresponds with the petition*, whether the occupation named in the [LCA] is a specialty occupation 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.

The regulation at 20 C.F.R. § 655.705(b) requires that USCIS ensure that an LCA actually supports the H-1B petition filed on behalf of the beneficiary. Here, the petitioner has failed to submit a certified LCA that corresponds to the claimed duties of the proffered position, and the appeal must be dismissed and the petition denied for this additional reason.

## V. CONCLUSION

An application or petition that does not 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, 145 (3d Cir. 2004) (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 1037, *aff'd*, 345 F.3d 683; see also *BDPCS, Inc. v. Fed. Communications Comm'n*, 351 F.3d 1177, 1183 (D.C. Cir. 2003) ("When an agency offers multiple grounds for a decision, we will affirm the agency so long as any one of the grounds is valid, unless it is demonstrated that the agency would not have acted on that basis if the alternative grounds were unavailable.").

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

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